

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1431 Fla. Wrek-reation Diving Trail Act
SPONSOR(S): Attkisson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2520 (I)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Commerce</u>	_____	<u>McDonald</u>	<u>Billmeier</u>
2) <u>Natural Resources</u>	_____	_____	_____
3) <u>Transportation & Econ. Dev. Apps. (Sub)</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates the Great Florida Wrek-reation Diving Trail Act of 2004. The purpose of the act is to promote ecotourism associated with recreational diving and fishing in Florida through the placement of U.S. Maritime Administration (MARAD) and other U.S. Navy decommissioned vessels in Florida waters as artificial reefs.

The bill creates the Florida MARAD and U.S. Navy Vessel Placement Commission. The Commission is to be considered the artificial reef coordinator for Florida for purposes of the U.S. Department of Transportation transfer of obsolete MARAD and Navy vessels program. The Commission shall consist of the following five members:

- Three members representing recreational scuba diving in Florida, one of whom shall be appointed by the Governor; one of whom shall be appointed by the President of the Senate, and one of whom shall be appointed by the Speaker of the House of Representatives.
- Two members representing VISIT FLORIDA are to be appointed by the Governor.

The Governor shall designate one member of the Commission as its chair. Vacancies in the membership of the Commission are to be filled in the same manner as the original appointments.

The Commission is required to review applications from Florida counties and municipalities for placement of MARAD and U.S. Navy decommissioned vessels in Florida waters as artificial reefs. The Commission shall receive donation transfer applications for such vessels and, using the MARAD application evaluation criteria, as amended, shall recommend to the Governor sites within the state for placement of these vessels. The Commission is required to develop a master site plan for the purposes of maximizing the number and type of vessels for placement in Florida waters. Criteria for vessel placement is to include geographical dispersement.

VISIT FLORIDA is required to provide administrative support to the Commission.

The bill does not provide language regarding numbers of meetings, payment of travel or per diem of Commission Members, payment for administrative overhead, or any other associated costs for Commission activities. The cost associated with the Commission is, therefore, unable to be determined at this time.

The bill takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1431.com.doc
DATE: March 29, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill creates a commission to make recommendations on the requests to be made of the U.S. Navy regarding the siting of certain vessels off the coast of Florida. Currently, the Florida Fish and Wildlife Conservation Commission has been performing this function for Maritime Administration (MARAD) and other vessels.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND:

Artificial Reefs in Florida¹

Florida has one of the most active artificial reef programs among the 14 Gulf and Atlantic states involved in this activity. The Florida artificial reef program is the only state program besides Maryland that is not exclusively run at a state agency level where the state holds all the reef area permits. Because of the extent of coastline and statewide involvement in reef activities, the Florida program continues as a cooperative partnership started over twenty years ago with local coastal governments. Currently, in addition to coastal counties, local coastal cities and qualified non-profit corporations also work with the Florida Fish and Wildlife Conservation Commission (FWC) in artificial reef development and monitoring activities.

Thirty-four of 35 Florida coastal counties spread along 8,426 miles of tidal coastline (1,200 miles fronting the Gulf of Mexico and Atlantic Ocean) are or have been involved in artificial reef development. Dating back to 1920 more than 2000 documented public artificial reefs have been placed in state and federal waters off these counties. Most development, however, has taken place in the last 20 years. Local coastal governments hold all but two of the more than 300 active artificial reef permits off both Florida coasts. About half of the active artificial reef sites are in federal waters. Fishing clubs, non profit corporations, and interested private individuals work through the local governments as the liable permit holders to provide input into public reef building activity.

The FWC is the only Florida state agency holding an artificial reef permit. A Florida Department of Environmental Protection permit for two large areas in federal waters off Escambia County (120.7 square nautical miles total), in existence since 1994, was transferred to the FWC following the transfer of the artificial reef program on July 1, 1999. A reauthorization request to extend the permit another five years in conjunction with some materials modifications was approved by the U.S. Army Corps of Engineers in 2001.

