

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 759

Placement of Vessels in State Waters to Form Artificial Reefs

SPONSOR(S): Holder and others

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 1856

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Conservation & State Lands</u>	<u>7 Y, 0 N</u>	<u>Zeiler</u>	<u>Zeiler</u>
2) <u>Environment & Natural Resources Council</u>	<u>9 Y, 0 N, As CS</u>	<u>Zeiler</u>	<u>Hamby</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The council substitute authorizes the planning and development of a statewide matching grant program and pilot program to be administered by the Fish and Wildlife Conservation Commission (FWC). The council substitute provides the objectives of such programs.

The council substitute authorizes the FWC to establish the "Ships-2-Reefs", a matching grant program that facilitates the deployment of decommissioned naval vessels as reefs for diving and fishing in state or federal waters seaward of Florida. The proposed grant program would provide matching state funds, subject to legislative appropriation and limited to a 33% match, to aid local governments undertaking the "Ships-2-Reef" programs.

The council substitute requires the FWC to develop a pilot program for the preparation and deployment of the U.S.A.F.S. General Hoyt S. Vandenberg (Key West). The council substitute requires the FWC to submit a report to the Governor, the President of the Senate and the Speaker of House on the success and outcomes achieved by the pilot program by January 1, 2008 and each year thereafter.

The council substitute requires the FWC to submit a report to the Governor, the President of the Senate and the Speaker of House on detailing the expenditure of funds appropriated to either program

The council substitute is effective upon becoming law.

The council substitute has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The council substitute authorizes the establishment of a new grant program.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

OVERVIEW OF ARTIFICIAL REEF PROGRAM

Background

Section 370.25, F.S., establishes the state's Artificial Reef Program. The Bureau of Marine Fisheries Management, within the Division of Marine Fisheries of the Florida Fish and Wildlife Conservation Commission (FWC), administers the state's artificial reef program. The program objectives are to provide financial and technical assistance to coastal local governments, nonprofit corporations, and state universities in developing, monitoring and evaluating artificial reefs. Under the program, reefs are constructed with one or more of the following intended objectives: 1) enhance private recreational and charter fishing and diving opportunities; 2) provide a socio-economic benefit to local coastal communities; 3) increase reef fish habitat; 4) reduce user conflicts; 5) facilitate reef related research; and, 6) while accomplishing objectives 1-5, do no harm to fishery resources, essential fish habitat (EFH), or human health.

According to the FWC, Florida has one of the most active artificial reef programs among the Gulf and Atlantic states. Thirty-four of 35 Florida coastal counties are or have been involved in artificial reef development. Since 1920, more than 2000 documented public artificial reefs have been placed in state and federal waters off these counties with most of the reef development taking place in the last 20 years. Over the last 23 years, the State of Florida has spent more than \$13 million on artificial reef related activities. Currently, local coastal governments hold more than 300 active artificial reef permits with about half of these sites in federal waters.

In addition to grant funding, the FWC provides technical assistance to local coastal governments, and state and federal regulatory agencies. FWC disseminates artificial reef related information to all of these entities and assists the general public by answering questions related to artificial reefs. FWC maintains a statewide public artificial reef database (on the FWC marine web site). FWC conducts statewide compliance and performance monitoring of grant funded reef projects. FWC's dive team conducts fish censuses, mapping, video, photography, and materials evaluation.

Program Funding

For fiscal year 2006-2007, the Florida Artificial Reef Program within the FWC Division of Marine Fisheries Management has a total of \$700,000 available for competitive pass through grants, \$400,000 in U.S. Fish and Wildlife Service Federal Aid in Sport Fish Restoration Program funds, and \$300,000 in state saltwater fishing license revenues for artificial reef related activities. These funds are provided for artificial reef construction on a cost reimbursement basis and for science-based biological or socio-economic artificial reef monitoring projects on either a cost reimbursement or fee schedule basis. The evaluation and ranking of applications is accomplished through a numerical rating process involving multiple independent reviewers and is based directly on the provisions of Chapter 68E-9.005 F.A.C.

