

# 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.)

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Prepared By: Community Affairs Committee

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BILL: SB 772

SPONSOR: Senator Dockery

SUBJECT: Inland Lakes and Canals

DATE: March 17, 2005

REVISED: \_\_\_\_\_

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Branning</u> | <u>Kiger</u>   | <u>EP</u> | <b>Favorable</b> |
| 2. | <u>Herrin</u>   | <u>Yeatman</u> | <u>CA</u> | <b>Favorable</b> |
| 3. | _____           | _____          | _____     | _____            |
| 4. | _____           | _____          | _____     | _____            |
| 5. | _____           | _____          | _____     | _____            |
| 6. | _____           | _____          | _____     | _____            |

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## I. Summary:

This bill exempts counties, municipalities, and other governmental entities from having to obtain a permit from the Fish and Wildlife Conservation Commission (FWC) for the placement of certain informational markers on inland lakes and their associated canals.

This bill substantially amends section 327.40 of the Florida Statutes.

## II. Present Situation:

### State Law and Rules

In 2000, s. 327.40(1), F.S., was amended to provide that waterways in Florida which need marking for safety or navigation purposes shall be marked under the United States Aids to Navigation System, 33 C.F.R. part 62. Until December 31, 2003, channel markers and obstruction markers may continue to be used on waters of the state that are not navigable waters of the United States. 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 the placement of any "safety or navigation markers" in, on, or over the waters or shores of the state without a permit from FWC's 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.

Section 327.40(2)(c), F.S., authorized the commission to adopt rules to implement the 2000 legislative changes to the waterway marker requirements. The FWC adopted its rule revisions in 2001. 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>1</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>2</sup>
- Establish application and review criteria and procedures for applications submitted to the division;<sup>3</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>4</sup> and
- Establish permit conditions, including maintenance and inspection requirements.<sup>5</sup>

The FWC’s rules regarding waterway markers 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 Rules**

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>6</sup> Federal regulations adopted by the United States Coast Guard require markers in those waters to comport with the U.S. System. As provided in 33 C.F.R. 62.1, 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.

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

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<sup>1</sup> 68D-23.102, F.A.C.; 68D-23.107; 68D-23.108; 68D-23.109

<sup>2</sup> 68D-23.104(1), F.A.C.

<sup>3</sup> 68D-23-104(2)-(5); 68D-23.105

<sup>4</sup> 68D23.107(2)(e); 68D-23.111, F.A.C.

<sup>5</sup> 68D-23.106; 68D-23.110

<sup>6</sup> 14 U.S.C. 83

improvement at a reasonable cost to provide, by themselves or in connection with other waters, highways for substantial interstate or foreign commerce.<sup>7</sup>

Rule 68D-23.103(1)(b) of the Florida Administrative Code defines “information marker” as 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. Florida Statutes does not define “information marker” or “informational marker.”

### III. Effect of Proposed Changes:

**Section 1** amends s. 327.40, F.S., to provide that the placement of certain informational markers by counties, municipalities, or other governmental entities on inland lakes and their associated canals is exempt from permitting by FWC’s Division of Law Enforcement. Such information 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 and canal, regulatory emergency, and special event markers. However, such markers do not include swimming area and special event markers.

The bill prohibits placement of these information markers more than 50 feet from the normal shoreline.

The placement of any safety, navigational, or informational marker on state submerged lands does not subject such lands to the lease requirements of ch. 253, F.S.

**Section 2** provides the act shall take effect upon becoming a law.

### 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:

None.

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<sup>7</sup> U.S. Coast Guard, Appendix 11 to Annex Y to CCGDSEVEN SOP, page Y-11-1

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The FWC 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 FWC 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.

The bill exempts the placement of certain informational markers on landlocked inland lakes by counties, municipalities, or other governmental entities. There could be a substantial cost savings to these governmental entities if they are not required to replace all of the signs and markers that were rendered nonconforming on December 31, 2003. Such a cost savings cannot be quantified at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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

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