



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited Government: The bill requires DEP to register gambling vessels and to respond to discharges and to assess damages, if any, resulting from discharges from gambling vessels.

Ensure Lower Taxes: The bill requires a port (which could be a governmental entity, or a private business) to establish and collect a fee not to exceed the actual costs associated with collection and disposal of the releases from gambling vessels.

Promote Personal Responsibility: The bill requires DEP to register gambling vessels and to respond to discharges and to assess damages, if any, resulting from discharges from gambling vessels. The bill requires a port (as defined) to establish and collect a fee not to exceed the costs associated with disposal of the releases from gambling vessels. The bill requires owners or operators of gambling vessels to report releases into coastal waters within 24 hours to DEP, and provides for civil penalties for violations.

### B. EFFECT OF PROPOSED CHANGES:

#### **Background**

Each day thousands of vessels use our waterways for transportation, commercial and recreational activities. Protecting our environment includes the proper handling of waste and wastewater management practices onboard these vessels.

Discharge of oil and other pollutants is prohibited under current state law.<sup>1</sup> For this purpose, the term "discharge" includes, but is not limited to, "any spilling, leaking, seeping, pouring, emitting, emptying, or dumping."<sup>2</sup> Not only does the provision cover discharges which occur within Florida's territorial limits, the statute has explicit extraterritorial effect if the discharge "affects lands and waters within the territorial limits of the state."<sup>3</sup> Penalties for discharging oil or other pollutants range up to \$50,000 per day.<sup>4</sup> Violators are liable for cleanup costs, and can be required to compensate the state for any damage done to the state's natural resources.<sup>5</sup>

Similarly, it is a violation of state law to discharge untreated sewage.<sup>6</sup> Discharge of untreated sewage from a commercial vessel is presumptively done for a commercial purpose, and is a felony of the third degree.<sup>7</sup> Violations of the federal regulations pertaining to marine sanitation devices are also subject to sanction under color of state law.<sup>8</sup> Although in theory these provisions apply beyond the territorial limits of the state (the waters of this state include "the high seas when navigated as a part of a journey or ride to or from the shore of this state")<sup>9</sup>, the extraterritorial effect is not significant because the federal regulations enforceable under the state statute do not apply beyond three nautical miles from shore.

The penalties for discharging solid waste from a vessel into state waters include civil penalties of up to \$10,000 per day.<sup>10</sup> The DEP may also assess administrative penalties of \$2,000 per day, plus another

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<sup>1</sup> s. 376.041, F.S.

<sup>2</sup> s. 376.031(7), F.S.

<sup>3</sup> Id.

<sup>4</sup> s. 376.16, F.S.

<sup>5</sup> s. 376.12, F.S. and s. 376.121, F.S.

<sup>6</sup> s. 327.53(4), F.S. and s. 403.413(5), F.S.

<sup>7</sup> s. 403.413(6), F.S.

<sup>8</sup> s. 327.53(5), F.S.

<sup>9</sup> s. 327.02(38), F.S.

<sup>10</sup> s. 403.121(1)(b), F.S.

\$1,000 because the waste is placed in a water body, plus another \$1,000 if the waste is untreated biomedical waste.<sup>11</sup> The disposal of hazardous wastes is tightly regulated under part IV of chapter 403, F.S., and disposal violations are similarly severely sanctioned.<sup>12</sup>

### Florida Gambling Vessel Industry

Florida has a day-cruise industry which offers gamblers the opportunity to board casino vessels that cruise offshore where casino gambling is legal. From the east coast of Florida, gambling vessels travel beyond the jurisdictional limits of the state (on the Atlantic side the limit is the edge of the Gulf Stream or three miles from shore, whichever is further, and nine miles out on the Gulf side) to gamble. According to information provided by Surfrider Foundation<sup>13</sup>, there are 12 gambling vessels operating from Florida. The 12 gambling vessels identified operate from the following locations:

Table A – Florida gambling vessels, geographic location, and berth location		
Name of vessel	Location	Sails from
SunCruz XII	Cape Canaveral	Port Canaveral
Ambassador II	Cape Canaveral	Port Canaveral
Island Adventure	Fort Lauderdale	Port Everglades
Big M Casino	Fort Myers Beach	Moss Marine
Big Cat Express	Fort Myers Beach	Ft. Meyers Beach
SunCruz I	Key Largo	Holiday Inn
SunCruz VI	Mayport	Mayport
Discover Sun	Miami	Port Everglades
SunCruz III	Ponce Inlet	Ponce Inlet
Palm Beach Princess	Palm Beach	Port of Palm Beach
Big Easy Casino	Palm Beach	Port of Palm Beach
SunCruz V	Maderia Beach	St. John’s Pass Village