Over the last 23 years, the State of Florida has spent more than \$13.57 million on artificial reef related activities. Today, from 30 to 70 public artificial reefs are constructed annually off Florida using a combination of federal, state, local government and private funds.

¹ “Artificial Reef Program Summary Overview”, Florida Fish and Wildlife Conservation Commission, March 2004.

Florida currently has over 400 vessels of varying sizes, mostly of civilian origin, deployed as artificial reefs in both state and adjacent federal waters around the state.

Role of Florida Fish and Wildlife Conservation Commission (FWC)²

The Florida Fish and Wildlife Conservation Commission (FWC), Division of Marine Fisheries, Bureau of Marine Fisheries Management administers a state artificial reef program that was legislatively created under s. 370.25, F.S., in 1982. The program was transferred to the Commission from the Department of Environmental Protection on July 1, 1999.

Under the program, FWC may provide grants and financial and technical assistance to coastal local governments, state universities, and nonprofit corporations for the siting and development of artificial reefs as well as for monitoring and evaluating such reefs and their recreational, economic, and biological effectiveness. The FWC artificial reef program is required to track all artificial-reef development activities statewide and to maintain a computer database of these activities for the public interest and to facilitate long-range planning and coordination within the FWC and local governments.³

Under s. 375.25(3), F.S., the FWC is authorized to adopt rule criteria for siting, constructing, managing, and evaluating the effectiveness of artificial reefs placed in state or adjacent federal waters and criteria implementing the transfer of vessel titles to the state for use as an offshore artificial reef.

According to FWC, under the program, reefs have been constructed with one or more of the following intended objectives: (1) enhance private recreational and charter fishing and diving opportunities; (2) provide a socio-economic benefit to local coastal communities; (3) increase reef fish habitat; (4) reduce user conflicts; (5) facilitate reef related research; and, (6) while accomplishing objectives 1-5, do no harm to fishery resources, Essential Fish Habitat (EFH), or human health.

The FWC artificial reef program administers grants-in-aid pass through funding derived from U.S. Fish and Wildlife Service Federal Aid in Sport Fish Restoration Program and state salt water fishing license revenues. The money is used to reimburse local government and nonprofit participants for funding transportation and deployment of reef material, construction of modular reef units, reef monitoring, pre-deployment site assessments, and special projects, such as planning (socio-economic studies) and research. Depending on the year approximately 70-80% of the grant project funding goes to artificial reef construction with the remainder utilized for monitoring, research, or other reef planning oriented projects. The selection process for construction and monitoring projects is competitive.

Between 40% to 75% of the money used for artificial reef related development in Florida annually is administered through the FWC reef program.

The FWC is involved with assisting local governments acquire noncombatant vessels from the Maritime Administration (MARAD) and combatant vessels through the U.S. Navy for artificial reefs.

On November 21, 2003, the FWC commissioners approved a state artificial reef strategic plan that was developed with the assistance of a 15-member state artificial reef advisory board as well as public input.

² Article IV, Sec. 9, Fla. Const., creates the Fish and Wildlife Conservation Commission composed of seven members appointed by the governor and confirmed by the Senate. The Commission shall exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. It is to establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions. The legislature may enact laws in aid of the Commission, not inconsistent with Art. IV, Sec. 9, Fla. Const.

³ See s. 370.25(1) and (5), F.S.

Role of Florida Department of Environmental Protection, U.S. Army Corps of Engineers, U.S. Coast Guard, and Florida Department of State

The regulatory responsibility for issuing permits for proposed artificial reef sites in federal waters is carried out by the U.S. Army Corps of Engineers (ACOE) and by both the ACOE and the Florida Department of Environmental Protection (DEP) in state waters. Both of these agencies accept comments from the FWC and other interested parties during the artificial reef application review process and public notice period. Over the last seven years the ACOE has not issued permits directly to private individuals or clubs for building artificial reefs due to liability issues associated with siting and placing materials on the sea floor. The local coastal governments who are applicants for new reef sites undergo an individual permit application process that may take 6-9 months.

