

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 777 Working Waterfronts  
**SPONSOR(S):** Berfield  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government &amp; Veterans' Affairs</u>	_____	<u>Grayson</u>	<u>Cutchins</u>
2) <u>Natural Resources</u>	_____	_____	_____
3) <u>Finance &amp; Tax</u>	_____	_____	_____
4) <u>Transportation &amp; Economic Development</u> <u>Appropriations (Sub)</u>	_____	_____	_____
5) <u>Appropriations</u>	_____	_____	_____

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### SUMMARY ANALYSIS

This bill appears to attempt to protect the state's "working waterfronts" in consideration of their provision of access to the state's navigable waterways and their economic impact.

The bill defines "working waterfront" as "a facility that requires direct access to or location in marine waters and therefore cannot be located inland, including, but not limited to, public marinas, public boat ramps, boat hauling and repair facilities, waterfront recreational facilities, commercial fishing facilities, and boating facilities."

The bill authorizes the assessment of "up to an additional \$10 for any vessel less than 40 feet long that can be transported by a trailer within the jurisdiction of the county."

The bill authorizes each county government, through its comprehensive plan, to provide a sufficient number of boat ramps to achieve a boat trailer parking capacity of 5% of the registered available vessels within its jurisdiction by July 1, 2014.

The bill provides that "[a] governmental entity that removes a working waterfront facility for any development and thereby limits public access to the working waterfront must replace the facility within its jurisdiction. The replacement facility must be substantially the same, provide similar access to navigable waterways, and be available for use when the existing working waterfront facility is removed."

The bill requires the Department of Community Affairs to commission a study, completed no later than November 1, 2004, on working waterfronts.

**The mandates provision appears to apply because this general law bill may require counties and municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not appear to qualify for either an exemption or exception, accordingly the bill needs to include a statement of important state interest and have a 2/3 vote of the membership of each house.**

**The bill does not contain a statement of important state interest as required for an exception to Art. VII, s. 18(a), State Constitution.**

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

**STORAGE NAME:** h0777.lgv.doc  
**DATE:** March 19, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

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

#### B. EFFECT OF PROPOSED CHANGES:

This bill appears to attempt to protect the state’s “working waterfronts” in consideration of their provision of access to the state’s navigable waterways and their economic impact.

#### Working Waterfront Definition

The bill defines “working waterfront” as “a facility that requires direct access to or location in marine waters and therefore cannot be located inland, including, but not limited to, public marinas, public boat ramps, boat hauling and repair facilities, waterfront recreational facilities, commercial fishing facilities, and boating facilities.”

- Comment: A representative of the Department of Community Affairs<sup>1</sup> has advised the Sponsor that the term “working waterfront” has a common industry meaning may differ from that intended in this bill.
- Comment: Additionally, it is unclear whether the term “waterfront recreational facilities” would include a recreational beach.

#### Authorized Assessment

The bill authorizes the assessment of “up to an additional \$10 for any vessel less than 40 feet long that can be transported by a trailer within the jurisdiction of the county.”

- Comment: It is unclear what the assessment is in addition to, if anything.
- Comment: The term “vessel” is not defined in the bill. However, the term is uniquely defined 7 times elsewhere in the statutes<sup>2</sup> and should therefore be defined to address the specific concerns of this bill.

#### Comprehensive Plan and the Provision of Sufficient Boat Ramps

The bill authorizes each county government, through its comprehensive plan, to provide a sufficient number of boat ramps to achieve a boat trailer parking capacity of 5% of the registered available vessels within its jurisdiction by July 1, 2014.

<sup>1</sup> Ken Metcalf, Regional Planning Administrator, Department of Community Affairs, 3/8/04.

<sup>2</sup> ss. 310.022; 327.02(37); 376.031(25); 403.413(2)(i); 487.021(66); 713.78(1)(b); and 849.35(3), F.S.

- Comment: The bill does not specify how the provision of a sufficient number of boat ramps would be reflected in a county's comprehensive plan.
- Comment: Many of the facilities the bill attempts to address may be located within the jurisdiction of a municipality. The bill does not address municipal comprehensive plans.
- Comment: The target of this provision is unclear. Is the intended target "boat ramps" or "boat trailer parking capacity?"
- Comment: It is unclear where and how this authority would be reflected in a comprehensive plan.
- Comment: The bill does not speak to any permitting aspects regarding the provision of a sufficient number of boat ramps; which leads to uncertainty whether the bill is intended to address only a planning goal rather than the actual provision of a sufficient number of boat ramps.

#### Governmental Removal of a Working Waterfront Facility

The bill provides that "[a] governmental entity that removes a working waterfront facility for any development and thereby limits public access to the working waterfront must replace the facility within its jurisdiction. The replacement facility must be substantially the same, provide similar access to navigable waterways, and be available for use when the existing working waterfront facility is removed."

- Comment: The bill does not address how this mandate would be implemented.
- Comment: The bill does not define the operative phrase "remove a working waterfront facility." As a result, it is unclear what action of a governmental entity would constitute a removal that would require a replacement. Also, there is uncertainty about the consequence of a private landowner who seeks rezoning of such a facility. Would that rezoning action at the request of the landowner create a liability for the governmental entity?

#### Working Waterfront Study

The bill requires the Department of Community Affairs to commission a study, completed no later than November 1, 2004, on working waterfronts. The study will focus on:

- the economic trends of the state's working waterfronts;
  - the impact on the state of the loss of critical working waterfronts;
  - findings concerning the coastal and waterway development trends and their impact on the working waterfronts.
- Comment: The bill does not address the funding or staffing aspects of such a study.
  - Comment: The provision appears to raise a new term "critical working waterfronts" which is undefined.
  - Comment: The bill provides a completion date that may leave only four months for the study to be conducted and the report finalized. It is not clear if the scope of the study may be effectively commissioned and completed in that period of time.

#### C. SECTION DIRECTORY:

Section 1. Provides definition of "working waterfront."

Section 2. Provides requirements for counties and governmental entities regarding working waterfronts.

Section 3. Provides for a working waterfront study and report to the Governor and Legislature.

Section 4. Provides for an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Insignificant. The Department of Community Affairs is required to conduct a study and report to the Governor and Legislature. The Department indicates that such study and report can be accomplished within present funding and staffing.<sup>3</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The bill authorizes counties to assess up to an additional \$10 for certain vessels transported within their jurisdiction.

2. Expenditures:

Unknown. However, s. 2(3) of the bill requires a governmental entity to replace any working waterfront facility that it removes. Considering that real property within the coastal area of the state is generally costly, the required facility replacement costs may be significant.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this general law bill may require counties and municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not appear to qualify for either an exemption or exception, accordingly the bill needs to include a statement of important state interest and have a 2/3 vote of the membership of each house.

The bill does not contain a statement of important state interest as required for an exception to Art. VII, s. 18(a), State Constitution.

2. Other:

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<sup>3</sup> Jon Bussey, Legislative Director, Department of Community Affairs.

Section 2(3) of the bill requires a governmental entity to replace a working waterfront facility when the governmental entity removes such facility. The bill is unclear how the provision will be implemented and may raise questions regarding the taking of private property.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

See EFFECTS OF PROPOSED CHANGES.

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

The Sponsor may offer an amendment to address some of the issues raised.