### Cruise Ship Memorandum of Understanding (MOU)

Apart from the gambling day-cruise ships, there are over 80 cruise ships that leave various Florida ports and sail to various locations in the Caribbean and the Gulf. DEP has a Memorandum of Understanding (MOU) with the cruise line professional associations under which cruise ships implement waste and wastewater management practices; however, the gambling vessels do not participate as parties to that operating agreement. The waste management practices and procedures contained within the cruiseline MOU meet or exceed the standards set forth in Florida laws and applicable Florida regulations. Those cruise ships operating under the MOU have agreed to not discharge graywater and blackwater while the ship is underway and proceeding at a speed of not less than 6 knots and within 4 nautical miles from shore or such distance as agreed to with authorities having jurisdiction or provided for by local law except in an emergency, or geographically limited circumstances. The term “graywater” is used to refer to wastewater that is generally incidental to the operation of the ship (i.e., drainage from the dishwasher, shower, laundry, bath and washbasin drains.) The term “blackwater” is used to refer to waste from toilets, urinals, medical sinks, and other similar facilities. Most cruise ships separate blackwater from other wastewaters before processing and discharge.<sup>14</sup>

### Florida Ports Waste Infrastructure

<sup>11</sup> s. 403.121(3)(e), F.S.

<sup>12</sup> Alan Richard (past Chair of the Florida Bar’s Admiralty Law Committee and Florida State University, College of Law, Adjunct Professor of Admiralty and Maritime Law) e-mail, March 21, 2006

<sup>13</sup> The Surfrider Foundation is a grassroots, non-profit, environmental organization that concentrates on issues related to ocean, beach and shore issues. According to the website Florida has a total of seven chapters located around the state, primarily on the east coast.

<sup>14</sup> Cruise ship MOU, December 6, 2001

The Florida Ports Council researched the capability of 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 from any gambling vessel. The research provided the following results:

- Most seaports have no fixed shore-side capacity to pump-out sewage.
- Those seaports which have provided pump-out sewage services have done so by contracting with 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 vessels to tank trucks.
- Sewage and gray water are processed either 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.
- Blackwater is generally hauled by the waste disposal firms to an off-site location.
- Removal and disposal of hazardous and biomedical waste is generally handled by the vessel operators without interaction or involvement by seaports.

Table A, above, demonstrates that a port, for purposes of this bill, would include both a traditional port (Port Canaveral) and nontraditional (Holiday Inn hotel).

### Federal Maritime Regulation of Waste

The discharge of sewage is substantially regulated at the federal level and Congress has expressly prohibited states from imposing additional regulations on vessels. Currently, it is permissible under federal regulations to discharge untreated sewage beyond three nautical miles from shore.<sup>15</sup> The DEP does not have jurisdiction for purposes of water pollution regulation over a discharge that is located more than three miles from the Atlantic coastline.<sup>16</sup>

### Effect of Proposed Change

#### Definitions

The bill creates section 376.25, F.S., cited as the "Clean Ocean Act." The bill provides definitions relating to different types of waste (biomedical waste, hazardous waste, oily bilge water, sewage, blackwater and graywater), defines what constitutes a "port" for purposes of this section and defines "coastal waters." The bill specifically excludes traditional cruise ships from the definition of "gambling vessel."

#### Gambling Vessel Registration

The bill requires owner/operators of gambling vessels (sometimes referred to as "day cruises" or "cruises to nowhere") to register under oath with the DEP on an annual basis. Registration shall include the owner/operator's name for each vessel, contact information, and the registered agent for service of process located in the state. In addition the registration shall list the vessel's name or call sign, its port of registry, as well as passenger and crew capacity. Finally, the registration shall describe the waste treatment system of each registered vessel by type, design, operation and location of all discharge pipes, including the capacity of the holding tank(s). Registration shall be submitted electronically upon request by the DEP.

#### Required Releases

Currently the bill requires a port (defined as "any place in the state into which gambling vessels enter or depart for docking") to establish procedures and a process for verification of contents for the release of specified waste streams from gambling vessels. The port is required to establish and collect a fee not to exceed the costs associated with disposal of the "required releases from gambling vessels."

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<sup>15</sup> 33 C.F.R., part 159 (Marine Sanitation Devices)

<sup>16</sup> August 29, 1994, DEP's Regulatory Jurisdiction Memo

## Notification of Releases

The bill requires that an owner/operator of a gambling vessel that releases specified substances into coastal waters (defined as "waters of the Atlantic Ocean or the Gulf of Mexico within the jurisdiction of the state") must report that release to the DEP within 24 hours of the release. A vessel that discharges for the purpose of securing the safety of the vessel or saving life at sea is not required to notify the DEP of the release.

## Penalties

A violation of the act subjects the actor to a civil penalty of not more than \$50,000 for each violation.

## Rules

The bill authorizes DEP to adopt rules to implement and administer the provisions provided for in the bill.

## No Discharges for Gambling Vessels

The bill instructs the DEP to request appropriate federal authorities to prohibit releases from gambling vessels within federal territorial waters off the coast of the state.

The bill provides an effective date of July 1, 2007.

### C. SECTION DIRECTORY:

See, Section B. EFFECT OF PROPOSED CHANGES

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

#### 2. Expenditures:

DEP reports the overall cost of implementing the required annual registration program is unknown. In addition, DEP estimates that at least two new Environmental Specialist III level staff positions would be required to implement the provisions of this bill, which would require an annual appropriation of approximately \$110,000.