Artificial Reef Permits

The FWC artificial reef program does not issue permits for artificial reef sites. This regulatory responsibility is carried out by the U.S. Army Corps of Engineers (USACE) for proposed artificial reef areas in federal waters, and by both the USACE and the Florida Department of Environmental Protection (DEP) in state waters.

Reef Materials Use

Allowable materials for artificial reef use are determined by USACE and DEP permit criteria. Their criteria are based upon direction provided by the National Artificial Reef Plan, developed under the Secretary of Commerce by direction of the National Fishing Enhancement Act of 1984 and by the Environmental Protection Agency based upon federal and international law. Guidance is also provided by the Guidelines for Marine Artificial Reef Materials; Second Edition (2004) produced by the Gulf and Atlantic States Marine Fisheries Commissions. The criteria require the use of non-hazardous material of sufficient stability and durability to insure that the materials and their component parts remain within permitted areas and last long enough to provide the intended habitat enhancement.

DEP has specific materials limitations for artificial reef use in state waters. In state waters of peninsular Florida, materials are limited to clean concrete or rock, clean steel boat hulls, other clean, heavy gauge steel products with a thickness of 1/4 inch or greater and prefabricated structures that are a mixture of clean concrete and heavy gauge steel (Chapter 62-341.600 F.A.C.). In state waters in the Florida Panhandle, allowable materials under the general permit are limited to clean concrete materials, rock, or steel boat hulls (Chapter 62-312.807 F.A.C.).

FWC's assessment of material types used in 709 publicly funded Florida artificial reef deployments (all funding sources) from 1994-2000 showed that secondary use concrete materials dominate (43%) followed by concrete modules (24%), military equipment (11%), steel vessels and barges (11%), scrap steel (6%), limestone (3%) and miscellaneous materials (2%). In the last several years there has been increasing use of designed modules. Though more expensive they can be more effectively placed, be designed to resist major storm events, target specific species or life history stages, and can serve as standardized units for follow-up monitoring or research.

Military Ships to Reefs Programs

FWC provided the following information regarding the military ships to reefs programs in a memorandum to County Artificial Reef Coordinators dated January 8, 2007.

There are currently two different federal obsolete military vessel ship disposal programs:

- the U.S. Maritime Administration (MARAD) program utilizing auxiliary vessels (cargo ships, amphibious ships, tankers, etc),
- and the more recent Navy program utilizing combatants (destroyers, cruisers, carriers, etc).

MARAD Reefing Program

MARAD is the longest established military vessel reefing program. It began with the passage of the Liberty Ship Act authorizing the subsequent donation of WWII Liberty ships to coastal states "as is" for their cleaning and sinking as artificial reefs from 1975 through 1983. The program's vessel donation authority was expanded in the mid 1980's to include other fleet auxiliary vessels. From 1991 to 2001 there was a 10 year hiatus in military vessel reefing because of regulatory issues related to the presence of PCBs in the ship components (cable insulation, gaskets, bulkhead insulation, paint, etc). The EPA classifies vessel deployment as a "disposal", if PCB levels in shipboard materials do not exceed 50 parts per million. The ships-to reefs program regained momentum with the deployment of the Spiegel Grove (May 17, 2002).

In December 2002, the passage of federal legislation (16 U.S.C. 1220c-1) allowed MARAD to help finance reefing projects, as long as MARAD's contribution to the states did not exceed MARAD's cost to have a vessel scrapped. Presently MARAD is providing partial funding to assist in the disposal deployment of two ships; the Texas Clipper donation to Texas Parks and Wildlife (\$1.5 million in federal assistance) and the Hoyt Vandenberg to FWC (\$1.25 million federal assistance)

Currently, there are no other active ship projects in the MARAD artificial reef "pipeline." This is the result of MARAD's policy to seek "best value" for the federal government and, due to increases in the price of steel and non ferrous metals, domestic scrapping is a better option than in previous years. Currently, Both MARAD and Navy are actively scrapping vessels. As of June 2006, MARAD had 49 ships in the James River Reserve Fleet and 135 total nationwide available for disposal. Since then, several of these already have been scrapped or have contracts to be scrapped. The MARAD program's policy continues to be a "as is, where is" reefing donation approach. Under this scenario, the

vessel's title changes hands as soon as the vessel leaves the James River Reserve Fleet and becomes the responsibility of the applicant (a state agency).

