

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 331
SPONSOR(S): Bowen
TIED BILLS:

Inland Lakes and Canals

IDEN./SIM. BILLS: SB 772

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Water & Natural Resources Committee</u>	<u>9 Y, 0 N</u>	<u>Smith</u>	<u>Lotspeich</u>
2) <u>Agriculture & Environment Appropriations Committee</u>	<u>11 Y, 0 N</u>	<u>Davis</u>	<u>Dixon</u>
3) <u>State Resources Council</u>	<u></u>	<u>Smith</u>	<u>Hamby</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Currently, no person, municipality, or other governmental entity is allowed to place a safety or navigation waterway marker in, on, or over the waters or shores of the state without a permit issued by the Division of Law Enforcement of the Florida Fish and Wildlife Conservation Commission. The 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.

The bill should provide an indeterminate cost savings to the state, counties, municipalities, and other governmental entities responsible for placement of waterway markers.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government:

This bill exempts counties, municipalities, or other governmental entities from state permitting requirements for the placement of waterway markers on inland lakes and their associated canals.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

State Law and Rules

Section 327.40(2)(b), Florida Statutes, was 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), Florida Statutes, 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. Florida law remains silent on any language associated with the placement of “informational markers.”

Section 327.02(38), Florida Statutes, defines the phrase “waters of the state” to include all the inland lakes, rivers, and canals under the jurisdiction of the state. Therefore, current permitting requirements appear to apply to any inland lake and its associated canals, so 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. While statutes do not explicitly define “navigational”, “safety”, or “regulatory markers”, they do provide the Commission with the rulemaking authority to enforce the provisions of the chapter.

In 2001, the Commission adopted rules to implement the Legislative revisions enacted in 2000.¹ The rules specifically define “information” and “regulatory” markers²:

“Information marker” means a device external to a vessel intended to provide the mariner with information concerning matters other than dangers or obstructions to navigation, or regulatory matters.

“Regulatory marker” means a device used to alert the mariner to various warnings or regulatory matters such as horsepower, speed, or wake restrictions.

Furthermore, the rules enforce the statutory requirements of permitted markers to meet federal standards of uniformity as well as updating existing markers to the federal standards³.

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.”

Federal Law and Regulations

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.⁴ Federal

¹ Chp. 68D-23, Uniform Waterway Markers In Florida Waters, F.A.C.

² Ch. 68D-23.103 (b) (c), F.A.C.

³ Chp. 68D-23, Uniform Waterway Markers In Florida Waters, F.A.C.

⁴ 14 USC 83

regulations adopted by the United States Coast Guard require markers in those waters to comport with the U.S. System.

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 determines the jurisdictional status of waterbodies.

EFFECT OF PROPOSED CHANGES

This bill exempts counties, municipalities, and other governmental entities (not private citizens) from all statutory permitting requirements applicable to placement of informational waterway markers only on inland lakes and their associated canals. 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, then federal waterway marker requirements will apply regardless of the exemption from state permitting requirements created by this bill.

Under the bill "informational markers" include, but are not limited to markers indicating end of boat ramp, no swimming, swimming area, lake name, trash receptacle, public health notice, or underwater hazard or canal, regulatory, emergency, and special event markers. Informational markers may be no more than 50' from the normal shoreline, unless such markers are swimming area and special event markers.

C. SECTION DIRECTORY:

Section 1. Amends s. 327.40, F.S., exempting counties, municipalities, and other governmental entities from certain waterway marker requirements.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None
2. Expenditures: See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None
2. Expenditures: See fiscal comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS: The Commission reports that the fiscal impact of the bill is "unknown." However, it appears that an indeterminate cost savings should result from 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. Similarly, the local government entities should realize a corresponding reduction in costs resulting from

this exemption as they will no longer be required to obtain such permits. The FWCC reports that there is no cost for the issuance of a sign permit.⁵

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:

B. RULE-MAKING AUTHORITY:

Section 327.40(c), Florida Statutes, currently authorizes the Commission to adopt rules to implement section 327.40.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill includes “regulatory” markers within the scope of “informational” markers. Florida law specifically addresses “regulatory” markers under section 327.41, Florida Statutes. In addition, Commission rules define “regulatory” markers as devices used to alert the mariner to various warnings or regulatory matters such as horsepower, speed, or wake restrictions.⁶ The bill may create confusion as to the distinction between “informational” and “regulatory” markers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

⁵ Personal Communication, Capt. Alan Richard, FWCC

⁶ Ch. 68D-23.103 (c), F.A.C.