



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input 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:

This bill reduces government by exempting counties, municipalities, or other governmental entities from state permitting requirements for the placement of waterway markers on inland lakes and their associated waterways that are not under the jurisdiction of the federal government.

#### B. EFFECT OF PROPOSED CHANGES:

##### **PRESENT SITUATION—State Law and Rules**

The State of Florida is responsible for establishing waterway marker requirements on state waters that are not navigable waters of the United States, waters within the jurisdiction of the United States, or waters under the concurrent jurisdiction of the United States and the State of Florida.

In 2000, the Florida Legislature revised the vessel safety laws to require waterways in Florida marked for “safety or navigation purposes” to be marked under the U.S. Aids to Navigation System (U.S. System), the same marking system applicable to waters under federal jurisdiction.<sup>1</sup> The 2000 revisions specifically provide that channel and obstruction markers not in compliance with the U.S. System would be allowed through December 31, 2003, on waters of the state that are not “navigable waters of the United States.”<sup>2</sup> However, the statutory revisions were silent as to any penalty for noncompliant markers in place after December 31, 2003.

Section 327.40(2)(b), F.S., was also amended in 2000 to prohibit placement of any “safety or navigation markers” in, on, or over the waters or shores of the state without a permit from the Florida Fish and Wildlife Conservation Commission (Commission), Division of Law Enforcement (Division). Section 327.41(4), F.S., was further amended to prohibit placement of any “regulatory markers” in, on, or over the waters or shores of the state without a permit from the Division. Section 327.02(38), F.S., defines the phrase “waters of the state” to include all the inland lakes, rivers, and canals under the jurisdiction of the state. Therefore, the permitting requirements appear to apply to any inland lake and its associated canals, and governmental entities wishing to place a regulatory, safety, or navigation marker on an inland lake or associated canal must apply to the Division for a permit prior to placement of the marker. However, the statute does not define the terms “regulatory,” “safety,” or “navigation” marker.

In 2000, the Legislature also directed the Commission to “establish a uniform system of regulatory markers for the waters of the state, compatible with the system of regulatory markers” prescribed by the Coast Guard in the U.S. System.<sup>3</sup> The Commission has specific statutory authority to adopt rules under Chapter 120, F.S., to implement the uniform system of regulatory markers in Florida.<sup>4</sup>

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<sup>1</sup> s. 327.40(1), F.S.

<sup>2</sup> s. 327.40(1), F.S.

<sup>3</sup> s. 327.41(1), F.S.

<sup>4</sup> ss. 327.40(2)(c); 327.41(6), F.S.

In 2001, the Commission adopted rules to implement the Legislative revisions enacted in 2000.<sup>5</sup> In part, the rules:

- Provide design specifications for all markers placed in, on, or over the waters and shores of this state by adopting by reference the U.S. System;<sup>6</sup>
- Prohibit placement of “any marker” in, on or over the waters of the state or the shores thereof without a permit from the Division;<sup>7</sup>
- Establish application and review criteria and procedures for applications submitted to the Division;<sup>8</sup>
- Require all new markers and mooring buoys to conform to the U.S. System;
- Require all nonconforming markers to be brought into conformity by December 31, 2003, or be removed;
- Declare nonconforming markers to be a “nuisance” after December 31, 2003;
- Authorize Division law enforcement officers and other authorized law enforcement officers to remove nonconforming markers;<sup>9</sup> and
- Establish permit conditions, including maintenance and inspection requirements.<sup>10</sup>

The Commission’s rules regarding waterway markers clearly prohibit placement of all waterway markers on state waters without a permit issued by the Division, not just those markers designated as “regulatory,” “safety,” or “navigational.”

### **PRESENT SITUATION—Federal Law and Regulations**

It appears that, if an inland lake and its associated waterways are considered to be “navigable waters of the United States,” waters under the jurisdiction of the United States, or waters under the concurrent jurisdiction of the United States and the State of Florida, federal waterway marker requirements will apply regardless of the exemption from state permitting requirements created by this bill.

Federal law prohibits any person, public body or instrumentality from establishing, erecting, or maintaining any aid to maritime navigation in or adjacent to the “waters subject to the jurisdiction of the United States” without first obtaining authority from the United States Coast Guard.<sup>11</sup> Federal regulations adopted by the United States Coast Guard require markers in those waters to comport with the U.S. System. The primary objective of the U.S. System is to mark navigable channels and waterways, obstructions adjacent to those waterways, and obstructions in areas of general navigation which may not be anticipated.<sup>12</sup>

Whether a particular body of water is under the jurisdiction of the United States depends upon several factors that are considered by the Coast Guard, which is responsible for determining the jurisdictional status of waterbodies. Those factors include whether the waters: (1) are subject to tidal influence; (2) are or have been used, or are to have been susceptible for use by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce notwithstanding natural or man-made obstructions that require portage or (3) are capable of improvement at a reasonable cost to provide, by themselves or in connection with other waters, highways for substantial interstate or foreign commerce.<sup>13</sup>

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<sup>5</sup> Chp. 68D-23, Uniform Waterway Markers In Florida Waters, F.A.C.