Navy Reefing Program

The Navy's Inactive Ships Program Office is responsible for transitioning ships from the active fleet to storage and disposal. Five methods are utilized:

- (1) Direct foreign military sales of usable vessels
- (2) Preserving the naval heritage through donations as museums
- (3) Sink-ex, a deep water, live fire weapons testing ship disposal program
- (4) Protecting the environment through ship dismantling and recycling
- (5) Enhancing the marine ecosystems through artificial reefing

All of these options are reviewed when a ship is removed from active service. The ship becomes a candidate for reefing only after the other four options are determined to be not viable.

The Navy's pilot artificial reef project was the U.S.S. Oriskany (CVA-34), a three year \$20 million dollar effort, completed May 17, 2006. The EPA has mandated a multi-year monitoring program with the associated costs to be paid by FWC and Escambia County. The Navy is evaluating their long term reefing program and they are managing the program on a ship by ship basis. They are reluctant to take on more than one ship-reefing project at a time. Currently, the Navy is conducting vessel preparation work on the ex-Forrestal aircraft carrier (CVA-59). If reefed, the Navy will require that it be sunk in at least 450 feet of water (too deep for recreational diving).

The program has 65 ships in inventory of which 26 are available for disposal and 5 of those appear to be candidates for reefing. They are listed below in an excerpt from their web site:

<http://peoships.crane.navy.mil/reefing/inventory.htm>

Navy Inventory for consideration for Artificial Reefing as of December 07, 2006

Ship Class	Quantity	Location	Overall Ship Length (FT)	Overall Beam (FT)	Height from Baseline to:			Light Ship Displacement (Tons)
					Top of Mast (FT)	Top of Super-structure (FT)	Main Deck	
CV 59 Forrestal Class	1	Newport, RI	1067	252	248	210	130	59468
CV 59 Forrestal Class	2	Bremerton, WA	1067	252	248	210	130	59468
DD 963 Spruance Class	1	Philadelphia, PA	563	55	158	112	33	6649
CG 47 Ticonderoga Class	1	Philadelphia, PA	567	55	156	90	39' 7"	7646

Note: The above ships may be utilized for artificial reefing, Navy deep-water sink exercises, and/or domestic dismantling based on dispositions that are most advantageous to the Navy for inactive ship inventory reduction. Also, additional ships may be added to this list as other inactive ships currently held for other purposes are redesignated for disposal, and as active ships are decommissioned and designated for disposal.

Atlantic States Marine Fisheries and Gulf States Marine Fisheries Commissions Artificial Reef Ships Subcommittee

In 2003 the joint Atlantic States Marine Fisheries and Gulf States Marine Fisheries Commissions (ASMFC/GSMFC) artificial reef technical committees set up a "Military Ships Subcommittee" to interact with the Navy and MARAD on reefing programs. The subcommittee's primary role was to develop a "fair and equitable" program for the distribution of ships, particularly Navy ships, among the various

interested coastal states. There was a concern from many smaller states that most ships would go to the few states with the most funding and most extensive coastlines. The goal was to secure from Navy/MARAD a predetermined list of ships and have all states be eligible for a ship through participation in a lottery system that determined the order of vessel donation among the states. Once all interested coastal states received a least one ship, they would have the opportunity to get another in the same order of distribution established by the original lottery. The idea was to make it easier for both the Navy and the states, with all states having the opportunity to receive an equal number of ships in a process of fair and equitable distribution independent of a state's monetary resources available for vessel reefing. The states felt that it would be to the Navy's advantage not to follow the model procedure used by the Navy for the ex-Oriskany reef. For the Oriskany project, the NAVY sent out a request for application submittal to all states. The Navy essentially encouraged competing applications in order to determine which applicant could provide the best value to the Navy.

