

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: SB 732

INTRODUCER: Senator Haridopolos

SUBJECT: Clean Ocean Act/ Gambling Vessels

DATE: January 26, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baum	Kiger	EP	Unfavorable
2.	_____	_____	DS	_____
3.	_____	_____	RI	_____
4.	_____	_____	GE	_____
5.	_____	_____	GA	_____
6.	_____	_____	_____	_____

I. Summary:

The bill proposes that gambling vessels which operate in coastal waters must register with the Florida Department of Environmental Protection (DEP) and also provides for the regulation of waste releases from those vessels. Gambling vessels would be required to hold all specified wastes while in coastal waters and then release those wastes upon returning to a port facility in accordance with the procedures of the port facility. The bill provides that port authorities are required to establish procedures for the release of certain substances by gambling vessels at port facilities and requires port authorities to establish and collect a fee not to exceed the costs associated with disposal of the required releases from gambling vessels.

The bill also requires owners or operators of gambling vessels to report releases into coastal waters within twenty-four hours to the DEP and provides for civil penalties associated with such violations.

The DEP is required to adopt rules to implement and administer the new legislation, and provides for an effective date of January 1, 2007.

The bill creates s. 376.25, Florida Statutes.

II. Present Situation:

State of Florida vessel registration and titling

Pursuant to s. 328.40, F.S., all vessels which operate in state waters must register with and obtain a certificate of title from the Department of Highway Safety and Motor Vehicles (DHSMV). A HSMV 82040 form must be completed which is available online and through local county tax

collector offices. The form requires a substantial amount of personal information such as the owner or co-owner's name(s), respective dates of birth, Florida driver's license numbers, and addresses. The form also requires a substantial amount of specific information about the vessel such as the identification number, make and manufacturer, year of production, color, length, materials used in construction, type of propulsion, and the type of fuel used. Along with the completed form, a Manufacturer's Statement of Origin, or its equivalent, must be submitted along with a registration fee based on the fee schedule.¹

Pollution Regulation

According to s.1, Art. II of the State Constitution, the state boundaries extend three nautical miles into the Atlantic Ocean and three marine leagues (9 nautical miles) into the Gulf of Mexico.

Pursuant to section 376.041, F.S., the discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state is prohibited. Provisions and penalties associated with this section include:

- Section 376.12, F.S., which states that any responsible party who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable for all costs of removal, containment, and abatement of a prohibited discharge, unless the responsible party is entitled to a limitation or defense under this section.
- Section 376.121(1), F.S., which states that the DEP shall assess and recover compensation from responsible parties for the injury or destruction of natural resources which results from prohibited pollutant discharges.
- Section 376.16(1), F.S., makes it unlawful for any person to violate any provision of ss. 376.011-376.21, titled "Pollutant Discharge Prevention and Control Act", or any rule or order of the DEP made pursuant to the act. Additional provisions of the section include:
 - Providing for violations which shall be punishable by a civil penalty of up to \$50,000 per violation per day to be assessed by the DEP.
 - Providing that each day during any portion of which the violation occurs constitutes a separate offense.
 - Providing that the penalty provisions shall not apply to any discharge promptly reported and removed by the responsible person(s), in accordance with the rules and orders of the DEP, or any discharge of pollutants equal to or less than 5 gallons.

Specific definitions listed in ss. 376.031(7), (16), and (17), F.S., include:

- "Discharge" which includes, but is not limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping which occurs within the territorial limits of the state and affects lands and waters within the territorial limits of the state.
- "Pollutants" which includes oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

¹ Department of Highway Safety and Motor Vehicles. <http://www.hsmv.state.fl.us/dmv/vslfacts.html#1>

- “Pollution” which means the presence in the outdoor atmosphere or waters of the state of any one or more substances or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

Section 376.071, F.S., states that any vessel operating in state waters with a storage capacity to carry 10,000 gallons or more of pollutants as fuel or cargo shall maintain adequate written ship-specific discharge prevention and control contingency plan. Additional requirements include:

- Designating each vessel to have a “discharge officer” on board who is responsible for training crew members to carry out discharge response efforts.
- Providing that an adequate plan shall include provisions for an on-board response, including:
 - Notification
 - Verification
 - Pollutant incident assessment
 - Vessel stabilization
 - Discharge mitigation
 - On-board discharge containment
- This section also provides civil penalties for failure to follow DEP rules and the Florida Coastal Pollutant Discharge Contingency Plan.

