

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 955 CS Waterfront Property
SPONSOR(S): Berfield and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Growth Management Committee</u>	<u>9 Y, 1 N, w/CS</u>	<u>Porter</u>	<u>Grayson</u>
2) <u>Environmental Regulation Committee</u>	<u></u>	<u>Kliner</u>	<u>Kliner</u>
3) <u>Fiscal Council</u>	<u></u>	<u></u>	<u></u>
4) <u>State Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 955 creates the "Waterfronts Florida Program" within the Department of Community Affairs (DCA) to provide technical assistance and support to communities in revitalizing waterfront areas in the state.

The bill requires comprehensive plans to include within certain elements of the plan, efforts to preserve recreational and commercial working waterfronts and provides a definition of recreational and commercial working waterfronts.

The bill changes the limits on small scale comprehensive plan amendments in counties designated as rural areas of critical economic concern by the Governor.

The bill requires the Board of Trustees of the Internal Improvement Trust Fund to encourage the use of sovereign submerged lands for water-dependent uses and public access.

The bill instructs the Department of Environmental Protection (DEP), in coordination with the Fish and Wildlife Conservation Commission (FWCC), to conduct a study of the use of state lands for recreational boating to identify opportunities to increase recreational boating access within the state park system.

The bill provides for an increase in fees paid on boat registration in the state to be deposited into the Marine Resources Conservation Trust Fund within the FWCC and used exclusively for boating grant programs.

The bill creates a tax deferral program for owners of recreational and commercial working waterfronts to encourage them to maintain the current use of the property.

The bill provides for penalties for individuals willfully submitting false information in relation to the tax deferral program.

The bill provides an effective date of July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes – HB 955 provides for an increase in the registration fees paid by boat owners.

B. EFFECT OF PROPOSED CHANGES:

HB 955 creates the “Waterfronts Florida Program” within the Department of Community Affairs (DCA) to provide technical assistance and support to communities in revitalizing waterfront areas in the state.

The bill requires coastal communities to include criteria that encourage the preservation of recreational and commercial working waterfronts in the future land use element of their comprehensive plan.

The bill requires comprehensive plans to include access to waterways in the recreation and open space element of the plans.

The bill requires comprehensive plans to include strategies that will be used to preserve recreational and commercial working waterfronts in the shoreline use component of the plans.

The bill increases the acreage for small scale comprehensive plan amendments in counties designated as rural areas of critical economic concern by the Governor by 150%. This takes the limit on each amendment from 10 acres {163.3187(1)(c)(1)} to 25 acres and increases the cumulative annual total from 120 acres {163.3187(1)(c)(1)(a)(I)} to 300 acres.

The bill instructs the Board of Trustees of the Internal Improvement Trust Fund to encourage the use of sovereign submerged lands for water-dependent uses and public access.

Waterfronts Florida Program

The bill creates the “Waterfronts Florida Program” within the Department of Community Affairs (DCA) to provide technical assistance and support to communities in revitalizing waterfront areas in the state.

The bill defines “waterfront community” as those required to prepare a coastal element for their comprehensive plans.

The bill defines “recreational and commercial working waterfront” as a parcel or parcels of real property that provide access to water-dependent commercial activities or provide access for the public to the navigable waters of the state. These require direct access to or a location on, over, or adjacent to a navigable body of water. This definition includes facilities open to the public and offer public access by vessels to the waters of the state or support facilities for recreational, commercial, research, or governmental vessels.

The bill provides that the purpose of the program is to provide technical assistance, support, training, and financial assistance to waterfront communities in their efforts to revitalize waterfront areas. The program shall direct its efforts on priority concerns, which are:

- Protecting environmental and cultural resources;
- Providing public access;
- Mitigating hazards; and
- Enhancing the viable traditional economy.

The bill establishes the responsibilities of the program including:

- Implementation of the “Waterfronts Florida Partnership Program”, which already exists at DCA. DCA and the Department of Environmental Protection (DEP) are to develop procedures and requirements governing program eligibility, application procedures and review.
- Serve as a source for information and technical assistance for Florida’s waterfront communities in preserving traditional recreational and commercial working waterfronts.

The bill instructs the DEP, in coordination with the Fish and Wildlife Conservation Commission (FWCC), to conduct a study of the use of state lands for recreational boating to identify opportunities to increase recreational boating access within the state park system. The DEP shall issue a report based on the study that will:

- Include appropriate locations for expanding existing recreational boating access.
- Identify state parks where new recreation boating access may be located.
- Include the costs necessary to expand or construct additional access.
- Be submitted to the Governor, President of the Senate, and Speaker of the House by January 1, 2006.

