

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/SB 1614

SPONSOR: Natural Resources Committee and Senator Posey

SUBJECT: Protection of Manatees

DATE: February 27, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gee	Voigt	NR	Favorable/CS
2.			CA	
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

This bill provides for the creation of local rule-review committees in counties where manatee-protection zones or manatee speed zones may be imposed. It provides that written reports submitted to the Fish and Wildlife Conservation Commission (FWC) by local rule-review committees are part of the rulemaking record. This bill revises the circumstances under which boat speeds may be regulated and requires the FWC to develop a measurable biological goal that defines manatee recovery. Legislative intent is provided relating to the retroactive application of the act and its application to proposed rules currently under challenge.

This bill amends ss. 327.41 and 370.12(2), F.S.

II. Present Situation:

Manatees are marine mammals that can be found in Florida's coastal and riverine waters throughout the year. The Florida manatee is listed as an endangered species under both state and federal law. Protection of manatees in Florida has been legislatively mandated since 1892. Current state efforts toward population recovery are guided by the Florida Manatee Sanctuary Act of 1978 and the federally-approved Florida Manatee Recovery Plan of 1995. The Florida Manatee Sanctuary Act declared the state to be a refuge and sanctuary for the manatee and subsequent amendments have given the FWC a wide range of responsibilities. The Recovery Plan lists 126 separate tasks that need to be accomplished. Many of these tasks are addressed through a cooperative effort between federal, state, and local governments. Manatees face a variety of threats including deaths from human-related causes (collisions with watercraft, crushings in water control gates and locks, and entanglements in fishing gear), as well as destruction and degradation of their habitat. Manatees have also died as a result of exposure to harmful algal blooms, the effects of cold water, and natural disease.

Pursuant to s. 370.12(2), F.S., the FWC is directed to adopt rules to protect manatees from harmful collisions with motorboats or from harassment, due to the expansion of existing, or the construction of new, marine facilities and mooring or docking slips, or by the addition or construction of five or more powerboat slips. The FWC may regulate the operation and speed of motorboat traffic only where manatee sightings are frequent and it can be generally assumed, based on available scientific information, that they inhabit the areas on a regular or continuous basis. The statutes specify a number of areas in several counties where such rules are to be considered; under this authority the FWC has adopted a number of rules establishing zones and areas where motorboat operation is prohibited, limited, or regulated for manatee protection. Rules have also been developed to regulate motorboat operation in the vicinity of power plants or other sources of warm water that attract concentrations of manatees.

Pursuant to s. 370.12(2)(j), F.S., the Legislature has provided its intent regarding the motorboat regulation allowed the FWC:

“... to post and regulate boat speeds only where manatee sightings are frequent and it can be generally assumed that they inhabit these areas on a regular or continuous basis. It is not the intent of the Legislature to permit the commission to post and regulate boat speeds generally in the above-described inlets, bay, rivers, creeks, thereby unduly interfering with the rights of fishers, boaters, and water skiers using the areas for recreational and commercial purposes. Limited lanes or corridors providing for reasonable motorboat speeds may be identified and designated within these areas.”

Aerial surveys conducted by the FWC show that manatee populations have increased in recent years. In February, 1991, the aerial count was 1,462. In January, 1997, the aerial count was 2,229. In March, 1999, the aerial count was 2,353, and in January, 2001, 3,276 manatees were counted in surveys conducted throughout Florida. However, the number of manatee deaths from human-related incidents, such as collisions with boats and other watercraft, continues to be of concern. In 1990, 47 manatee deaths were attributed to collisions with watercraft. In 1995, there were 42 watercraft-related deaths, and in 2001, the FWC reported 81 watercraft-related deaths. In 1997, Florida had 755,000 registered recreational vessels, and in 2000, Florida had almost 841,000 registered recreational vessels. Many more vessels visit annually from other areas.

In January, 2000, the Save the Manatee Club and others sued the Army Corps of Engineers (Corps) and the US Fish & Wildlife Service of the Department of the Interior (DOI) for failure to protect manatees under the Marine Mammal Protection Act and the Endangered Species Act. The lawsuit claimed that by authorizing dredge and fill projects and the construction of boat marinas, the DOI and the Corps have adversely modified habitat critical to manatees. The lawsuit further claimed that by authorizing the construction of marinas and boat slips, the Corps was responsible for increased boat traffic which resulted in harm to manatees and caused an intentional “taking” of an endangered species, without requiring the projects to apply for an incidental take permit under the terms of the Marine Mammal Protection Act.

In January, 2001, the U.S. District Court ratified a settlement agreement between the Save the Manatee Club and the defendants. The settlement agreement established target dates for completion of manatee protection tasks, including a comprehensive review of current manatee protection areas throughout Florida, and the establishment of additional areas of protection where necessary, some of which duplicate the areas involved in the lawsuit against the state, which is discussed below.

