

STORAGE NAME: h3655.wrm
DATE: March 12, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Water & Resource Management
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3655
RELATING TO: State Funds
SPONSOR(S): Representative Posey
COMPANION BILL(S): None

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

- (1) Water & Resource Management
- (2) General Government Appropriations
- (3)
- (4)
- (5)

I. SUMMARY:

HB 3655 would amend s. 370.12, F.S., to reduce the annual allocation to the Save the Manatee Trust Fund when the number of living manatees exceeds the number of manatees that existed both 10 and 100 years previously.

In addition, HB 3655 would amend s. 370.12, F.S., to prohibit the distribution of state funds to any private organization to pay legal fees incurred because of any challenge or opposition to any rule, regulation or statute lawfully adopted by the state or any agency. The bill, moreover, prevents any private organization from using state funds to pay legal fees associated with any action that would result in the dilution or limitation of private property rights of any landowner within the state. Finally, HB 3655 bans the further distribution of state funds to any private organization that uses state funds to pay legal fees incurred because of a challenge or opposition to any rule or regulation of the Department of Environmental Protection.

In limiting the distribution of state funds, HB 3655 moves beyond the narrow issue of the protection of manatees to broader issues. Withholding state funds from private organizations that seek administrative or judicial redress or even oppose a state statute or rule raises possible constitutional questions. However, the sponsor has filed an amendment that appears to eliminate this concern.

The fiscal impact of HB 3331 is indeterminate.

HB 3655 would take effect upon becoming law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

To fund research and recovery for the manatee, s. 327.28, F.S., directs that the Save the Manatee Trust Fund (STMTF) receive \$1 for every vessel registered in the state. Section 327.28, F.S., also steers 50 cents for every vessel registered in the state to the STMTF specifically for the use by those facilities authorized to rescue, rehabilitate and release manatees. As another means to support the STMTF, s. 320.08058, F.S., requires that the registration fees for the manatee license plate go to the trust fund.

According to DEP's Save the Manatee Trust Fund Fiscal Year 1996-1997 Annual Report (received on December 1, 1997), the license tag fees generated \$2.2 million for the STMTF; vessel registration fees produced another \$900,000; and other sources resulted in approximately \$4.3 million (most of this amount came from a one-time transfer from the Save Our State Trust Fund).

While ss. 320.08058 and 327.28, F.S., provide funding, s. 370.12(5), F.S., enumerates the purposes for which the funds of the STMTF may be used. Generally, s. 370.12(5), F.S., provides for annual funding from the STMTF to support activities relating to manatee rescue, rehabilitation, recovery and protection. In addition to these activities, s. 370.12(5)(a), F.S., requires that funds from the STMTF be available each fiscal year for a population census of the manatees in the state. The Department of Environmental Protection (DEP) in conjunction with the U.S. Fish and Wildlife Service oversees an annual census of the state's manatee population. This census involves the use of aerial surveys undertaken in the winter months when the manatees congregate in warm springs and shallow bays.

Although employing the best available techniques and information, DEP cautions that this census merely counts observed individuals and represents, at best, an educated guess of the current manatee population. Weather, for example, affects the accuracy of the count. Moreover, manatee population data do not cover any period other than the last five or six years. The latest census, taken in January of 1997, counted 2,022 manatees.

Currently, the manatee occupies a place on the U.S. Department of Interior's list of endangered species. Section 370.12(5), F.S., provides that in the event the federal and state governments remove the manatee from the endangered or threatened species list that the annual allocation from the STMTF may be reduced.

HB 3655 was filed to address concerns that monies from the STMTF helped fund legal challenges against the state. Specifically, concerns were raised about the recent opposition by the Save the Manatee Club to a project in Brevard County known as the H-Canal. In this case, DEP preliminarily decided to issue a permit authorizing the reconnection of the canal to the Banana River. Allegedly concerned about adverse impacts to water quality and the local manatee population, the Save the Manatee Club filed an administrative petition challenging DEP's decision. While it is not clear that the Save the Manatee Club used state funds in this legal challenge, the Game and Freshwater Fish Commission did grant the organization \$33,930 from the STMTF in fiscal year 1996-97.

Based on a review of Florida statutes, it does not appear that any law prohibits or restricts the use or distribution of state funds by any organization -- public or private -- based on its opposition or legal challenge to a state regulation or statute.

B. EFFECT OF PROPOSED CHANGES:

HB 3655 amends s. 370.12(5), F.S., to provide under certain circumstances a reduction in the annual allocation of funds from the STMTF to public and private organizations conducting activities related to manatee protection and recovery. Under HB 3655, the annual allocation of the STMTF would be reduced when the number of living manatees exceeds the number of manatees that existed 10 and 100 years previously. However, because of the lack of manatee population data beyond the last six years, it appears that HB 3655 cannot be implemented.