The bill provides for an increase in fees paid on boat registration in the state. The fee increase shall be deposited into the Marine Resources Conservation Trust Fund within the FWCC and will be used exclusively for boating grant programs. These fees have not been increased since 1989 and the increase will be used to fund existing grant programs that increase, maintain, or enhance public access to waterways in the state.

Tax Deferral Program

The bill provides an incentive for owners to maintain working waterfront property by creating a tax deferral program for recreational and commercial working waterfronts to allow a deferral of payment of the combined total of the ad valorem taxes and any non-ad valorem assessments that could be covered by a tax certificate. The county must adopt an ordinance to allow the deferral. The deferral would not be allowed if:

- The deferred amount plus interest and other unsatisfied liens on the property exceed 85% of the assessed value of the property; or
- The primary financing on the property exceeds 70% of the assessed value of the property.

The bill states the deferred amount shall accrue interest equal to the semiannually compounded rate of one-half of 1 percent (.5%) 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 (9.5%). 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 bill provides for 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 bill 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 bill 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.

The bill requires the tax collector to notify the property appraiser in writing that the taxes on the property have been deferred.

The bill requires the property appraiser to notify the tax collector of changes in ownership of properties or change in use of properties that have been granted tax deferral.

The bill requires the tax collector to notify local governing bodies of the amount of deferred taxes and non-ad valorem assessments that would have been collected for each governing body.

The bill provides that 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 bill requires that the deferred amounts plus interest and all other liens on the property not exceed 85% of the assessed value. In any year in which the amount exceeds 85% of the assessed value, the tax collector is required to notify the owner that the amount that exceeds 85% is due and payable within 30 days of receipt of notice. Failure to pay this amount will make all deferred amounts become delinquent.

The bill requires the property owner to annually submit a list of all outstanding liens on the property and their current value on notification from the tax collector. Failure to respond to this notice will make all deferred amounts payable within 30 days.

The bill states that 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 bill allows 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.

The bill provides that 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 bill 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 bill 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.

Background

Commercial and recreational waterfronts are an important part of the economy and quality of life enjoyed by residents of the state. A recent study indicated that the “marine industry represents a total economic output of over \$14.1 billion and is responsible for over 180,000 jobs in the state”¹. As Florida’s population continues to grow, there is increasing evidence that changes in land use will continue to affect the viability of the states waterfronts. The decreasing availability of undeveloped waterfront property available for use and the nature of a supply and demand economy will naturally lead to the redevelopment of existing waterfront as the availability of undeveloped waterfront decreases.

Demand

The Florida Wildlife Commission recently estimated that there are approximately 8,000 boat ramps across the state.² However, the report noted that many of these ramps are not available to the public – the use is “limited to their owners or members of exclusive marinas and yacht clubs.” The report found that there are an “estimated 1,300 ramps statewide operated by public agencies (federal, state and local) explicitly for public use.”³ Approximately 200 of these ramp sites are maintained by the FWC.⁴

In 2003, Florida had 978,225 registered boats, a 29.5 % increase from 1997, and a 51.7 % increase from 1987. This is approximately twice the rate of the population increase for the state over the same period.⁵ Visiting vessels registered in other states also require waterfront facilities. It is reported that Florida is the top ranked destination for marine recreation in the United States, with an estimated 4.3 million participants.⁶ Consequently, it appears that our present inventory of waterfront facilities may be insufficient to meet current demand.

Conversion

Development interests have started buying traditional working waterfronts and converting them to private and residential use. “Water-enhanced” and “water-related” activities are replacing traditional or “water-dependent” activities.⁷ This has the effect of decreasing the availability of waterfront property necessary to sustain commercial-fishing and recreational boating activities, and increasing the value of the surrounding working waterfront property. The increase in property value results in higher property

¹ “Florida’s Recreational Marine Industry – Economic Impact and Growth 1980-2000,” March 2001, by Thomas J. Murray & Associates, for the Marine Industries Association of Florida, Inc., p. iii.

² Assessing the Economic Impact and Value of Florida’s Public Piers and Boat Ramps. FWC, March 2001, pp. 13-14.

³ Ibid., p. 14.

⁴ <http://www.floridaconservation.org/fishing/ramps/>

⁵ The estimated statewide population increase was 14.2 percent, from 14.9 to 17 million. See <http://www.state.fl.us/edr/population/web7.xls>

⁶ Tampa and Sarasota Bays, Sea Grant, University of Florida TP-130, June 2004, p. 1.

