Water & Natural Resources Committee

Wednesday March 15, 2006
2:30 p.m.--5:30 p.m.
Reed Hall

Meeting Packet

Revised

Allan G. Bense
Speaker

Donna Clarke
Chair

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 229 Use of Land for the Exploration, Production, and Storage of Petroleum and Natural Gas
SPONSOR(S): Clarke
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee		Lotspeich	Lotspeich
2) Environmental Regulation Committee			
3) Agriculture & Environment Appropriations Committee			
4) State Resources Council			
5)			

SUMMARY ANALYSIS

The bill prohibits the use of state-owned submerged lands for any activities associated with the exploration for or the production of oil or natural gas.

The bill also addresses concerns relating to potential environmental impacts that may be caused by hurricane winds and storm surge to bulk fuel storage terminal facilities located in coastal areas. The bill requires all dike fields around such facilities to be designed and maintained to withstand the winds and storm surge associated with a hurricane.

The bill will have no fiscal impact on the state or local governments. The bill will cause oil companies to incur costs associated with upgrading existing dike fields to comply with the requirements of the bill. The total costs to the oil companies are indeterminate at this time.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Offshore Drilling for Oil and Natural Gas

The Outer Continental Shelf

The Outer Continental Shelf (OCS) consists of the submerged lands, subsoil, and seabed, lying between the seaward extent of the States' jurisdiction and the seaward extent of Federal jurisdiction. The continental shelf is the gently sloping undersea plain between a continent and the deep ocean. The United States OCS has been divided into four leasing regions. They are the Gulf of Mexico OCS Region, the Atlantic OCS Region, the Pacific OCS Region, and the Alaska OCS Region. In 1953, Congress designated the Secretary of the Department of Interior to administer mineral exploration and development of the entire OCS through the Outer Continental Shelf Lands Act (OCSLA). The OCSLA was amended in 1978 directing the secretary to:[1]

- conserve the Nation's natural resources;
- develop natural gas and oil reserves in an orderly and timely manner;
- meet the energy needs of the country;
- protect the human, marine, and coastal environments; and
- receive a fair and equitable return on the resources of the OCS.

State jurisdiction over the OCS is defined as follows:

- Texas and the Gulf coast of Florida are extended 3 marine leagues (approximately 9 nautical miles) seaward from the shoreline.
- Louisiana is extended 3 imperial nautical miles (imperial nautical mile = 6080.2 feet) seaward from the shoreline.
- All other States' seaward limits are extended 3 nautical miles (approximately 3.3 statute miles) seaward from the shoreline.

Federal jurisdiction over the OCS is defined under accepted principles of international law. The seaward limit is defined as the farthest of 200 nautical miles seaward of the shoreline or, if the continental shelf can be shown to exceed 200 nautical miles, a distance not greater than a line 100 nautical miles from the 2,500-meter isobath or a line 350 nautical miles from the shoreline.[2]

The Outer Continental Shelf is a significant source of oil and gas for the nation's energy supply. The OCS supplies more than 25 percent of the country's natural gas production and more than 30 percent of total domestic oil production. The offshore areas of the United States contain the majority of future oil

[1] http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html
[2] http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html

and gas resources. It is estimated that 60 percent of the oil and 59 percent of the gas yet to be discovered in the United States are located on the OCS.[3]

The OCS Lands Act requires the Department of Interior (DOI) to prepare a 5-year program that specifies the size, timing and location of areas to be assessed for Federal offshore natural gas and oil leasing. It is the role of DOI to ensure that the U.S. government receives fair market value for acreage made available for leasing and that any oil and gas activities conserve resources, operate safely, and take maximum steps to protect the environment. OCS oil and gas lease sales are held on an area-wide basis with annual sales in the Central and Western Gulf of Mexico with less frequent sales held in the Eastern Gulf of Mexico and offshore Alaska. The program operates along all the coasts of the United States - with oil and gas production occurring on the Gulf of Mexico, Pacific, and Alaska and OCS.[4]