Federal Level

The Federal Water Pollution Control Act Amendments were created in 1972. As amended in 1977, the law became known as the Clean Water Act. Basic provisions of the law include²:

- Establishing the basic structure for regulating discharges of pollutants into the waters of the United States.
- Making it unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit is obtained under the Act’s provisions.
- Authorizing the Environmental Protection Agency (EPA) to have authority to implement pollution control programs such as setting wastewater and water quality standards for industries and surface waters.
- Funding the construction of sewage treatment plants under the construction grants program and recognize the need for planning to address the critical problems posed by non-point source pollution.

Provided by the Clean Water Act under Title III Standards and Enforcement- Effluent Limitations, Section 301.(a)., specifically states that, “Except as in compliance with this section and sections 302, 306, 307, 318, 402 and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.”³

Specific definitions listed in the Clean Water Act, ss. 502(6), (16), and (19), F.S., include:

² <http://www.epa.gov/region5/water/cwa.htm>

³ http://www.epa.gov/region5/water/pdf/ecwa_t3.pdf

- The term “pollutant” means dredged spoil, solid waste, incinerator, residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
- The term “discharge” when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.
- The term “pollution” means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

In 2004, the Clean Cruise Ship Act was enacted by Congress. The purpose of the Act, as defined by the United States House of Representatives is “to establish national standards for discharges from cruise vessels into the waters of the United States, and for other purposes.”

The Clean Cruise Ship Act of 2004 has one main strength-- that it very specifically establishes law in the cruise ship industry. In the past, regulation of cruise ship pollution has been covered under general water pollution laws which cover a wide variety of issues. Instead of attempting to continue putting a bubble over multiple industries, the law sets the cruise ship industry apart from other related industries which may indirectly affect ocean pollution.

Key provisions of the Act include⁴:

- Prohibiting discharges of sewage or other bilge materials within 12 miles of the U.S. shore.
- Providing for more enhanced inspections of discharge operations and equipment.
- Providing for whistleblower protection for employees who report noncompliance.
- Enacting stricter penalty provisions for violations.
- Empowering citizens to commence civil actions against violators of the Act.

According to the Florida Casino City website, there are 10 casino vessels which operate from Florida. In addition, there are more than 80 cruise ships owned and operated by a variety of cruise lines, some of which host gambling activities in the course of their cruises.⁵ Many cruise and casino-only vessels use both ports and marinas for docking and waste disposal purposes.

The Florida Caribbean Cruise Association (FCCA) is a non-profit trade association presenting 12 Member Lines operating almost 100 vessels in Florida, Caribbean and Mexican waters. The FCCA’s mandate is to provide a forum for discussion on legislation, tourism, development, port, safety, security and other cruise industry issues.⁶

The International Council of Cruise Lines (ICCL) is also a non-profit trade organization that represents the interests of 15 passenger cruise lines in the North American cruise market and a growing number of important cruise industry strategic business partners. The mission of the ICCL is to participate in the regulatory and policy development process and promote all

⁴ <http://www.theorator.com/bills108/hr4101.html>

⁵ <http://florida.casinocity.com>

⁶ Florida Caribbean Cruise Association <http://www.f-cca.com/>

measures that foster a safe, secure and healthy cruise ship environment. Under the direction of the chief executives of its member lines, ICCL advocates industry positions to key domestic and international regulatory organizations, policymakers and other industry partners. The ICCL actively monitors international shipping policy and develops recommendations to its membership on a wide variety of issues.⁷

In December 2001, the DEP, Florida-Caribbean Cruise Association (FCCA) and the International Council of Cruise Lines (ICCL) entered into a Memorandum of Understanding (MOU) whose purpose is to implement certain waste and wastewater management practices.⁸ The MOU applies to participating cruise ship lines in the FCCA and ICCL organizations. Vessels which partake in casino activities only, do not participate in this agreement. Casino-only vessels, however, are subject to other statutory waste disposal policies including waste streams that constitute hazardous waste which is addressed by Chapter 403, F.S, and Chapter 62-730, F.A.C.

