

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.)

Prepared By: Environmental Preservation Committee

BILL: CS/CS/SB 1316

SPONSOR: Environmental Protection Committee, Community Affairs Committee and Community Affairs Committee

SUBJECT: Waterfront Property

DATE: April 20, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>GE</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute (CS) addresses a range of issues relating to recreational and commercial waterfront property and the preservation of public boating access to waterways. In addition to providing legislative findings and a definition for the term “recreational and commercial working waterfronts,” the CS provides for the following:

- Requires counties to include strategies for preserving recreational and commercial working waterfronts within their comprehensive plans;
- Provides that the Board of Trustees of the Internal Improvement Trust Fund must encourage the use of sovereign submerged lands for water-dependent uses and public access;
- Directs the Department of Environmental Protection and water management districts to adopt programs to expedite the processing of certain permits for marina projects that reserve a portion of the boat slips for public access;
- Provides technical assistance and support to waterfront communities through the creation of the Waterfronts Florida Program within the Department of Community Affairs;
- Directs the Department of Environmental Protection to evaluate the current use of state parks for recreational boating and identify appropriate locations for the future expansion of public boating access;
- Increases the current schedule of vessel registration fees and provides that the additional revenue generated must be deposited into the competitive boating grants program for the construction of publicly owned boating infrastructure; and
- Authorizes local governments to establish a property tax deferral program for qualifying recreational and commercial working waterfront properties.

This CS substantially amends the following sections of the Florida Statutes: 163.3177, 163.3178, 253.03, 327.47, 328.72, and 328.76. This CS creates sections 197.303-197.3047 and 324.07 of the Florida Statutes. This CS also creates unnumbered sections of the Florida Statutes.

II. Present Situation:

A diversified waterfront industry, both commercial and recreational, is an important component of the state economy. The recreational marine industry represents a total economic output of over \$14.1 billion and is responsible for over 180,000 jobs in the state. Commercial fishing remains a \$1.1 billion industry employing more than 13,000 Floridians. However, changes in Florida’s economy and land use are affecting the economic viability of many recreational and commercial working waterfronts.¹ Public access to marinas and boat ramps may be diminishing due to the fact that the capacity to launch and moor boats has not kept pace with increases in annual vessel registrations. In addition, there is evidence that, for both commercial-fishing and recreational working waterfronts, conversion of waterfront property from public to private use is contributing to this loss of public access to waterways.

Waterfront Facilities - Definitively documenting the loss of working waterfronts and boating-related facilities is problematic. A comprehensive inventory of commercial and recreational working waterfronts in Florida (marinas, boatyards, and boat ramps) does not exist.² However, various estimates of facilities are available. The Division of Recreation and Parks within the Department of Environmental Protection (DEP) maintains an inventory of outdoor recreational facilities and resources in the state provided by federal, state, regional, county and municipal governments, commercial enterprises (which may include retail sales facilities), non-profit organizations, and private clubs.³ The following table summarizes various categories of waterfront facilities since 1987.

TABLE 1 – Waterfront Facilities				
Facility Type	2004 (est.)	1998	1992	1987
Marinas	1,546	1,643	1,415	1,545
Boat Slips	62,954	58,076	56,853	60,682
Dry Storage	35,908	38,771	34,852	37,774
Boat Ramps	2,714	2,613		
Ramp Lanes	3,404	3,345	3,073	2,993

SOURCE: *Florida’s Statewide Comprehensive Outdoor Recreation*, Department of Environmental Protection

¹ The term “commercial and recreational working waterfronts” is generally defined as public or private-owned water-dependent facilities that are available to the public. It includes marinas, mooring fields, boat yards, boat ramps, and commercial-fishing support facilities. It does not include “ports” (federally chartered or port authorities) and military waterfronts.