However, in October, 2001, the plaintiffs in this case served the defendants with a formal notice that the terms of the settlement agreement had been breached by the DOI's failure to adopt a comprehensive network of manatee refuges and sanctuaries as called for in the settlement. The notice further states that the interim management policy adopted by the DOI is more harmful than that which was agreed to because the federal government is still permitting marinas, docks, and boat slips but is not collecting an impact fee to be assessed against single-family and other dock permit applicants to pay for the implementation of manatee conservation measures.

In January, 2000, the Save the Manatee Club and others also sued Dr. Allan Egbert as Executive Director of the FWC. The federal lawsuit charged the FWC with violations of the Endangered Species Act and the Marine Mammal Protection Act for failure to provide adequate protection for manatees by allowing motorboats and other watercraft to travel at high speeds through manatee habitat. The Save the Manatee Club charged that the FWC was authorizing the illegal taking of manatees due to the increasing numbers of manatees that were killed, injured, maimed or harassed by collisions with boats.

In November, 2001, the U.S. District Court entered a settlement agreement that called for protective measures very similar to those required in the settlement with the federal agencies. The FWC is required to revise the Brevard County speed zone rules. Upon completion of the Brevard County rules, the FWC will propose speed zone rules or changes to eight "hot spots" in the state where manatee mortality has been identified as a special problem. These areas include Lemon Bay and the Peace River in Charlotte County, the Alafia River in Hillsborough County, Terra Ceia Bay in Manatee County, portions of the Halifax River in Volusia County, the Jungle Trail Area in Indian River County, the Crossroads Area in Martin County, and the confluence of the Loxahatchee River and the Intracoastal Waterway in Palm Beach County.

While the "hot spot" rules are being developed, the FWC will also prepare a rulemaking proposal to include eight areas as "safe havens" which can include limited entry or no access restrictions. The areas proposed for the safe havens include the Blue Waters in the Homosassa River in Citrus County, Warm Mineral Springs in Sarasota County, a portion of Turtle Bay in Charlotte County, the Vero Beach Power Plant discharge areas in Indian River County, the Blue Lagoon and Sky Lakes in Dade County, DeLeon Springs in Volusia County, and Pansy Bayou in Sarasota County.

When rules for the eight hot spots and eight safe havens have been completed, the FWC will prepare a rulemaking proposal for Tampa Bay, and a rulemaking proposal for six additional safe havens in Hillsborough, Marion, Putnam, St. Lucie and Palm Beach counties. Finally, under the settlement agreement, the FWC will study boating and manatee conflicts in the Caloosahatchee River and Mullock Creek in Lee County, and evaluate existing rules for Lee County, the downtown portions of Duval County, and the Ten Thousand Islands in Collier County. The FWC

must provide enhanced law enforcement statewide, and must specifically increase law enforcement in the Caloosahatchee River.

III. Effect of Proposed Changes:

Section 1. This section amends s. 370.12(2), F.S., to revise requirements for the FWC's rulemaking to protect manatees from collisions with motorboats.

The bill requires that, except for emergency rules, proposed rules of the FWC for which a notice of intended agency action is filed after June 15, 2002 which propose to govern the speed and operation of motorboats for purposes of manatee protection, must be submitted to each county within which the proposed rule will take effect for review by a local rule-review committee.

No less than 60 days before filing a notice of rule development in the Florida Administrative Weekly, the FWC must notify the counties for which a rule to regulate the speed and operation of motorboats for the protection of manatees is proposed. Each county that is notified must establish a local rule-review committee, or several counties may combine local rule-review committees.

The board of county commissioners of each county in which such a proposed rule will take effect must appoint the members of each local rule-review committee. The membership must represent a balance of fishers, boaters, water skiers, other traditional waterway users, and environmental interests. A board of county commissioners may designate an existing advisory group as the local rule-review committee so long as the membership of the advisory group maintains a balance of fishers, boaters, water skiers, other traditional waterway users, and environmental interests.

The county must also invite other state, federal, county, municipal, or local agency representatives to participate as nonvoting members of the local committee. The county will provide logistical and administrative staff support to the local committee appointed by that county, and may request technical assistance from the FWC. The members of each local committee will elect a chair and recording secretary from among its voting members.

FWC staff must submit the proposed rule and supporting data used to develop the rule to the local committees, which will have 60 days from receipt of the proposed rule to submit a written report to FWC members and staff. The local committees may use supporting data supplied by the FWC, as well as public testimony that may be collected by the committee, to develop the written report. The report may contain recommended changes to proposed manatee protection zones or speed zones, including a recommendation that no rule be adopted, if that is the finding of the committee. In conducting a review of the proposed manatee protection rule, the local committee may address such factors as whether the best available science justifies the proposed rule, whether seasonal zones are warranted, and such other factors as are necessary to balance manatee protection and public access to and use of the waters being regulated under the proposed rule. The written reports submitted by the local rule-review committees must contain a majority opinion; if the majority opinion is not unanimous, a minority opinion must also be included.

Prior to filing a notice of proposed rulemaking in the Florida Administrative Weekly as provided in s. 120.54(3)(a), F.S., the FWC staff must provide a written response to the local committee reports to the appropriate counties and to the commission members.