During the permit review process, the Department of State's Bureau of Archaeology may be contacted to ensure that no known historical shipwrecks are located within the proposed reef deployment site.

The U.S. Coast Guard is involved in projects involving vessels and has regulations regarding navigational clearance over reefs, locating reefs in relation to anchorages and fairways, and marking reefs with navigational aids, if necessary.

Disposal of Non-Combatant and Combatant Navy Vessels

On November 24, 2003, President Bush signed the National Defense Authorization Bill, HR 1588. Section 1013 of that bill provides that the Secretary of the Navy may transfer, by gift or otherwise, any vessel stricken from the Naval Vessel Register to any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof for use as an artificial reef.⁴

On occasion, the Navy has used unneeded ships as targets for military exercises know as SINKEX or sinking exercises. However, now these obsolete Navy vessels may serve as artificial reefs which will help promote marine life and fishing and relieve pressures on natural "coral" reefs. The Navy's objective by seeking this program was to reduce the size of the inactive ships inventory in a cost-effective and environmentally sound manner.

Prior to the signing of HR 1588, the Navy disposed of its non-combatant ships through the U.S. Maritime Administration (MARAD), which is the government's disposal agent for merchant type vessels of 1,500 gross tons or more. MARAD has had statutory authority since 1972 to donate obsolete vessels to states for sinking as artificial reefs. The Naval Sea Systems Command (NAVSEA) has worked with MARAD to develop a common process for the donation of "federal" ships for artificial reefing.⁵

The FWC, recently, has been involved with two large ships over 500 feet long: *U.S.S. Spiegel Grove* and *U.S.S. Hoyt Vandenberg*. The former was donated to Monroe County, and the latter will be donated to the City of Key West via FWC as a state pass through recipient. The *Spiegel Grove*, was sunk off Key Largo in the Florida Keys National Marine Sanctuary in May 2002, and is currently experiencing a high level of diving use that was intensively monitored during the first year after the vessel's deployment. The *Spiegel Grove* was donated by the U.S. Maritime Administration (MARAD) to the State of Florida on May 21, 2001. Title was subsequently transferred to Monroe County in conjunction with a Memorandum of Agreement. In 2002, the FWC submitted at the request of the City of Key West, and private sponsors, an application to MARAD for the donation of the *Hoyt Vandenberg*. The application is pending following completion of an Environmental Assessment by NOAA's Florida

⁴ HR 1588 (P.L. 108-136). Section 1013 amended Chapter 633 of Title 10, United States Code, by adding s. 7306b relating to the transfer of vessels for use as artificial reefs, including vessel preparation, cost sharing, and terms and conditions relating to such transfer of vessels.

⁵ *ex-USS Oriskany to Serve as Artificial Reef*, Navy Newstand, 2/9/04

Keys National Marine Sanctuary and authorization by NOAA to place the vessel within Sanctuary waters.⁶

The first warship offered for donation by the Navy for sinking as an artificial reef is the ex-Oriskany. The Oriskany, the last Essex-class aircraft carrier in the fleet's inactive ship inventory, served the Navy for more than 25 years during the Korean War and the Vietnam conflict. The ship was decommissioned September 1976.

In anticipation of this program receiving approval through the passage of HR 1588, the Fish and Wildlife Conservation Commission (FWCC) in May 2003 began the process of notifying the federal government of Florida's interest in obtaining the Oriskany for placement as an artificial reef somewhere in Florida. In Florida, local governments hold title to most permitted reef sites. The FWCC holds the permit to two sites off Escambia County. There are only five counties in Florida with sites having active permits that are deep enough to accept the Oriskany – Escambia, Okaloosa, Palm Beach, Broward and Dade.⁷ Ultimately, the FWCC selected Escambia County as the site for the Oriskany if Florida was chosen to receive the ship for sinking as a reef. Besides Florida, the other states that have applied for the Oriskany are Mississippi, Texas, and a joint application by Georgia and South Carolina. To date, a decision has not be made by the Navy and MARAD on which state would receive the Oriskany.