² In part to address this problem, the Florida Fish and Wildlife Conservation Commission (FWC) has commissioned a comprehensive statewide recreational boating facilities inventory for Florida. The inventory will include facilities (marinas, dry storage, mooring fields, boat ramps, and docks) in saltwater, freshwater, and brackish environments. It is projected that the inventory will be completed in 2 – 3 years.

³ *Outdoor Recreation in Florida – 2000, Florida’s Statewide Comprehensive Outdoor Recreation Plan*, (SCORP) Florida DEP, February 2002. p. 2-62. The estimate does not include private facilities, such as condominium slips or “dockomniums.”

Recognizing limitations in the data presented in TABLE 1, it may be concluded that, since 1987, there has been no change in the number of marinas, a decline in the number of dry storage units, and a marginal increase in the number of marina slips and boat ramps (and ramp lanes).

Vessel Registration – While the number of waterfront facilities has remained relatively stagnant in recent years, the number of vessels registered in Florida has increased significantly. In 2003, Florida had 978,225 registered vessels, a 30 percent increase from 1997, and a 52 percent increase from 1987. This increase is approximately twice the rate of the population increase for the state over the same period. Visiting vessels registered in other states also require waterfront facilities. Florida is currently the top ranked destination for transient marine recreation in the United States. Given the lack of new waterfront facilities previously discussed, it appears that Florida’s present inventory of waterfront facilities may be insufficient to meet current and future boating demand.

Conversion of Recreational and Commercial Working Waterfronts – A number of factors have exerted pressure on the operators of traditional working waterfronts to convert their property to other uses. In many instances, development interests are acquiring traditional working waterfronts that currently serve the public and “water-dependent” uses and converting them to private boating and residential uses. This has the effect of both decreasing the availability of waterfront property necessary to sustain commercial-fishing and recreational boating activities, and increasing the value of nearby working waterfront property. This increase in property value results in higher property taxes, which may cause the working waterfronts to be decreasingly profitable, further compounding the pressure to convert the property to its “highest and best” use.

Although the data is limited, there is evidence that the frequency of waterfront conversion has increased significantly in recent years. Local governments and marine industry groups indicate that the strong demand for condominiums with water access has largely fueled this trend. The problem is particularly acute in urban areas of the state where the number of large public marinas appears to be declining. Recreational boating industry representatives report that statewide 57 public-accessible marinas or boatyards have recently converted to condominiums or other private uses, and a number of sales of such facilities are pending or have been proposed.⁴ Marine industry representatives have also reported that the 2004 hurricane season has adversely affected the inventory of public-accessible waterfront facilities.

Impediments to Development of New Waterfront Access – Marine industry representatives identify two major impediments to development of new waterfront access: the cost to develop (land and infrastructure) and government approval of such development. To obtain a marina permit, applicants must obtain the approval of both the state and federal government. State permits are issued by the Department of Environmental Protection (DEP), or the applicable water management district for facilities in conjunction with larger commercial or residential developments. Each permitting entity reviews the application for, among other things, potential impact on sea grass, manatees, and water quality. Permits for facilities of more than 50 slips, or projects of “heightened concern” are approved by the Florida Board of Trustees of the Internal

⁴ This information was provided by members of the Florida Water Access Coalition, an organization of various boating interest groups in the state.

Improvement Trust Fund (the Florida Cabinet). Permits for use of sovereign submerged lands are also approved by the Board of Trustees.

Applicants must also obtain a permit from the U.S. Army Corp of Engineers. In response to recent litigation in the federal courts addressing manatee protection, projects in specified areas of the state must be reviewed for their impact on manatees, and facility permits may not be approved unless certain measures are in place. Over the past eleven years, an annual average of 450 permits has been granted for commercial, private, or public-owned recreational facilities. However, in those Florida counties that have not adopted Manatee Protection Plans, permitting for new or expanded large-scale projects may be delayed or denied.

