

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 777 w/CS Working Waterfronts

SPONSOR(S): Berfield

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government & Veterans' Affairs</u>	<u>18 Y, 0 N w/CS</u>	<u>Grayson</u>	<u>Cutchins</u>
2) <u>Natural Resources</u>	<u></u>	<u>Perkins</u>	<u>Lotspeich</u>
3) <u>Finance & Tax</u>	<u></u>	<u></u>	<u></u>
4) <u>Transportation & Economic Development</u> <u>Appropriations (Sub)</u>	<u></u>	<u></u>	<u></u>
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill relates to the protection and preservation of the state's "working public waterfronts" in consideration of their provision of access to the state's navigable waterways and their economic impact. The bill provides statutory language to require local governments to address working public waterfronts in their comprehensive plan and requires a study to be conducted by the Florida Fish and Wildlife Conservation Commission on working public waterfronts.

The bill does not appear to have a significant fiscal impact.

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: h0777b.nr.doc

DATE: April 5, 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:

Issue – Comprehensive Plan (Working Public Waterfront)

Present Situation

Under Florida law, all “local governments” have the responsibility to designate land uses for lands within their jurisdictions. As a result of escalating property values of water-front properties, local governments are experiencing increasing pressure to change the land use designations of water-front properties to uses which will increase the value of such properties often to residential land uses. Such land use changes have the potential to preclude current and future uses of those water-front properties which provide access to the water such as marinas, boatyards, and commercial fishing facilities.

Pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, local governments have adopted comprehensive plans on which future land use decisions would be based.¹ Comprehensive plans are required to contain certain elements that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements.²

Effect of Proposed Change

- Section 163.3164, F.S., is amended to include a definition for “Working public waterfront.” to mean a parcel or parcels of real property used for water-dependent activities contained herein that require direct access to or a location on or adjacent to a navigable waterway, and therefore cannot be located inland. The term “working public waterfront” includes marinas open to the public (both wet and dry), public boat ramps, boat hauling and repair facilities, commercial fishing facilities, and boat construction facilities.
- The bill amends section 163.3177, F.S., (Required and optional elements of comprehensive plan; studies and surveys), to require all local governments to amend their comprehensive plans to include two new elements:
 - An element regarding a sufficient **number of public access boat ramps** with adjoining boat trailer parking capacity. The local government will make its determination of sufficiency based on the following:
 - 1) An examination of the availability of privately owned boat ramps;
 - 2) The demand for boating facilities;

¹ s. 163.3161, F.S.

² s. 163.3177(6), F.S.

- 3) Points of origin and destination;
- 4) Volume and types of boats;
- 5) Seasonal variations in boating patterns
- 6) Types and distribution of boating activities; and
- 7) The ability of the local government to fund boat ramp facilities.

Unless the local government determines that a different ratio is appropriate, the plan must have a goal of providing, by July 1, 2014, a minimum number of boat trailer parking spaces adjoining public access boat ramps equal to 5 percent of the registered vessels under 40 feet in length registered in the jurisdiction.

- An element regarding **working public waterfronts** to provide the following:
 - 1) A means of identifying working public waterfronts;
 - 2) A means by which working public waterfronts and working public waterfront facilities that are removed by governmental action will be replaced by the political subdivision whose actions led to the removal.
- The bill creates section 342.07, F.S., to be entitled “Working Public Waterfronts.” The new statutory language provides Legislative recognition that there is a significant interest in the availability and economic impact of public marinas, public boat yards and public boat ramps along navigable waterways. The Legislature further recognizes that an important use of the waterways of this state is for engaging in commerce and transportation of goods and people upon such waterways; however, this commerce and transportation is not feasible unless there is access from the water to the land by and through working public waterfronts.

The bill requires political subdivisions and water management districts to identify working public waterfronts within their jurisdiction. Any political subdivision or water management district that takes any action to close to public access a publicly owned working public waterfront facility, or that uses the power of eminent domain to take a privately owned working public waterfront, must account for the loss of public access to the working public waterfront by replacing the lost access. The replacement must be “substantially the same” as that replaced and must be available for use when the existing working public waterfront is removed or closed. The bill provides guidance in determining whether a replacement (for working public waterfronts other than those serving only inland freshwater bodies of water) is “substantially the same and provides similar access.” It provides that the political subdivision or water management district must take into account distance, speed zones, water depth, and man-made obstructions to travel between the replacement and the Atlantic Ocean or the Gulf of Mexico.

The bill provides that a replacement is not substantially the same and does not provide similar access if:

- Bridges, shoals, or shallow water would restrict access to vessels that can transverse the watercourse to the existing working public waterfront; or
 - The travel time to the Atlantic Ocean or the Gulf of Mexico is substantially increased.
- The bill requires the Florida Fish and Wildlife Conservation Commission to conduct a study and present the results to the Governor, the President of the Senate and the Speaker of the House of Representatives by January 4, 2005. The study will focus on:
 - Economic trends of the state’s working public waterfronts;
 - Impact on the state’s economy of the loss of critical working public waterfronts; and
 - Findings concerning the coastal and waterway development trends and their impact on the working public waterfronts.

The study is required to present recommendations for statutory changes regarding the preservation of existing working public waterfronts.

C. SECTION DIRECTORY:

Section 1. Creates s. 163.3164(32), F.S., to define "working public waterfronts."

Section 2. Creates ss. 163.3177(6)(l) and (m), F.S., requiring all local comprehensive plans to include elements regarding access boat ramps, and working public waterfronts.

Section 3. Creates s. 342.07, F.S., relating to working public waterfronts.

Section 4. Requires the Florida Fish and Wildlife Conservation Commission to conduct a study on working public waterfronts.

Section 5. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The Florida Fish and Wildlife Conservation Commission is required to conduct a study and report to the Governor and Legislature.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Unknown. However, the bill requires a governmental entity to replace any working public 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 23, 2004, the Committee on Local Government & Veterans' Affairs adopted one strike-all amendment. The amendment accomplished the following:

- Defines the term "working public waterfront" and clarifies the definition in lieu of the term "working waterfront."
- Amends s. 163.3177(6), F.S., to add local comprehensive plan elements addressing a sufficient number of public access boat ramps, and working public waterfronts.
- Creates s. 342.07, F.S., to require the replacement of a working public waterfront when one is removed or closed by certain government actions.
- Requires the Florida Fish and Wildlife Conservation Commission to commission a study examining the economic trends of the state's working public waterfronts and the economic impact of the loss of these assets and report back to the Governor, the President of the Senate, and the Speaker of the House of Representatives by 1/4/05.

This analysis has been revised to reflect the adoption of this amendment.