The Minerals Management Service

The Minerals Management Service (MMS), a bureau in the DOI, is the federal agency that manages the nation's natural gas, oil and other mineral resources on the OCS. The MMS also collects, accounts for and disburses more than $8 billion per year in revenues from federal offshore mineral leases. The MMS oversees two major programs: Offshore Minerals and Minerals Revenue Management. The Offshore Minerals program, which manages the mineral resources on the OCS, comprises three regions: Alaska, the Pacific, and the Gulf of Mexico.[5]

The Gulf of Mexico OCS Region is made up of three planning areas along the Gulf Coast - the Western, Central, and Eastern Gulf of Mexico Planning Areas. These areas contain 43 million acres under lease. There are 3,911 offshore production platforms active in the search for natural gas and oil on the Gulf OCS. These production facilities contribute significantly to the nation's energy supply.[6]

Eastern Gulf of Mexico Planning Area[7]

The Eastern Gulf of Mexico Planning Area extends along the Gulf's northeastern coast for some 700 miles, from Baldwin County, Alabama, southward to the Florida Keys. The area encompasses approximately 76 million acres, with water depths ranging from approximately 30 feet to nearly 10,000 feet. The area extends for more than 300 miles seaward of the state/federal boundary (9 miles off the Florida coast).

Since the late 1980's, a limited amount of OCS activity has taken place in the Eastern Gulf of Mexico Planning Area because of administrative deferrals and annual congressional moratoria.

The MMS has estimated that between 6.95 and 9.22 trillion cubic feet of natural gas and 1.57 and 2.78 billion barrels of oil and condensate are contained in the Eastern Gulf of Mexico Planning Area. Drilling for natural gas and oil has been occurring in the Eastern Gulf of Mexico offshore Alabama and Florida for more than three decades. The first of 11 natural gas and oil lease sales held offshore Florida occurred in 1959 and resulted in the issuance of 23 leases. Additional lease sales have been held periodically in the Eastern Gulf from 1973 through 2003. Currently, there are 241 active leases in the Eastern Gulf of Mexico Planning Area.

Exploratory drilling started in the Eastern Gulf of Mexico in the mid-1970's with the drilling of Destin Dome Block 162, located 40 miles south of Panama City, Florida. After two years of drilling and 15 dry holes, exploration stopped. To date, over 54 exploratory wells have been drilled in the Eastern Gulf of Mexico. Thirteen wells discovered natural gas, condensate, and crude oil.

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[3] http://www.mms.gov/offshore/
[4] http://www.mms.gov/offshore/
[5] http://www.mms.gov/aboutmms/
[6] http://www.gomr.mms.gov/homepg/offshore/gulfocs/gulfocs.html
[7] http://www.gomr.mms.gov/homepg/offshore/egom/eastern.html

Three Eastern Gulf lease sales were made in the 1980's and there was renewed industry interest in the Destin Dome area. In the late 1980's, Chevron U.S.A. and Gulfstar made natural gas discoveries in the area.

In October 1995, 73 oil and gas leases located *south* of 26° N. latitude (the approximate latitude of Naples, Florida) were returned to the federal government as part of a litigation settlement. Consequently, no active Federal natural gas and oil leases exist off southwest Florida. Likewise, no active leases exist in the Straits of Florida Planning Area or off Florida's east coast (South Atlantic Planning Area).

In 1996, a development plan was filed by Chevron U.S.A. and partners on the Destin Dome 56 Unit. On July 24, 2000, Chevron U.S.A. and partners filed a lawsuit against the U.S. government for denying the companies "timely and fair review" of plans and permits relating to the Destin Dome 56 Unit. In May 2002, the Department agreed to settle the litigation with the oil companies. The companies -- Chevron, Conoco and Murphy Oil -- relinquished seven of nine leases in the unit that were the subject of the litigation in exchange for $115 million. The remaining two leases, Destin Dome Blocks 56 and 57, are to be held by Murphy and will be suspended until at least 2012, under the terms of the agreement. Murphy agreed not to submit a development plan on the two remaining leases before 2012, the year when the current moratoria will expire. Under the terms of the agreement, the leases can not be developed unless approved by both the federal government and the State of Florida.

Unocal began the first production in the Eastern Gulf Planning Area in mid-February 1999 on Pensacola Block 881. Located approximately 12 miles offshore Alabama, this site involves the production of some 5 million cubic feet of natural gas per day.