In addition to the DEP permits, marinas with 150 or more wet slips, or 200 dry slips, must be approved through the Development of Regional Impact (DRI) program through the Department of Community Affairs (DCA). However, counties that have adopted countywide marina siting plans into the coastal management element of their local comprehensive plans are exempt from the DRI program. DCA reports that four marina DRIs have been approved by the department since 1997.⁵

Part II, of Chapter 193, F.S., provides legislation to be used by property appraisers for assessing special classes of property. Specifically, s. 193.501, F.S., provides directions for how assessments of lands subject to conservation easements, environmentally endangered, or are used for outdoor recreation and park purposes should be assessed.

Sections 253.67 – 253.75, F.S., create a method for the leasing of submerged lands for the purposes of conducting aquaculture. Provisions of these sections: provide authority to the Board of Trustees to lease these lands for these purposes; detail the application process to be used; provide public notice requirements; direct the form that contracts shall use; create restrictions on use; provide for penalties; grants rulemaking authority; and provides a mechanism for agency cooperation to be applied to the review of these activities.

III. Effect of Proposed Changes:

This CS addresses a wide range of issues relating to the preservation of traditional working waterfronts and public boating access in Florida. Specifically, the CS strengthens existing waterfront-related programs, revises local planning requirements to recognize the importance of traditional working waterfronts and public boating access, and provides additional funding for boating-related infrastructure projects.

The CS establishes legislative findings and a definition for the term “recreational and commercial working waterfronts” which is used throughout the CS. The CS defines this term to mean a parcel or parcels of real property that provide access for water-dependent commercial activities or provide access for the public to the navigable waters of the state which require direct access to or a location on or adjacent to a navigable waterway, and therefore cannot be located inland. The term “recreational and fishing working waterfront” includes water-dependent

⁵ A total of 39 DRIs have been approved since 1974. All DRI applications were approved, after modifications or conditions. Ken Metcalf, Regional Planning Administrator, Div. of Community Planning, DCA. 8/04.

facilities that are open to the public and offer public access by vessels to the waters of the state or are support facilities for either pleasure, commercial, research and governmental (e.g., docks, marinas open to the public (both wet and dry), public boat ramps, boat hauling and repair facilities, commercial fishing facilities, and boat construction facilities).

Section 1 amends s. 163.3177, F.S., to require that coastal counties include within the future land use element of their comprehensive plan criteria, including regulatory incentives, which encourage the preservation of recreational and commercial working waterfronts as defined in s. 342.07, F.S. Similarly, this section is amended to provide that the recreation and open space element of a local comprehensive plan must address public access to waterways.

Section 2 amends s. 163.3178, F.S., to provide that counties required to develop a coastal management element must identify in the associated shoreline use component the strategies that will be used to preserve recreational and commercial working waterfronts as defined in s. 342.07, F.S.

Section 3 amends s. 193.501, F.S., to provide a new term to be used by property appraisers when evaluating lands subject to a conservation easement, that may be environmentally endangered, or are used for outdoor recreation or park purposes when rights have been conveyed or conservation restrictions have been covenanted. The new term created is “open to the general public” which shall mean property that is open to any person for normal use on terms no less favorable than those provided anyone else that may be given certain rights as a result of membership or shareholder status.

Section 4 amends s. 253.03, F.S., to provide that the Board of Trustees of the Internal Improvement Trust Fund shall, in establishing the terms and conditions for the use of state sovereign submerged lands, encourage the use of such lands for water-dependent uses and public access. This provision enunciates the Legislature’s intent with regard to use of state sovereign submerged lands and codifies policies currently established in administrative rule.

Section 5 creates a new section of law codifying the Waterfronts Florida Program. This program, which is managed through the Department of Community Affairs and funded through grants provided by the Department of Environmental Protection, helps participating communities develop a plan to revitalize, renew and promote interest in their waterfront district. Waterfront revitalization targets environmental resource protection, public access, retention of viable traditional waterfront economies,⁶ and hazard mitigation.