The Inactive Ship Program currently has an additional 24 ships available for reefing. The Navy's goal is to move a third of the 24 ships this year.

EcoTourism or Nature-Based Tourism

Statistics on Recreational Fishing and Diving on Tourism⁸

Florida Recreational Fishing Impacts in 2003

Ranked #1 Nationally in these areas:

Overall Economic Impact	\$7.8 Billion
Non-Resident Economic Output	\$1.6 Billion
Number of Anglers	3.1 Million
Non-Resident Anglers	1 Million
Retail Sales	\$4.3 Billion
Salaries and Wages	\$2.1 Billion
Fishing-dependent Jobs	79,949

Of Florida's 67.9 million domestic visitors in 2002, 11.8% reported outdoor activities (hunting, fishing, or hiking) as one of their primary activities, up 0.6 percentage points over 2001.

In 2003, 4.5% of Florida residents participated in saltwater fishing, up 2.4 percentage points over 2002. Only 0.4% of Florida residents participated in freshwater fishing in 2003, down 0.2 percentage points from 2002.

In a 1998 nationwide survey of the most popular nature-based activities for vacationers to Florida, 19.4% participated in snorkeling or scuba diving.

Trails involving Wrecks or Diving

Currently, the Department of State has what is called "Florida's Maritime Heritage Trail" which was created to promote public access to the state's natural and cultural coastal resources for education,

⁶ "Artificial Reef Program Summary Overview", Florida Fish and Wildlife Conservation Commission, March 2004.

⁷ Summary Document: Acquiring and Siting the USS Oriskany, Florida Fish and Wildlife Conservation Commission, Division of Marine Fisheries, July 2003.

⁸ Statistical Information provided by VISIT FLORIDA, March 2004.

recreation, and tourism. The trail is divided into six heritage themes: Historic Shipwrecks, Lighthouses, Historic Ports, Coastal Forts, Coastal Environments and Coastal Communities. Each is presented in picture and narrative to encourage people to visit the sites.

VISIT FLORIDA

VISIT FLORIDA is the statutorily created direct support organization for the Florida Commission on Tourism. VISIT FLORIDA is statutorily charged with carrying out the Commission on Tourism's marketing plan and for doing other activities assigned by contract with the Commission Tourism. It is the private side of the public-private partnership and is charged with carrying out the policies set forth by the public partner. VISIT FLORIDA markets the venues of the state. It does not create venues for the state.⁹

EFFECT OF PROPOSED CHANGES:

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VISIT FLORIDA is required to provide administrative support to the Commission.

The bill is to take effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1. Provides a popular name for the act; creates the Florida MARAD and U.S. Navy Vessel Placement Commission; provides purpose, membership, and duties of the Commission; requires VISIT FLORIDA to provide administrative support to the Commission for all of its purposes.

Section 2. Provides an effective date of upon becoming a law.

⁹ See ss. 288.1224, 288.1226, and 288.1265, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is unknown what the direct impact will be by the Commission. If Florida receives any of the obsolete Navy vessels for sinking as artificial reefs, the diving and fishing opportunities in Florida will be increased and enhanced. As a result, this is anticipated to attract tourists to Florida who fish and dive. Businesses serving populations who dive or fish should benefit as well as businesses that serve visitors.

D. FISCAL COMMENTS:

The fiscal impact on the state for travel and per diem for the Commission members and staffing and administrative costs related to the duties of the Commission are not able to be determined from the legislation. It is not known what impact this legislation will have on any state agency currently performing a similar function. At this time, the effect the Commission will have on the success of the state in acquiring ships from MARAD and the U.S. Navy is not able to be determined and, therefore, the impact that the legislation will have on increased number of artificial reefs for fishing and diving and the dollars associated with such increased activity by tourists and residents.