In October 1999, Gulfstream Natural Gas Systems (ANR) and Buccaneer Gas Pipeline Company (Transco/Williams) submitted pipeline right-of-way applications to the MMS for the construction of two 400-mile (36-inch) natural gas pipelines spanning the Eastern Gulf of Mexico. The Gulfstream right-of-way was approved by MMS on June 1, 2001. This line went into service in June 2002.

In November 1996, DOI released the OCS Oil and Gas Leasing Program (1997-2002). The program included 16 lease sales, with one sale proposed for the Eastern Gulf of Mexico in 2001. The original sale area was reviewed to be consistent with the State of Florida's opposition to offshore oil and gas activities within 100 miles of its coast. The first steps in the 3-year planning process began on January 25, 1999, with the release of the Call for Interest and Information and the Notice of Intent to Prepare an Environmental Impact Statement. A draft environmental impact statement was released in December 2000 and a final EIS was made available to the public in July 2001.

In July 2001, Sale 181 was adjusted from 5.9 million acres to about 1.5 million acres or 256 blocks. The adjusted area lies more than 100 miles off the Alabama/Florida State line. Twenty-three blocks in this area were under lease at that time. Lease Sale 181 was held on December 5, 2001. MMS awarded leases on 95 tracts involving $340,474,113. Seventeen companies participated in this sale.

On December 10, 2003, Eastern Gulf of Mexico Sale 189 was held. Six companies participated in the lease sale that offered 138 blocks comprising approximately 794,880 acres offshore Alabama. The highest bid received was $2.2 million, submitted by Shell and Nexen.

In an August 22, 2005, Department of Interior news release, it was announced that the MMS is seeking initial public comment on the development of its 2007-2012 five-year leasing plan for energy development on the Outer Continental Shelf (OCS) and accompanying environmental impact statement.[8] This includes the Eastern Gulf of Mexico Planning Area. The announcement stated:

[8] http://www.doi.gov/news/05_News_Releases/050822.htm

The announcement is the first step in a two-year process to develop the leasing plan. It does not include proposals for new lease sales but instead asks the public for general information and comment not only on energy development but also on other economic and environmental issues in the OCS areas.

"The Outer Continental Shelf contains billions of barrels of oil and trillions of cubic feet of natural gas that can be safely produced," Interior Secretary Gale Norton said. "With our reliance on imports of foreign oil climbing each year, we would be irresponsible if we did not consider how we might develop these abundant domestic resources."

Presidential withdrawals or congressional moratoria have placed more than 85 percent of the OCS off the lower 48 states off limits to energy development.

The Bush Administration has repeatedly expressed its support for the existing moratoria, based upon deference to the wishes of the states to determine what activities take place off their coasts.

However, recent energy legislation passed by Congress calls for a comprehensive inventory and analysis of the oil and natural gas resources for all areas of the OCS.

Therefore, as MMS undertakes the process of drafting its proposal, the agency is seeking comment on the potential resources available in all areas of the OCS, recognizing that many of these areas are subject to existing moratoria and will not be fully analyzed for possible leasing. In seeking public comment, Secretary Norton reaffirmed the Bush Administration's pledge not to conduct any new leasing under the 2007-2012 five-year plan within 100 miles of Florida's coast, in the Eastern Gulf of Mexico Planning Area. MMS is also asking the public to comment specifically on whether the existing withdrawals or moratoria should be modified or expanded to include other areas in the OCS; and whether the Interior Department should work with Congress to develop gas-only leases.

The 2007-2012 OCS oil and gas leasing program will be the seventh program prepared since Congress passed the OCS Lands Act in 1978. The Act requires the Secretary of the Interior to prepare and maintain five-year programs for offshore oil and natural gas leasing. The current program runs through June 30, 2007.

Once public comment is received, MMS will develop a draft proposed program followed by a proposed program and draft EIS. The public will have an opportunity to comment on both documents.