The Florida Ports Council conducted research on the capability at Florida's deepwater seaports to pump-out sewage, oily bilge water, untreated or treated gray water, untreated or treated black water, hazardous waste, or biomedical waste. The following information was reported⁹:

- Most seaports provide waste disposal capabilities to vessels anchored at their facilities through tank trucks operated by licensed private waste disposal firms.
 - Liquid waste materials, with the exception of hazardous and biomedical waste, are pumped through hoses from ships to tank trucks.
 - Sewage and gray water are either disposed at a port's sanitary waste water system (if a system is located at the port) or hauled by the waste disposal firm to an off-site location.
 - Black water, as well, is hauled by the waste disposal firm to an off-site location.

According to the Department of Health¹⁰ (DOH), the DOH presently has sole statutory authority under section 381.0098, F.S., to regulate biomedical waste. This section authorizes the department to adopt rules (Chapter 64E-16, F.A.C.) to permit generators, to establish and collect fees, and to establish a tracking system. Gambling vessels with medical clinics are biomedical waste generators.

III. Effect of Proposed Changes:

The bill creates section 376.25, F.S., known as "Clean Ocean Act", provisions will:

- Define "gambling" or "gambling device" to mean any game of chance and includes, but is not limited to, cards, keno, roulette, faro, slot machines, video poker, or blackjack machines played for money or thing of value. The term "gambling" does not include penny-ante games, as defined in s. 849.085(2)(a).

⁷ International Council for Cruise Lines <http://www.iccl.org/>

⁸ http://www.dep.state.fl.us/legal/Operating_Agreement/operating_agreements.htm

⁹ Memorandum from the Florida Ports Council on HB 313, February 2, 2006.

¹⁰ Department of Health, Bill Analysis, Economic Statement and Fiscal Note for SB 732, December 16, 2005.

- Define “gambling vessels” to mean a boat, ship, casino boat, watercraft, or barge kept, operated, or maintained for the purpose of gambling and that carries or operates gambling devices for the use of its passengers or otherwise provides facilities for the purpose of gambling, whether within or without the jurisdiction of the State of Florida, and whether it is anchored, berthed, lying to, navigating, and the sailing, voyaging, or cruising, or any segment of the sailing, voyaging or cruising begins and ends within the state.
- Provides additional definitions which include biomedical waste, coastal waters, the Department, hazardous waste, oily bilge water, release, sewage, treated black water, treated gray water, untreated black water, and untreated gray water.
- Specify registration requirements which an owner or operator of a gambling vessel must provide for each calendar year to the DEP. Information shall be submitted electronically upon the request of the DEP. Requirements include:
 - The vessel owner’s business name, and, if different, the vessel operator’s business name for each gambling vessel of the owner or operator that is scheduled to be in coastal waters during the calendar year.
 - Contact information including the postal address, e-mail address, telephone number and exact fax number for the principal place of each business.
 - The name and address of an agent for service of process for each business. The agent shall be an individual resident of the State of Florida, a domestic corporation, or a foreign corporation having a place of business in and authorized to do business in the State of Florida.
 - The name or call sign, port of registry, and passenger and crew capacity for each of the owner’s or operator’s vessels scheduled either to call upon a port in the State of Florida or otherwise be in coastal waters during the calendar year and after the date of registration.
 - The description of all waste treatment systems for each vessel including the system type, design, operation, location of all discharge pipes and valves, and number and capacity of all storage areas and holding tanks.