The members of the FWC must fully consider any timely submitted written report by a local committee before authorizing commission staff to move forward with proposed rulemaking and must also fully consider any subsequent committee reports before adoption of a final rule. Each local committee written report and the FWC's staff response will be part of the rulemaking record and may be submitted as evidence in any proceeding relating to a proposed or adopted rule.

The bill makes a number of other changes including:

- Deleting provisions requiring the FWC to adopt rules relating to new or expanded marine facilities in order to protect manatees; instead, the FWC is authorized to provide a permitting agency with its comments regarding such facilities.
- Specifying that the FWC may regulate the operation and speed of motorboat traffic and adopt any manatee protection rule only where manatees have been sighted and the best available science and observations of the FWC, including, but not limited to, manatee surveys, and available studies of food sources and water depths, justify the conclusion that manatees inhabit these areas on a regular or continuous basis.
- Provisions permitting the establishment of a limited lane or corridor providing for reasonable motorboat speeds within specified areas of the Indian River, the Loxahatchee River, and the Withlacoochee River and certain of its tributaries have been deleted and replaced by legislative intent that the FWC may identify and designate limited lanes or corridors providing for reasonable motorboat speeds within waters of the state whenever they would be consistent with manatee protection and recovery goals.
- Clarifying that the FWC may post and regulate boat speeds on a seasonal basis in areas where the best available science, including, but not limited to, manatee surveys, and available studies of food sources and water depths, justifies the conclusion that manatees inhabit such areas on a seasonal basis.
- Revising legislative intent to specify that it is not the intent of the Legislature to permit the commission to post and regulate boat speeds generally in the waters of the state, thereby unduly interfering with the rights of fishers, boaters, water skiers, and other traditional waterway users who are using the areas for recreational and commercial purposes.
- Provisions authorizing a local government to regulate, except in the marked navigation channel of the Florida Intracoastal Waterway and the area within 100 feet of the channel, motorboat speed and operations on waters within its jurisdiction have been modified to authorize such ordinances only where the best

available science, including, but not limited to, manatee surveys, and available studies of food sources and water depths, justifies the conclusion that manatees inhabit these areas on a regular or continuous basis. However, such an ordinance may not take effect until it has been reviewed and approved the FWC pursuant to s. 370.12(2), F.S.

- Existing provisions providing for a local manatee protection committee to be formed to review technical data when the FWC disagrees with a local government regarding a local ordinance have been deleted.
- Requiring the FWC, by February 15, 2003, working in conjunction with the U.S. Fish and Wildlife Service, to develop a measurable biological goal that defines manatee recovery. This manatee recovery goal must be used by the FWC in its development of management plans or work plans that must be used by the FWC and the local rule-review committees to evaluate the effectiveness of existing and proposed manatee-protection rules and to determine the progress in achieving manatee recovery.

Section 2. Section 327.41(2), F.S., is amended to correct a cross-reference.

Section 3. Legislative intent is provided that the provisions of this act may not be retroactively applied to manatee protection rules existing on the effective date of this act unless the FWC proposes to amend or review such rules after this act takes effect. Proposed rules that are currently subject to an administrative challenge pending as of February 12, 2002, are not subject to the provisions of this act unless a court or administrative hearing officer finds the proposed rule to be invalid.

Section 4. This act shall take effect upon becoming a law, except that paragraph (f) of subsection (2) of section 370.12, Florida Statutes, as created by this act shall take effect June 15, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires that a local rule-review committee be created when the FWC initiates rulemaking and requires the county to provide logistical and administrative staff support to the committee. It is to be expected that the county would incur expenses in providing such support and therefore be subject to an unfunded mandate. However, such expenses most likely would have an insignificant fiscal impact and be exempt from local mandate requirements. In addition, although a committee must be formed as described, under s. 370.12(2)(f)2., F.S., the local committee appears to be granted discretion regarding its election to participate in the rule-development process, thereby avoiding a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Although the FWC generally has constitutional authority under Art. IV, s. 9. of the State constitution to exercise the regulatory and executive powers of the state with respect to marine life, the Legislature's ability to statutorily delegate manatee regulation to the FWC is the subject of a lawsuit filed immediately after the merger of the Game & Fresh Water Fish Commission with the Marine Fisheries Commission in 1999. Although the Florida First District Court of Appeals ruled that the Legislature's statutory delegation of authority over manatees to the FWC was constitutional, that decision has been appealed to the Florida Supreme Court. The Supreme Court has not yet rendered a decision to hear arguments in the case, or confirm the District Court ruling. (See Caribbean Conservation Corporation, Inc., and Save the Manatee Club, Inc. v FWC – Trial Court No. 99-4188. FWC, Appellant v CCC, Inc., et al, Appellees – Case No. 1D00-1389 & 1D00-1804).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

There is no direct impact, although the regulation of motorboat speed and operation can have fiscal consequences for those engaged in businesses relating to the use of such vessels.

C. Government Sector Impact:

The FWC could experience expenses relating to the rule-development process, but these cannot be estimated at this time. County governments would also incur unknown expenses through the activities of the local committees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.