<sup>6</sup> 68D-23.102, F.A.C.; 68D-23.107; 68D-23.108; 68D-23.109

<sup>7</sup> 68D-23.104(1), F.A.C.

<sup>8</sup> 68D-23-104(2)-(5); 68D-23.105

<sup>9</sup> 68D23.107(2)(e); 68D-23.111, F.A.C.

<sup>10</sup> 68D-23.106; 68D-23.110

<sup>11</sup> 14 USC 83

<sup>12</sup> 33 CFR 62.1

<sup>13</sup> U.S. Coast Guard, Appendix 11 to Annex Y to CCGDSEVEN SOP, page Y-11-1

## **EFFECT OF PROPOSED CHANGES**

This bill exempts counties, municipalities, and other governmental entities from the statutory permitting requirements applicable to placement of informational waterway markers on inland lakes and their associated canals. If, however, an inland lake and its associated waterways are under the jurisdiction of the United States, or under the concurrent jurisdiction of the United States and the State of Florida, federal waterway marker requirements continue to apply.

### **C. SECTION DIRECTORY:**

Section 1. Amends s. 327.40, F.S., providing governmental entities a limited exemption from waterway marker permit requirements.

Section 2. Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None.

2. Expenditures: The Commission reports that the fiscal impact of the bill is "unknown." However, it appears that an indeterminate cost savings will result due to the fact that the Commission will not be required to review and approve permit applications from counties, municipalities, or other governmental entities for placement of waterway markers on inland lakes and their associated canals.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None.

2. Expenditures: It appears that counties and municipalities will experience an indeterminate cost savings due to the fact that those entities are no longer required to develop and submit to the Commission permit applications for placement of waterway markers on inland lakes and their associated canals. In addition, cost savings will result because those entities will not be required to replace waterway markers placed on state waters if those markers do not conform to the U.S. System.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not impact the rulemaking authority of any state agency.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

On January 14, 2004, Mr. J.B. Embres, Chief of the Planning and Marine Information/Waterways Management Section, Aids to Navigation Waterways Management Branch, United States Coast Guard, Seventh Coast Guard Division, provided the following comments to the Commission regarding waterway markers in Florida:

This is to advise you of the Coast Guard's appreciation for the State of Florida's efforts in supporting the standardization of information/regulatory marks often referred to as signs. During the last decade there have been thousands of such marks/signs installed throughout the state both in Navigable Waters of the U.S. as well as inland bodies of water.

The Coast Guard is interested in the safety of boaters and the protection of the environment. The proliferation of boaters, many of whom have limited education and or experience, combined with the myriad of rules and regulations established to protect "protected species" and the environment, with the associated requirement to establish signs for enforcement, has created potential hazards to the boaters as well as the species or environment that the signs are meant to protect.

It is important that there is uniformity on all of the waters of the state so when the boaters transit or trailer their boats from one body of water to another they will see the same sign, (shape, color, symbol and verbiage) so there would be little to no confusion. This uniformity allows for better understanding by the boaters and allows for better law enforcement.

The need for uniformity of aids to navigation which include information regulatory marks/signs has been recognized by all of the maritime nations of the world who formed the International Association of Lighthouse Authorities with the purpose to establish uniformity of marks throughout the waters of the world. It is only through this process that a mariner can safely and effectively travel anywhere and feel secure in knowing that the representation placed in the water is the same and means the same thing regardless of what body of water he is transiting.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Representative Bowen, the bill sponsor, anticipates offering an amendment in the Subcommittee on Public Lands & Water Resources in an effort to clarify the following:

1. The permitting exemption created by the bill applies only to counties, municipalities, or other governmental entities placing markers in, on, or over the shores or waters of "landlocked" inland lakes and their associated canals;
2. The appearance of waterway markers placed by counties, municipalities, or other governmental entities is not required to conform to the U.S. System or any other uniform waterway marker system adopted by the Commission; and
3. Markers exempt from state permitting requirements by virtue of this bill must nevertheless comply with federal laws and rules when markers are placed on federally regulated waters.

Representative Bowen interprets the term "landlocked" to include an inland lake connected to another lake or series of lakes by canals but not lakes under federal regulation, such as Lake Okeechobee.