Through this program, communities are selected every 2 years and receive technical assistance over a two-year period and a grant to reimburse the recipient for a portion of costs associated with preparing the waterfront plan.⁷ Once the plans are complete, communities can begin the process of financing implementation of the plan from sources such as state and federal grants, bond issuances, private borrowing, and tax increment financing districts. Since 1997, the Department has designated 13 communities as Waterfronts Florida Partnership Communities. To

⁶ Eight of the 13 grants were for commercial-fishing working waterfronts.

⁷ Up to \$10,000 in the first year, and up to \$25,000 in the second year.

date, these communities have been the beneficiaries of 7,000 hours of volunteer services, \$143,362 in private donations, and \$7.4 million of other public investment.

Section 6 requires the Department of Environmental Protection and the various water management districts to adopt programs to expedite the processing of wetland resource and environmental resource permits for marina projects that reserve at least 10 percent of available boat slips for public use.

Section 7 directs the Department of Environmental Protection, in coordination with the Florida Fish and Wildlife Conservation Commission, to undertake a study evaluating the current use of state parks for purposes of recreational boating and identify opportunities for increasing recreational boating access within the state park system. The study must include recommendations regarding the most appropriate locations for expansion of existing recreational boating facilities, as well as identifying state parks where new recreational boating facilities may be located. The report must also contain estimates of the costs necessary to expand and construct additional recreational boating facilities at specific state parks. Finally, the report must address impacts on existing recreational uses and wildlife needs. The Department is required to submit a report summarizing its findings and recommendations to the Governor, President of the Senate, and Speaker of the House of Representatives no later than January 1, 2006.

Section 8 amends s. 327.47, F.S., to provide that additional revenues generated through increased vessel registration fees (section 9 of the CS) are to be used for the competitive boating grants program administered by the Florida Fish and Wildlife Conservation Commission. This program provides grants to local governments for the construction and maintenance of publicly owned boat ramps, piers, and docks.

Section 9 amends s. 328.72, F.S., to increase the current schedule of vessel registration fees and provide that the revenue generated through this fee increase must be deposited into the competitive boating grant programs authorized under s. 327.47, F.S. The CS provides for an increase of approximately 25 percent across the various vessel classes. This increase is estimated to generate an additional \$4 million annually for the competitive boating grants programs.

TABLE 2 – Revised Vessel Registration Fees		
Class (Vessel Length)	Current Fee	Fee Under CS/SB 1316
Class A-1 (Less 12 ft.)	\$3.50	\$4.50
Class A-2 (12 ft. to 15 ft.)	\$10.50	\$13.50
Class 1 (16 ft. to 25 ft.)	\$18.50	\$23.50
Class 2 (26 ft. to 39 ft.)	\$50.50	\$63.50
Class 3 (40 ft. to 64 ft.)	\$82.50	\$103.50
Class 4 (65 ft. to 109 ft.)	\$98.50	\$123.50
Class 5 (110 ft. or greater)	\$122.50	\$153.50
Dealer Registration Certificate	\$16.50	\$20.50

The CS stipulates that all revenue generated through the increase in vessel registration fees is to be deposited into the Marine Resources Conservation Trust Fund within the Fish and Wildlife

Conservation Commission and must be used exclusively for the construction and maintenance of publicly owned boat ramps, piers, and docks through the competitive boating grant programs established in s. 327.47, F.S.

Section 10 amends s. 328.76, F.S., to conform the distribution of vessel registration fees deposited into the Marine Resources Conservation Trust Fund to provisions previously discussed in sections 7 and 8 of the CS.

Section 11 creates s. 342.07, F.S., to provide Legislative findings and a definition for the term “recreational and commercial working waterfronts.” This new statutory language acknowledges the state has a significant interest in boating access to the state’s navigable waters and this access is vital to recreational users and the marine industry and recognizes 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.