⁷ “Watermarks: Technical Briefs on Coastal Waterfront Revitalization,” Volume 1, Issue 3. Department of Community Affairs, July 1997.

taxes, which may cause the working waterfronts to be decreasingly profitable, thereby compounding the pressure to convert to the “highest and best” use of the property.

The benefit to local and regional economies of converting working waterfronts to residential uses varies, depending on the specific social and economic circumstances. However, a recent study in Maine found that conversions initially stimulate the local economy (during the construction stage), but the benefit diminishes over the long term, especially in small jurisdictions. The local economy eventually suffers from the decrease in economic activity even though the tax base of the community has increased.⁸ A recent report also stated that “Research indicates that the construction of new launch facilities has not kept pace with increases in annual vessel registrations”.⁹

In 1995, the Florida Coastal Management Program commissioned a study to develop a profile of Florida’s working waterfronts and the economic viability of those areas. The report found that “many working waterfronts are experiencing a decline in economic activity due to market forces and demands for waterfront property, the fishing net ban, and other trends affecting small-scale commercial fishing.”¹⁰

A number of factors have combined to exert pressure on the commercial-fishing industry to convert their property to other uses:

- The constitutional net-ban adopted by the electorate in 1994 resulted in reducing the catch and consequently, the income potential, of commercial fisheries;
- Increased regulation on commercial fishing;
- Recent increases in imported seafood has depressed the prices for locally harvested seafood, further reducing income potential;
- Escalations in waterfront property values have resulted in higher property taxes, thereby increasing the operating costs; and
- Regulatory impediments to new marina development make existing commercial fishing waterfronts attractive to residential developers.

In response to these pressures, some commercial fishermen have “down-sized” their operations and modified portions of their properties to include mixed-use development (recreational/transient marinas, restaurants, tourism), or sold their property to residential developers. Commercial fishermen who sell their working waterfront property may remain in operation by docking in other commercial-fishing facilities, or in private residential slips or recreational marinas.

State Strategies to Preserve or Increase Access

There are several state or regional government programs to assist local governments and the private sector in their efforts to preserve or increase access for commercial or recreational boating activities.

DCA provides technical assistance and limited funding to small waterfront communities through the Waterfronts Florida Partnership Program. This program 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, and hazard mitigation.

The Florida Boating Improvement Program of the Office of Boating and Waterways within the Fish and Wildlife Conservation Commission (FWCC) coordinates funding for projects to improve boating access.¹¹ In each fiscal year, a portion of the state taxes collected on motor fuel are transferred to the

⁸ http://www.portlandphoenix.com/features/other_stories/multi3/documents/03919490.asp

⁹ Interim Summary Report 2005-122 - “Working Waterfronts”, November 2004, Committee on Community Affairs, Florida Senate

¹⁰ Profile of Working Waterfronts, FAU/FIU Joint Center for Environmental and Urban Problems, 1995, p. v.

¹¹ Section 20.331, F.S.

FWCC to fund, in part, local projects that provide “recreational channel marking, public launching facilities, aquatic plant control, and other local boating related activities.”¹² In addition, a portion of taxes collected on motor and diesel fuels at marinas is transferred to the FWCC to be used, in part, to “provide funding for construction and maintenance of publicly owned boat ramps, piers, and docks, directly and through grants to counties and municipalities.”¹³ Also, a portion of vessel registration fees collected by the Department of Highway Safety and Motor Vehicles (DHSMV) are transferred to FWCC to fund a variety of services, to include public launching facilities.¹⁴

Additional funding is available to local governments through the Florida Recreational Development Assistance Program,¹⁵ the Land and Water Conservation Program,¹⁶ the Florida Recreational Development Assistance Program,¹⁷ and the Boating Infrastructure Grant Program.¹⁸

Current Tax Deferment

Eligible homeowners can defer the portion of their tax liability that exceeds 5% of their household income. Senior citizen homeowners can defer that portion of their tax liability that exceeds 3% of their household income; except no tax deferral is allowed where the taxes to be deferred plus interest plus all other unsatisfied liens exceed 85% of the assessed value of the homestead; or, where the primary mortgage financing exceeds 70% of the assessed value of the homestead.

The deferred taxes are a lien on the property and are issued to the county as a tax certificate not subject to public sale. The deferred tax amount will accrue interest semiannually, compounded at one-half of one percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of the deferred payment tax certificates not to exceed 9.5 percent (9.5%).