In 2006, the ASFMC/GSMFC artificial reef technical committee voted to abandon the plan to have a fair and equitable distribution policy of military vessels. The main reasons for not pursuing the proposed fair and equitable military vessel distribution concept further were:

- (1) A long list of available ships designated specifically for reefing would not be developed. The Navy indicated they would not develop such a list but rather preferred to evaluate the possibility of combatant ships for reefing on a case by case basis using a short list of a few vessels;
- (2) The Navy indicated it would change title at the time of initial ship movement, similar to MARAD, rather turning the title of the vessel over to the permit holder once it is on the bottom in its permitted site as it did with the Oriskany project. This earlier title exchange places a tremendous administrative, contractual, technical oversight and financial burden on the state, as well as, a significant liability while the ship is being prepared. In fact the opposite is now occurring.
- (3) Neither the Navy nor MARAD will fund 100% of the cost of the project unless it is a carrier sunk in greater than 500 feet of water.
- (4) The Navy believes the competition for the ships reduces the cost for the Navy.

FWC Artificial Reef Program Role in the Ship to Reef Programs

The FWC provides several important functions in the process of getting a large military ship ready for use as an artificial reef in Florida.

- (1) Federal policy restricts the transfer title to a state government and pursuant to s. 370.25(1), F.S., the FWC has been given this formal responsibility which states, "The commission is authorized to accept title, on behalf of the state, to vessels for use in the artificial reef program as offshore artificial reefs. The program may be funded from state, federal, and private contributions."
- (2) MARAD by law can only give grants to states and the use of the funds is restricted, therefore the FWC has to receive these funds and distribute them to the sponsor. FWC acts as the project/grant manager and provides a single liaison for the Federal government.

Effect of Proposed Change

The council substitute creates s. 370.25(8), F.S., which authorizes: 1) the planning and development of statewide matching grant program that facilitates the securing and placement of United States Maritime Administration (MARAD) and United States Navy decommissioned vessels in state and federal waters seaward of Florida as artificial reefs, and 2) a pilot program for the preparation and deployment of the U.S.A.F.S. General Hoyt S. Vandenberg in Key West. Both programs are to be administered by the Fish and Wildlife Conservation Commission and their implementation is subject to appropriation.

The objectives in establishing the programs are:

- To assist in reducing the pressures on natural coral reefs in state and federal waters seaward of the state and increasing the opportunities for recreational diving and fishing.
- To provide a mechanism through which local counties and municipalities that are permitted to place vessels in state and federal waters seaward of the state as artificial reefs can apply for and receive state matching grants.

- To provide state funds that would be matched with local funds, federal funds, and funds from local businesses.
- To establish criteria to determine eligibility for state matching funds.
- To assist local counties and municipalities with the donation and transfer application for decommissioned vessels.
- To develop a master plan for the purposes of maximizing the number and type of vessels to be placed in state and federal waters seaward of the state that provides for the location of vessels in the most geographically effective and beneficial manner.
- To establish and promote standards for the placement of decommissioned vessels in state and federal waters seaward of the state, consistent with current federal environmental standards
- To provide for and receive interagency comments from the agencies responsible for the permitting of artificial reefs and the Florida Department of Environmental Protection, allowing for a review period consistent with MARAD and United States Navy application deadlines.
- To establish a United States Military vessel component as the seventh theme for Florida's Maritime Heritage Trail, to promote Florida's nature-based tourism and heritage tourism.
- To provide for title of decommissioned vessels to be transferred to the state.

The council substitute creates s. 370.255, F.S., and authorizes the FWC to establish the Florida Ships-2-Reefs Program, a matching grant program for the securing and placing United States Maritime Administration (MARAD) and United States Navy decommissioned vessels in state and federal water seaward of Florida to serve as artificial reefs. The council substitute authorizes the FWC to make expenditures and enter into contracts with local governments and nonprofit corporations for the purpose of securing and placing MARAD and United States Navy decommissioned vessels as artificial reefs in state and federal waters seaward of the state. FWC is authorized to make expenditures and enter into contracts with local governments and nonprofit corporations for the purpose of securing, environmental preparation and cleaning, and placing federally decommissioned vessels pursuant to s. 370.25(8), F.S. The council substitute provides FWC authority for final approval of grants awarded through this program.

