

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SB 326

INTRODUCER: Senator Constantine

SUBJECT: Vessels/Clean Ocean Act

DATE: March 25, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Kiger	EP	Pre-meeting
2.			MS	
3.			RI	
4.			GA	
5.				
6.				

I. Summary:

This bill creates the “Clean Ocean Act”. Provides definitions. Requires certain vessels to be registered with the Department of Environmental Protection (DEP). Requires ports to establish procedures for the release of sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, and biomedical waste from vessels at port facilities. Requires immediate reporting of any specified releases. Provides for civil penalties. Provides for the DEP to establish and collect certain fees. Authorizes the DEP to adopt rules. Requires the DEP to request the appropriate federal agencies to prohibit certain releases from vessels within federal territorial waters off the shores of Florida.

This bill creates s. 376.25, F.S.

II. Present Situation:

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). The registration form 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 registration form, a Manufacturer’s Statement of Origin, or its equivalent form, must be submitted along with a registration fee.

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.

Section 376.041, F.S., generally prohibits the discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state. The term “discharge” as defined in s. 376.031, F.S., includes, but is not limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping which occurs within the territorial limits of the state or outside the territorial limits of the state and affects lands and waters within the territorial limits of the state. Penalties for discharging oil or other pollutants may be as much as \$50,000 per day. Violators are liable for cleanup costs, and can be required to compensate the state for any damage done to the state’s natural resources.

Similarly, it is a violation of state law to discharge untreated sewage.¹ Pursuant to s. 403.413(6), F.S., discharge of untreated sewage from a commercial vessel is presumptively done for a commercial purpose, and is a felony of the third degree.

Section 376.12, F.S., provides 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., requires the DEP to 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., provides that it is unlawful for any person to violate any provision of the Pollutant Discharge Prevention and Control Act (ss. 376.011-376.21, F.S.,), or any rule or order of the DEP made pursuant to the act. Also, this section provides for civil penalties.

Section 376.071, F.S., provides 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.

Under the federal Clean Water Act, the Environmental Protection Agency (EPA) has the authority to implement pollution control programs such as wastewater and water quality standards for industries and surface waters.

Pursuant to the federal Clean Water Act, the discharge of any pollutant by any person shall be unlawful.

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 reported²:

¹ s. 327.53(4), F.S., and s. 403.413(5), F.S.

- 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 of 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.

Pursuant to s. 381.0098, F.S., the Department of Health regulates the packaging, transport, storage, and treatment of biomedical waste. The DEP regulates onsite and offsite incineration and disposal of biomedical waste. Further, the Department of Health has the exclusive authority to establish treatment efficacy standards for biomedical waste and the DEP has the exclusive authority to establish statewide standards relating to environmental impacts. Gambling vessels with medical clinics are biomedical waste generators and subject to Department of Health regulations.

III. Effect of Proposed Changes:

Section 1 creates s. 376.25, F.S., which establishes the "Clean Ocean Act". The following terms are defined: "biomedical waste"; "coastal waters"; "department"; "hazardous waste"; "oily bilge water"; "port"; "release"; "scheduled releases"; "sewage"; "treated blackwater"; "treated graywater"; "untreated blackwater"; "untreated graywater"; and "vessel". A "vessel" under this bill is any craft used as a means of transportation on water which routinely carries or is certified to carry more than 100 passengers for a period of more than 2 continuous hours in waters outside the jurisdiction of Florida, whether the vessel is anchored, berthed, lying to, or navigating if the sailing, voyaging, or cruising, or any segment of the sailing, voyaging, or cruising, begins and ends within Florida. The term does not include a cruise ship as defined in 33 C.F.R. s. 101.105.

For each calendar year in which the owner or operator of a vessel intends to operate, or cause or allow to be operated, a vessel in coastal waters, the owner or operator of the vessel shall register with the DEP. The registration must be completed before the vessel enters the marine waters of the state in that calendar year. The registration must contain the following information:

- The vessel owner's name and the vessel operator's business name;
- The postal address, e-mail address, telephone number, and facsimile number of the principal place of business;
- The name and address of an agent for service of process;
- The name or call sign, port of registry, and passenger and crew capacity of each of the vessels scheduled to call upon a port in this state or otherwise to be in coastal waters of the this state; and
- A description of all waste-treatment systems of each vessel including system type, design, operation, location of all discharge pipes and valves, and the number and capacity or storage areas and holding tanks.

The registration must be executed under oath.

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

Upon request of the department, the registrant shall submit registration information electronically.

Each port shall establish procedures for the release of sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, and biomedical waste from vessels at port facilities. Each port shall establish and collect a fee not to exceed the costs associated with disposal of the scheduled releases from vessels.

If a vessel releases any sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, or biomedical waste into coastal waters, the owner or operator shall immediately, but not later than 24 hours after the release, notify the DEP of the release and provide certain specified information regarding the release.

Any person who violates this section is subject to a civil penalty of not more than \$50,000 for each violation. This civil penalty is separate from, and in addition to, any other civil penalty imposed for a separate violation under this provision or any other provision of law.

In determining the amount of a civil penalty, the DEP shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstances, extent, and gravity of the violation. In making this determination, the DEP shall consider:

- The degree of toxicity and volume of the release;
- The extent of harm caused by the violation;
- Whether the effects of the violation can be reversed or mitigated;
- With respect to the defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken in the past, the prior history of violations, the gravity of the behavior, and the economic benefit, if any, resulting from the violation, and
- All other matters that the DEP determines justice may require.

This section does not apply to releases made for the purpose of securing the safety of the vessel or saving life at sea if all reasonable precautions have been taken for the purpose of preventing or minimizing the release.

The DEP shall establish and collect fees to cover the entire cost to the department of developing and implementing the vessel registration, release tracking, and compliance and enforcement responsibilities required under this section. The DEP may adopt rules to administer this section.

Section 2 requires the DEP to request the appropriate federal agencies to prohibit the release of all sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, or biomedical waste from any vessel within federal territorial waters off the shores of Florida.

Section 3 provides that this bill shall take effect July 1, 2008.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

Each port shall establish and collect a fee not to exceed the costs associated with disposal of the scheduled releases from vessels.

The DEP shall establish and collect fees to cover the entire cost to the department of developing and implementing the vessel registration, release tracking, and compliance and enforcement responsibilities under the Clean Ocean Act.

B. Private Sector Impact:

Owners of affected vessels would have to pay the cost of compiling and providing registration information to DEP. That registration information should be readily available as it is used for other purposes and relatively inexpensive to provide. The owners also would have to pay whatever fees port facilities would charge to dispose of the wastes that their vessels release at those facilities. The costs cannot be determined at this time. It is not know how many “vessels” would be impacted by the provisions of this bill.

To the extent that the requirements are applied equally on all vessels covered by the act, there would not be a competitive advantage or disadvantage to any one vessel covered by the act. Cruise ships are not included in the definition of “vessel” and are not subject to the provisions of this bill.

C. Government Sector Impact:

The DEP would have to develop a vessel registry under this bill. The cost to develop such a system is not known at this time. The DEP would have to adopt rules to implement the provisions of this bill and establish a fee to cover the costs associated with implementing and administering the provisions of the bill. It is not know what that fee would be. The DEP would have to determine what the costs associated with the program would be. Those costs have not yet been determined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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