The taxes can be deferred until the ownership or use of the property changes. Upon either occurrence the deferred tax liability plus accrued interest becomes immediately due and becomes delinquent April 1 of the following year. Also, in any year the total amount of the deferred taxes, interest and other unsatisfied lien exceeds 85% of the assessed value of the homestead, the homeowner is liable to pay for that portion of the tax in excess of the cap. The failure to pay the excess amount due causes the total amount to become delinquent and could result in the tax certificate being sold to the public if the amount due is not paid timely.

C. SECTION DIRECTORY:

Section 1. Amends s. 163.3177, F.S. relating to elements of comprehensive plans.

Section 2. Amends s. 163.3178, F.S. relating to the coastal element of comprehensive plans.

Section 3. Amends s. 253.03, F.S. relating to the Board of Trustees of the Internal Improvement Trust Fund.

Section 4. Creating the “Waterfronts Florida Program”.

¹² Section 206.606(1) (b) 1., F.S. A minimum of \$1.25 million must be used for this purpose. Section 206.606(1) (d), F.S., requires that \$5 million be appropriated in FY 2004-5, increasing to \$13.4 million in FY 2007/8, and each year thereafter.

¹³ Section 370.0603(4) (c), F.S.

¹⁴ Section 328.76(1), F.S. However, to date, it appears that this money has never been appropriated for public launching facilities.

¹⁵ Federal funds administered by DEP. See <http://www.dep.state.fl.us/parks/bdrs/>

¹⁶ Administered by DEP, last year, \$3.9 million in federal funds were available, with preference given to projects on water bodies.

¹⁷ Administered by Bureau of Design and Recreation Services, Division of Recreation and Parks in DEP.

¹⁸ Administered by FWCC, this program provides federal funds to local governments for tie- up facilities (slips, mooring buoys, docks, piers, etc.) for transient recreational boats 26' or longer. See <http://myfwc.com/boating/grants/bigp.htm>

Section 5. Directs DEP to conduct a study with the FWCC relating to the use of state parks for boating access.

Section 6. Amends s. 327.47 relating to competitive grant programs at FWCC.

Section 7. Amends s. 328.72 relating to boat registration fees.

Section 8. Amends s. 328.76 relating to the Marine Resources Conservation Trust Fund.

Section 9. Creates s. 342.07 relating to recreational and working waterfronts.

Section 10. Creates s. 197.304-197.3046 relating to tax deferral for recreational and commercial working waterfronts.

Section 11. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides for an increase in registration fees paid by boat owners. There were no preliminary estimates of revenue available at the time of analysis.

2. Expenditures:

The bill does not appear to impact state expenditures. However, the increase in boat registration fees will increase the available resources for grants funded through the bill. It was not clear at the time of analysis as to whether the increased volume of grants could be absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill 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.

2. Expenditures:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could have an impact on the private sector for those property owners qualifying to defer their taxes under the program. Deferring property taxes would be advantageous to small business owners that are experiencing increased property taxes due to the value of their property but are not experiencing a matching increase in income to compensate for it.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to increase rule making authority for any affected agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Although contacted for comment on the bill, 1000 Friends of Florida¹⁹ had not responded by the time this analysis was finalized.

A representative of the marine industry²⁰ stated that the group was increasingly concerned over a decrease in the public's access to navigable waters in the state. The group is concerned that as population and develop increase and the number of boats demanding access to the states waters increase, there could be a negative impact on the states economy and standard of life cause by decreasing access to the state's waterways. The group is concerned about the lack of permitting of new marina and ramp facilities by the Department of Environmental Protection and other state agencies. They stated that the vessel registration fees have not been increased in over 10 years and should not constitute a burden on boat owners. The amount allocated for grants for public access are not sufficient to satisfy demand causing grant applications to be denied.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2005, the Growth Management Committee adopted three amendments as summarized below.

- Amendment No. 1 – Inserted language between lines 170-171 which amended s. 163.3187(1)(c), and created s. 163.3187(1)(o) , F.S., to clarify the study performed by DEP will be for recreational boating access and not the location of marinas on state park lands.
- Amendment No. 2 – Removed lines 227-228 and inserted language to increase the acreage limit on small scale comprehensive plan amendments in certain counties in relation to the study to be conducted by the DEP.
- Amendment No. 3 – Inserted language between lines 376-377 to create s. 197.303, F.S., to clarify that the tax deferral program must be approved by the respective county.

¹⁹ Janet Bowman, Legal Director – 1000 Friends of Florida.

²⁰ Missy Timmons – Marine Industries Association of Florida.