The rulemaking expense required by the bill would be approximately \$10,000.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

#### 2. Expenditures:

Indeterminate. See Part D. FISCAL COMMENTS

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If a private party operates or leases a wharf that provides a berth for a gambling vessel (a "port" as defined herein) the local authority must establish procedures for the release of sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, and biomedical waste from gambling vessels at port facilities. The procedures must include a process for verifying the contents released.

#### D. FISCAL COMMENTS:

The fiscal impact on local governments that may operate a port, as defined in the bill, is uncertain. A port is required to "establish and collect a fee not to exceed the costs associated with disposal of the required releases from gambling vessels." This part of the process appears to be revenue-neutral as the port is required to charge a fee for the service.

The port must establish procedures for the release of sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, and biological waste from gambling vessels at port facilities, and must verify the contents released. The bill does not explain the verification process, and the bill does not permit the port to charge a fee for the verification, therefore it is not possible to estimate a cost for this process.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill requires a port to establish procedures to verify contents of the release of sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, and biological waste from gambling vessels at port facilities. This may require a local government that is a port, as defined in the bill, to expend funds to accomplish this task. The bill does not appear to qualify for an exemption or exception. Article VII, section 18(a) of the state constitution provides that counties or municipalities shall not be bound by laws requiring them to spend funds or take actions requiring them to spend funds unless the legislature determines that the law fulfills an important state interest and the law is passed by 2/3 of the membership of each house of the legislature.

##### 2. Other:

#### B. RULE-MAKING AUTHORITY:

The bill provides a broad grant of rule-making authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires a port to establish and collect a fee not to exceed the costs associated with disposal of the required releases from gambling vessels. The bill does not define what constitutes a "required release."

The bill requires a port to verify contents of the release of sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, and biological waste from gambling vessels at port facilities; however, there is no clear explanation how a port may verify the contents released.

#### **Comments provided by the Florida Fish and Wildlife Conservation Commission:**

Aside from graywater and treated sewage, both state and federal law currently prohibit the discharge of all substances listed in this bill. For example, it is unlawful for any vessel subject to the jurisdiction of the United States to discharge oil (including oily bilge water) or any hazardous substance into internal

or coastal waters. The federal definition of "coastal waters" includes the federal Exclusive Economic Zone, which encompasses waters up to 200 nautical miles out to sea.<sup>17</sup> Discharge of trash or garbage, from plastics to food scraps, is also substantially regulated at the federal level by statutes and regulations adopting and implementing Annexes I, II and V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), done at London on February 17, 1978. The federal statute provides for penalties of up to \$25,000 per day with a minimum mandatory penalty of \$100,000 for grossly negligent discharges.<sup>18</sup> For deliberate discharges or attempts to conceal discharges, the penalties can be enormous. The United States Attorney's Office recently charged a shipping company with 33 felony charges related to intentional vessel pollution, resulting in a total \$37 million in penalty fines.<sup>19</sup>

Similarly, the discharge of oil and other pollutants is prohibited under current state law (§ 376.041, F.S.) For this purpose, the term "discharge" includes, but is not limited to, "any spilling, leaking, seeping, pouring, emitting, emptying, or dumping" (§ 376.031(7), F.S.). Not only does the provision cover discharges which occur within Florida's territorial limits, the statute has explicit extraterritorial effect if the discharge "affects lands and waters within the territorial limits of the state" (§ 376.031(7), F.S.). Penalties for discharging oil or other pollutants range up to \$50,000 per day (§ 376.16, F.S.). Violators are liable for cleanup costs (§ 376.12, F.S.) and can be required to compensate the state for any damage done to the state's natural resources (§§ 376.12(4), 376.121, F.S.) Additionally, state law currently prohibits discharge of untreated sewage (§§ 327.53(4), 403.413(5), F.S.) Discharge of untreated sewage from a commercial vessel is presumptively done for a commercial purpose (§ 403.413(6)(g), F.S.) and is a felony of the third degree (§ 403.413(6)(j), F.S.).

#### D. STATEMENT OF THE SPONSOR

The Clean Ocean Act provides guidelines which will serve to reduce the increasing amount of unsanitary releases from day-cruise vessels operating from Florida ports. The travel pattern of these vessels unfortunately contributes to increased levels of pollution washing toward our shores. Vessels which operate in this manner should be held accountable as would any other dockside Florida business. The proper disposal of sewage through an approved sewage treatment facility should be treated at the same rate as any other Florida dockside business. Responsibility to our environment while making business profits from our shores should be a part of the business plan of these vessels. The State of Florida should work with its federal partners to remove this type of sewage disposal from all waters off the State of Florida.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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<sup>17</sup> See, Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; Act to Prevent Pollution from Ships, 1980, as amended, 33 U.S.C. §§ 1901–1911; 33 C.F.R. subchapter O.

<sup>18</sup> See, 33 U.S.C. § 1321.

<sup>19</sup> See, U.S. Department of Justice, Press Release Dec. 19, 2006; <http://www.usdoj.gov/usao/ma/Press%20Office%20-%20Press%20Release%20Files/Dec2006/OSG.html>