The following provisions would apply to port facilities and authorities only. Provisions would:

- Require all sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, or biomedical waste from any gambling vessel to be held for release until return to a port facility. All previously stated wastes shall be released in accordance with the procedures of the port facility upon return of the gambling vessel.
- Require port authorities to establish procedures, including processes for verification of the contents released for all wastes released by gambling vessels at the port facility.
- Direct that port authorities shall establish and collect a fee not to exceed the costs associated with the disposal of required releases from gambling vessels.
- Prohibits an owner or operator of a gambling vessel from releasing, or permitting anyone to release any wastes from the vessel into coastal waters.
 - Requires that if releases of any wastes occur, the owner or operator shall immediately, but no later than 24 hours after the release, notify DEP. Information included in the notification shall consist of the date, time, location, volume, and source of the release, in addition to any remedial actions taken to prevent future releases.

- Provide for civil penalties for any person who violates this section of not more than \$25,000 for each violation and specifies that the civil penalty imposed for each separate violation of the section is separate from, and in addition to, any other civil penalty imposed for a separate violation under the subsection or any other provisions of law.
- Provide guidelines for the court to take in determining the amount of civil penalty imposed for a violation. The following circumstances shall be considered:
 - The degree of toxicity and volume of the release.
 - The extent of harm caused by the violation and whether the effects of the violation may be reversed or mitigated.
 - The ability of the defendant to pay, including the effect of a civil penalty on the ability to continue business.
 - All voluntary cleanup efforts undertaken.
 - The prior history of violations.
 - The gravity of behavior.
 - The economic benefit, if any, resulting from the violation.
- Provide for exemptions of violations if all reasonable precautions have been taken for the purpose of preventing or minimizing the release which include:
 - Releases made for the purpose of securing the safety of the gambling vessel.
 - Saving life at sea.

The bill provides that the DEP adopt rules pursuant to section 120.536(1), F.S., to implement the provisions of this section of statute.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to the analysis written by the DEP, there are both costs and benefits for the private sector.

1. Direct Private Sector Costs: The owners of affected gambling vessels would have to pay the cost of compiling and providing registration information to DEP, which is presumably readily available as it is used for other purposes and, thus, relatively inexpensive to provide. The owners also would have to pay whatever fees port facilities charge to dispose of the wastes that their vessels release at those facilities. The cost of disposal and the potential fee is unknown.

The actual cost of on-board waste management facilities is unknown; it would be case-specific, depending on the size of the ship, number of passengers, and other factors. However, it is assumed that responsible vessel owners are outfitted with waste management facilities and that appropriate upgrades, if any, would represent a relatively small cost when compared with gambling revenues.

C. Government Sector Impact:

According to the analysis written by the DEP, the cost of implementing the required annual registration program is unknown. However, it would require some level of staff effort to secure, review and catalogue the fairly extensive registration information, including any necessary follow-up on incomplete registrations. The DEP would also have to process, catalogue and, inevitably, respond to reports of pollutant releases and determine and take appropriate enforcement. DEP indicates that they do not have existing staff to implement such a program.

It is estimated that at least two new Environmental Specialist III level positions would be required. Given the standard pay package, the total cost for the positions would be \$110,000. The program could also be contracted out. Based on previous experience with contracted programs, the cost would be about three times the state FTE cost or about \$330,000 annually. The rulemaking required by the bill would cost approximately \$10,000.¹¹

The bill does not provide any revenues to DEP nor does it authorize DEP to assess fees on gambling vessels to pay the cost of the required registration program.

¹¹ Per analysis provided by the DEP

VI. Technical Deficiencies:

None.

VII. Related Issues:

The current definition of “gambling vessels” as stated in the bill includes cruise ships which would, therefore, make the provisions of the bill applicable to all major cruise lines and cruise ships as defined in 33 C.F.R. 101.105.

The bill currently only applies its provisions to ports and port authorities. The bill is not applicable to marinas which host gambling vessels.

The Department of Health (DOH) has expressed concern that the regulation and inspection of biomedical generators was preempted by the bill, thus infringing on their statutory authority.

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