

The Florida Senate
PROFESSIONAL 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 and Conservation Committee

BILL: CS/SB 444

INTRODUCER: Environmental Preservation and Conservation Committee and Senators Bennett and Haridopolos

SUBJECT: Gambling Vessels

DATE: April 2, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Saleh	Kiger	EP	Fav/CS
2.	_____	_____	MS	_____
3.	_____	_____	RI	_____
4.	_____	_____	GA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute proposes that the Department of Environmental Protection conduct a study of the wastewater discharged by gambling vessels to determine the potential for water quality impacts on coastal waters.

This committee substitute would take effect on July 1, 2007.

The committee substitute creates an un-numbered section of Florida law.

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). An HSMV 82040 form which is completed upon registration requires specific vessel information 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 form, must be submitted along with a registration fee based on the fee schedule.¹

¹ Department of Highway Safety and Motor Vehicles. <http://www.hsmv.state.fl.us/dmv/vslfacts.html#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 the 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 as a result of 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, F.S. 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.

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 plans. Additional requirements include:

- Designating each vessel to have a “discharge officer” on board who is responsible for training new members to carry out discharge response efforts.
- Providing that an adequate plan shall include provisions for an on-board response to any discharge.
- 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 new law include²:

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

- 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.

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, 404 of this Act, the discharge of any pollutant by any person shall be unlawful.”³

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 a 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 administering rules broadly 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 cruises⁵. 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 representing 12 Member Lines operating almost 100 vessels in Florida, Caribbean, and Mexican Waters. The

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

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

⁵ <http://florida.casinocity.com>

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 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 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 authorized the department to adopt rules (Chapter 64E-16, F.A.C.) to permit generators, to establish and collect

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

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.

fees, and to establish a tracking system. Gambling vessels with medical clinics are biomedical waste generators.

II. Effect of Proposed Changes:

This committee substitute proposes that the Department of Environmental Protection conduct a study of the wastewater discharged by gambling vessels to determine their impact on water quality. The department would consider existing studies, research, manufacturer specifications, and other available information on the characteristics of wastewater generated by gambling ships and similar vessels, including standard or typical marine sanitation devices; and credible water quality impacts on coastal waters attributed to such vessels.

For the purposes of this committee substitute, a gambling vessel is defined as a boat, ship, casino boat, watercraft, or barge that is 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 this state, and whether the sailing, voyaging, or cruising, or any segment of the sailing, voyaging, or cruising, begins and ends within this state. The term would not include cruise ships as defined 50 33 C.F.R. s. 101.105.

The owners of gambling vessels would provide the department no later than September 1, 2007, for each vessel owned, the maximum and average number of passengers and number of crew persons for each vessel; the average and typical time duration and number of nautical miles for each voyage; the typical route of each voyage; the average number of voyages in each month of the year for each vessel; the number and type of wastewater treatment devices on each vessel; holding tank volumes; and the wastewater management, treatment and discharge practices employed on each vessel.

The committee substitute would also require that beginning September 1, 2007, each owner of a gambling vessel provide monthly reports to the Department of Environmental Protection with the following information:

- Date and time of discharge
- Volume of discharge
- Location of discharge
- Vessel speed at the time of discharge
- Characteristics of waste water discharged including:
 - Concentrations of nitrogen species
 - Phosphorus
 - Pathogens
 - Total suspended solids
 - Biochemical oxygen demand
 - Chlorine content

If a vessel has its waste water pumped out at a port or other land-based pump-out facility rather than discharging it, the vessel owner shall report to the department the date, time, location, and volume of each instance of pump-out in its monthly report. The department may require

electronic submittal of the monthly reports in which the department would then report to the Governor, President of the Senate and Speaker of the House of Representatives on its findings by February 1, 2009.

This committee substitute would take effect July 1, 2007

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This committee substitute 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.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to an 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 information such as vessel specifications and waste water release data to DEP. Some information such as the vessel specifications 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.

C. Government Sector Impact:

The Department of Environmental protection is likely to incur costs associated with enforcing the provisions of this committee substitute.

V. Technical Deficiencies:

None.

VI. Related Issues:

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