Section 12 creates ss. 197.303 – 197.3047, F.S., authorizing local governments to adopt ordinances allowing for the establishment of a tax deferral program for qualifying recreational and commercial working waterfronts. This program, which is modeled after a similar property tax deferral program for qualifying low-income elderly individuals, would provide owners of traditional working waterfront properties some relief in the face of escalating waterfront property values, and enable them to continue to operate their property as a traditional working waterfront. The tax deferral program would not be allowed if:

- The deferred amount plus interest and other unsatisfied liens on the property exceed 85 percent of the assessed value of the property;
- The primary financing on the property exceeds 70 percent of the assessed value of the property; or
- The property is located within the boundaries of a community redevelopment area.

The CS states the deferred amount shall accrue interest equal to the semiannually compounded rate of one-half of 1 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments at the end of the quarter prior to the sale of the tax certificate not to exceed 9.5 percent. The tax deferred amount will be issued as a tax certificate to the county and will not be subject to public sale, as are other tax certificates. The deferred taxes, assessments, and interest constitute a prior lien and will attach and be collected as other taxes, however, the amounts will only come due under certain circumstances.

The applicant for the deferral must annually submit an application prescribed by the Department of Revenue (DOR) and be signed under oath (notarized). The tax collector may require any other evidence and documentation as deemed necessary by the tax collector in considering the application. The application must state the conditions that must be met for approval, the conditions under which the deferred taxes will become due, payable, and delinquent, and that all

deferrals constitute a lien on the applicant's property. The application must contain a list of all outstanding liens on the property and their current value.

Tax collectors are required to consider all applications within 30 days of filing or as soon as is practicable thereafter. The tax collector must permanently file approved applications in the records and send a notice by personal delivery or registered mail of disapproval within 30 days of filing giving the reasons for the applications disapproval. The notice of disapproval shall be filed in the permanent records and must contain a notice of the applicant's right to appeal the decision of the tax collector to the value adjustment board along with the procedures for filing an appeal.

The CS provides procedures for the appeal of a tax collector decision to the value adjustment board including that the applicant has 20 days from receipt of the notice of disapproval to submit their written request for appeal to the board. The value adjustment board must either overturn or affirm the decision of the tax collector and the board's decision is final. If the board affirms the tax collector's disapproval, a proceeding for a declaratory judgment or other appropriate proceeding can be initiated by the applicant, tax collector, or other lienholder if initiated within 15 days. The CS states that the date the application for tax deferral was received shall be used in calculating taxes due and payable net of discounts for early payment for applications that are approved.

The CS requires the applicant to provide proof of fire and extended insurance coverage on the property in an amount in excess of any outstanding liens and deferred taxes and interest on the property to the tax collector. The coverage must also have a loss payable clause to the county tax collector. The owner must maintain this coverage during the duration of tax deferral. Failure to maintain this coverage will cause all deferred tax and interest to become due and payable on the date failure to maintain coverage occurs and delinquent on April 1 of the following year.

Tax collectors are required to notify the property appraiser in writing that the tax on the property has been deferred. Property appraisers must notify the tax collector of changes in ownership of properties or change in use of properties that have been granted tax deferral. The tax collector must notify local governing bodies of the amount of deferred taxes and non-ad valorem assessments that would have been collected for each governing body. If there is a change in use of the property, all deferred tax and interest become due and payable on November 1 of the year the change in use occurs and delinquent on April 1 of the following year.

The CS requires that the deferred amounts plus interest and all other liens on the property not exceed 85 percent of the assessed value. In any year in which the amount exceeds 85 percent of the assessed value, the tax collector is required to notify the owner that the amount that exceeds 85 percent is due and payable within 30 days of receipt of notice. Failure to pay this amount will make all deferred amounts become delinquent. If deferred taxes become delinquent they can then be subject to sale as a tax certificate as any other property tax under s. 197.432, F.S.

The CS provides for prepayment of deferred taxes by the owner, the owners next of kin, heir of the owner, child of the owner, or any person having or claiming a legal or equitable interest in the property if the owner does not object within 30 days of payment tender. Any prepayment of

deferred amounts shall be applied to accrued interest first and be distributed with the procedures for distributing ad valorem taxes or redemption moneys.