The council substitute limits the state matching grant amount to 33 percent of the total cost of securing, environmental preparation and cleaning, and the placing of the decommissioned vessel.

The council substitute authorizes the FWC to receive requests for matching funds; approve requests for matching funds; and allocate matching funds to local governments or nonprofit corporations.

The council substitute provides FWC authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to address procedures necessary to administer the matching grants program. In order to demonstrate that a local government or nonprofit corporation meets the required criteria of the program and is eligible to receive funds, the council substitute requires a local government or nonprofit corporation to submit formal documents which demonstrate non-state matching funds are available for securing and placing the vessel prior to submission of a grant application.

The council substitute requires FWC to report annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives, beginning January 1, 2008, and each year thereafter, on the successes and outcomes achieved by the pilot program (preparation and deployment of the U.S.S. General Hoyt S. Vandenberg). The report is to provide recommendations as to whether the pilot program should be continued, terminated, or expanded. The commission is also required to report on the procedures developed and used for the proper preparation and deployment of the U.S.S. General Hoyt S. Vandenberg.

To the extent a specific appropriation is made available, FWC may fund a portion of the preparation and deployment costs of the U.S.A.F.S. General Hoyt S. Vandenberg. FWC is required to develop procedures for conducting the pilot program, including, but not limited to, procedures for determining eligibility, providing payment, ensuring that payment is limited solely to the costs of preparing and deploying the vessel, and ensuring that payments are made to eligible persons or local governments.

The council substitute requires FWC to examine and use, to the extent possible, other available options for funding the cost of the preparation and deployment of the U.S.S. General Hoyt S. Vandenberg, including the use of funds raised by private agencies or persons.

The council substitute requires FWC to report annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives, beginning January 1, 2008, and each thereafter, a detail of the expenditure of the funds appropriated to Ships-2-Reefs program and the U.S.A.F.S. General Hoyt S. Vandenberg pilot program.

C. SECTION DIRECTORY:

Section 1. creates s. 370.25(8), F.S., authorizing the establishment of a statewide matching grant program and pilot program, and providing the objectives of such programs.

Section 2. creates s. 370.255, F.S., authorizing FWC to establish a Ships-2-Reefs Program.

Section 3. provides an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

Not Applicable - no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this council substitute does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds, nor does it appear to reduce the authority that cities or counties have to raise revenues in the aggregate, nor does it appear to reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The council substitute provides the FWC rulemaking authority to establish procedures necessary to administer the Ships-2-Reefs program, a matching grant program for the securing and placing decommission naval vessels as artificial reefs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 11, 2007, the Environment and Natural Resources Council considered and passed HB 759 with one traveling strike-all amendment. The bill was reported favorably with council substitute.

The original bill created ss. 370.25(8) and 370.255, F.S., authorizing the establishment of two grant programs; 1) Florida Decommissioned Vessel Placement Program, a matching grant program for the securing and placing decommissioned vessels in Florida waters to serve as artificial reefs and 2) a pilot program for the preparation and deployment of the U.S.A.F.S. General Hoyt S. Vandenberg in Key West. The original bill provided a \$10 million nonrecurring general revenue appropriation for the purpose of the Florida Decommissioned Vessel Placement Program.

The strike-all amendment creates ss. 370.25(8) and 370.255, F.S., which authorizes: 1) the planning and development of statewide matching grant program that facilitates the securing and placement of United States Maritime Administration (MARAD) and United States Navy decommissioned vessels in Florida waters as artificial reefs, and 2) a pilot program for the preparation and deployment of the U.S.A.F.S. General Hoyt S. Vandenberg in Key West. Both programs are to be administered by the Fish and Wildlife Conservation Commission and their implementation is subject to appropriation. The strike-all amendment has no fiscal impact.