In addition, doubts exist about the level of accuracy of DEP's annual census count of manatees. Influenced by weather conditions and conducted over Florida's long coastline and many rivers and springs, the annual census is, at best, a rough count of the number of manatees in the state. Because DEP's annual census does not constitute a definitive count of the number of living manatees, the comparison between the current and past manatee populations mandated by HB 3655 is unworkable (even if the records existed to show the manatee population 10 and 100 years ago).

HB 3655 prohibits the use of state funds to pay for legal fees incurred by any private organization because of its opposition or legal challenge to any rule, regulation or statute lawfully adopted by the state or any of its agencies. The bill also extends the same prohibition on the use of state funds for any legal action that would dilute, inordinately burden, restrict or limit the private property rights of any landowner within the state. The effect of these provisions transcends the manatee program or even Chapter 370, F.S. and raises potential constitutional questions of freedom of speech and contractual impairment. In light of these questions, and as more fully discussed in the "Comments" section below, the sponsor has filed a strike-everything-after-the-enacting clause amendment to address these issues.

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?

No.

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

Potentially yes. In the event that DEP lost funding as the result of the passage of HB 3655, the task of promoting the recovery of the manatee might fall more heavily on the shoulders of other agencies and private organizations.

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

No.

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

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Potentially yes. To extent the loss of DEP grants affects local government efforts to promote and protect manatees, these same local governments may seek to offset the loss of DEP grants through additional taxes. However, the loss of DEP grant money by local governments appears to be minimal.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

Not applicable.

4. Individual Freedom:

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

No.

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

Yes. Given its broad language, HB 3655 may compromise the ability of any private organization receiving state funding (regardless of its issue focus) to mount a legal challenge to a rule or statute. However, as more fully discussed in the "Comments" section below, the strike-everything amendment being considered by the sponsor addresses this issue.

5. Family Empowerment:

Not applicable.

D. STATUTE(S) AFFECTED:

Section 370.12(5), F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 370.12(5), F.S., to provide that when the number of living manatees exceeds the number of manatees that existed during the periods both 10 and 100 years previously that the annual allocation shall be reduced.

Section 2: Amends s. 370.12(5), F.S., to prohibit the expenditure of state funds by any private organization for the payment of any legal fees incurred because of a challenge to or opposition to any rule, regulation or statute lawfully adopted by the state or any of its agencies. Provides that no state funds may be used by any private organization to pay for legal fees in any action that would result in the dilution, inordinate burden, restriction or limitation of private property rights of any landowner in the state. Prohibits any private organization that spent state funds to pay for legal fees incurred because of a challenge or opposition to any rule or regulation of the Department of Environmental Protection from receiving further state funds.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

If HB 3655 becomes law, then DEP may experience a loss of funding if the number of living manatees exceeds the number of manatees that existed 10 and 100 years ago.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

As discussed above, if HB 3655 becomes law and the number of living manatees exceeds the number of manatees that existed 10 and 100 years ago, then DEP may experience a loss of funding for its manatee recovery and protection efforts.

At the same time, HB 3655's prohibition on the use of state funds to mount legal challenges or even oppose state rules or statutes may lower the state's legal costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Because some local governments may rely on grants from DEP to promote and protect manatees within their jurisdictions, the loss of these grants, if the number of living manatees exceeds the number of manatees that existed 10 and 100 years ago, may force governments to seek other funding sources, possibly including ad valorem taxation. However, it appears that the effect of HB 3655 would be minimal.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Because some private organizations may rely on grants from DEP to fund their manatee-related activities, the possible loss of these grants, if the number of living manatees exceeds the number of manatees that existed 10 and 100 years ago, may compel these organizations to seek other funding sources.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This provision is not applicable to HB 3655 as the bill does not require local governments to spend funds or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

V. COMMENTS:

Aside from concerns about the implementation of HB 3655, the bill contains provisions with some potential technical difficulties. For instance, the prohibition on the use of state funds for a challenge or opposition to a lawfully adopted rule or statute appears problematic because the validity of a rule or statute is often not established until after a challenge is brought. Moreover, some terms such those referring to "dilution," "restriction," or "limitation" may need further clarification. In its provisions restricting the distribution and use of state funds, HB 3655 raises potential constitutional questions regarding freedom of speech and contractual impairment.

However, the sponsor has filed a strike-everything amendment narrowly drafted to prevent the use of monies from the STMTF or the manatee license plate to pay legal fees or costs.

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Given the narrow scope of this language, the potential issues identified in HB 3655 appear to be resolved.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Not applicable.

VII. SIGNATURES:

COMMITTEE ON Water & Resource Management:

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