The CS states that the provisions for deferred taxes do not prevent the collection of personal property taxes that become a lien against the property, defer payment of special assessments to benefited property other than those specifically allowed to be deferred, or affect any provision of any mortgage.

The CS provides that any person that willfully submits incorrect information shall: immediately pay the amount of deferred tax and interest due; be disqualified from filing for a tax deferral for 3 years; and pay a penalty of 25 percent (25%) of the total amount of deferred tax and interest deferred. The penalty can be appealed to the value adjustment board within 30 days of imposition.

Section 13 amends s. 253.002, F.S., which provides for the duties with respect to state lands for the Departments' of Agriculture and Consumer Services and Environmental Protection, and the water management districts. The CS provides that "authorizations" to use trustee's submerged lands may also be utilized in additional leases.

Section 14 amends s. 253.67, F.S., a definitions section for terms used for issuing leases as they relate to aquaculture practices utilizing submerged lands. The CS creates a definition for "aquaculture activity." This term is defined to mean any activity, as determined by rule, which is related to the production of aquaculture products.

Section 15 amends s. 253.68, F.S., relating to the authority to lease submerged land and water for aquaculture. Conforming changes are made to recognize that "authorizations", provided for in Section 13, may be used.

Section 16 amends s. 253.74, F.S., which provides for penalties for those who unlawfully conduct aquaculture activities. The CS makes necessary conforming changes.

Section 17 amends s. 253.75, F.S., which provides authority for the studies to be done when requests are made to use submerged land. The CS makes conforming changes.

Section 18 provides that this CS shall take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The CS provides an increase in the current schedule of vessel registration fees and provides that the revenue generated through this fee increase must be deposited into the competitive boating grant program authorized under s. 327.47, F.S., and must be used exclusively for construction of publicly owned boating infrastructure. The CS provides for an increase of approximately 25 percent across the various vessel registration classes.

The CS authorizes local governments to create a tax deferral program for eligible owners of recreational and commercial waterfront property. This provision would allow such persons to defer ad valorem and any non-ad valorem assessments until there is change in the use of the property at which time the deferred taxes, assessments, and interests would be due. The number of individuals who would elect to utilize this program is unknown.

The CS provides a new definition to be used by property appraisers when dealing with conservation lands. This new definition if applied could have the effect of reducing property tax proceeds for a county. The provision created in the CS is permissive so the exact impact is unknown.

B. Private Sector Impact:

The CS would increase vessel registration fees for boat owners in the state by approximately 25 percent. The amount of the increase would vary by vessel length. For the more than 90 percent of the vessel owners in the state who own vessels less than 26 feet, the increase would be \$5 or less annually.

The CS authorizes local governments to establish a property tax deferral program for eligible owners of recreational and commercial working waterfront property. Under this program the county would maintain a lien on the property until such time as there is change in the use of the property and the owner is no longer eligible to claim the property as a bona fide recreational and commercial working waterfront. The county would then collect any taxes and interest due following this change in the use of the property.

C. Government Sector Impact:

The increase in vessel registration fees could generate an additional \$4.5 million annually for the competitive boating grants program administered by the Florida Fish and Wildlife Conservation Commission. This program provides grants to local governments for the construction and maintenance of publicly owned boat ramps, piers, and docks.

The property tax deferral program for eligible owners of recreational and commercial waterfront property will impact the revenue stream of local governments in two ways if

property owners within their taxing authority defer their taxes. First, it will limit the short term cash flow the local governments would receive from the taxes deferred on the property. Second, it will increase the total amount the local government will receive on the property because the deferred amount will accrue interest during the deferral. The amount of each effect could not be adequately estimated at the time of analysis because there is no method of determining how many property owners would avail themselves of this option or the amount of taxes and other assessments that would be deferred.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This CS is the result of *Senate Interim Project 2005-122: Working Waterfronts*.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