VISIT FLORIDA states that with the current workload of the New Product Development Department, which has responsibility for nature-based and heritage tourism, it could not provide administrative support with existing resources and without acquiring new staff. VISIT FLORIDA states that it is difficult to determine the exact duties and scope of work at this time; however, administering a new statewide initiative would require at least an additional 2 FTE's. An amount was not provided by VISIT FLORIDA.

The local governments who may receive these vessels for sinking in waters off their coasts would incur costs in the form of matching funds to help defray the costs of towing and sinking. The Navy is responsible for the costs associated with cleaning the ships and making them environmentally safe. The local government's contribution is a factor that is considered by MARAD and the Navy for locating ships. This would indicate that the local government has an active interest in the program. The benefits would come from increased revenues from fishing and diving by residents and tourists as well as revenues from hotel accommodations, food, and other purchases. However, it is not known what impact the Commission will have on the local government's receipt of such vessels.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The legislation does not require expenditure of funds by local governments, does not reduce the authority to raise revenue, nor reduce the percentage of state tax shared with local governments.

2. Other:

Art. IV, s. 6, Fla. Const, provides that “[a]ll functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution.” The only agencies specifically created are the Florida Fish and Wildlife Commission, the Department of Veteran Affairs, and the Department of Elder Affairs. Additionally, Art. IV, s. 6, provides:

“The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor...”

It can be argued that section 1 of the bill may constitute a violation of Art. IV, s. 6, Fla. Const., because it appears to have executive agency powers but its administration is not specifically placed by law as required.

Currently, in ch. 20, F.S., there are 19 departments other than those mentioned in the Florida Constitution. Additionally, there is the Parole Commission, the Agency for Workforce Innovation, and the Agency for Health Care Administration.

Legislation can adopt provisions of legislation or administrative rules from jurisdictions outside of Florida, such as federal and state laws and rules, that exist at the time the legislation is enacted. These laws and rules may not be adopted to incorporate subsequent changes in the legislation and rules from outside this state.¹⁰ Legislation may adopt codes or standards from non-governmental entities, but the legislative adoption must be limited to the codes and standards that are in effect at the time the law is enacted, but also cannot adopt subsequent changes to the codes and standards made by the non-government entities after the Florida legislation is enacted.¹¹ As written, the bill refers to “using the Maritime Administration application evaluation criteria, as amended”, when reviewing applications from local governments and other entities for recommendation to the Governor. If the criteria is changed, the bill would lock the state in to using outdated criteria until the law can be changed.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

The legislation does not provide for terms of members, numbers of meetings, how meetings are to be conducted, or payment of per diem or travel expenses.

Although the assumption is that records are public and meetings are open when the legislation is silent. Other legislation dealing with Commissions or advisory entities specifically state such.

¹⁰ *Adoue v. State*, 408 So.2d 567, 569 (Fla. 1982); *Friemuth v. State*, 272 So.2d 473, 476 (Fla. 1976).

¹¹ *Galaxy Fireworks, Inc. v. City of Orlando*, 842 So.2d 160, 167 (Fla. 5th DCA 2003); *State, Dept. of Children and Family Services v. L.G.*, 801 So.2d 1047, 1052 (Fla. 1st DCA 2001).

The bill does not specify what will happen to the records of the Commission when it expires. Generally, a provision is made for records and assets to be transferred to a specific entity.

The staffing by VISIT FLORIDA is contrary to the responsibilities of that entity established by law one of which is to market the state, not create venues to market. Additionally, staffing has already been reduced in VISIT FLORIDA because of the reduction in funding from the rental car surcharge.

The bill does not provide for payment of travel and per diem of the Commission Members. It does not provide a mechanism to access legal counsel or other expertise that might be needed in the operation of the Commission and in the fulfillment of its duties.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A