The following is the schedule for the 2007-2012 five-year program:

Date	Step
August 24, 2005	Solicit comments and information (Federal Register Notice)
Winter 2005	Issue draft proposed program (60-day comment period)
Summer 2006	Issue proposed program and draft EIS (90-day comment period)
Winter 2007	Issue proposed final program and final EIS (60-day waiting period)
Spring 2007	Approve five-year program for July 2007-July 2012

The Exploration and Development Process

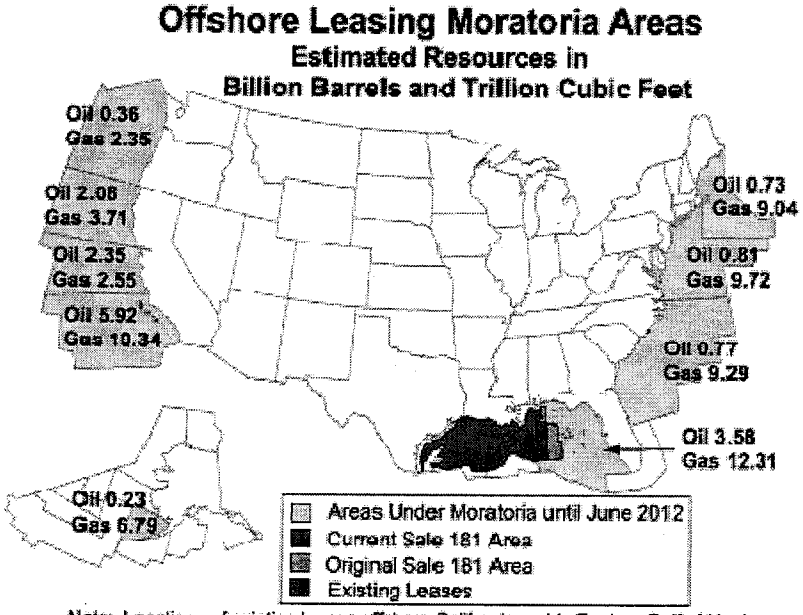
Once a company acquires a lease, the company has to prepare an exploration plan and have it approved by MMS and other federal and state agencies in order to drill a well. Typical exploration plans propose the drilling of one or more exploratory wells. The MMS conducts an environmental review of the impacts of drilling the well. Should a discovery be made, the company may then prepare and file a development plan. The exploration and development plans must be consistent with the affected state's Coastal Zone Management Plan

During exploratory drilling or production operations on the OCS, the MMS inspection program calls for MMS inspectors to review operations and periodically visit and inspect facilities to ensure clean and environmentally safe operations.

To prepare for lease sales and to protect the environment during offshore drilling operations, MMS conducts environmental studies. Several new studies are planned and/or currently underway.[9]

Federal Moratoria

Congress and past Presidents have placed moratoria on offshore drilling and development on the OCS on both the U.S. East and West Coasts. Included in the moratoria is the Eastern Gulf of Mexico. The consequence of the moratoria is to foreclose until at least 2012 any effort to explore for critical oil and gas resources that are estimated to lie beneath these areas. In response to recent sharp increases in fuel and home heating oil, several attempts have been made in Congress to limit or remove these moratoria. The map below illustrates these moratoria areas.[10]



Note: Locations of existing leases offshore California and in Eastern Gulf of Mexico are approximate and intended to be representative only.

Source: Minerals Management Service

Current State Law

[9] http://www.gomr.mms.gov/homepg/offshore/egom/eastern.html
[10] http://api-ep.api.org/issues/index.cfm

Under the provisions of Chapter 253, F.S., the Governor and Cabinet sitting as the Trustees of the Internal Improvement Trust Fund have been granted the powers and duties with regard to the control of private uses of state-owned submerged lands. These state-owned submerged lands extend waterward from the shoreline for approximately 9 miles into the Gulf of Mexico and 3 miles into Atlantic Ocean.[11] Section 253.61, F.S., expressly prohibits the Trustees from granting any "oil or natural gas *lease*" on state-owned submerged lands off the State's west coast. A similar provision in Section 377.24, F.S., prohibits the Department of Environmental Protection from issuing a *permit* "to drill a well in search of oil or gas" on the same state-owned submerged lands.

Onshore Storage of Petroleum Products

There are currently 11 ports along Florida's coast where petroleum products are shipped into the State. Each of these ports has one or more bulk petroleum storage facilities. The largest such facilities are located at Tampa (11 facilities with 162 million gallons of unleaded gasoline and 65 million gallons of diesel), Port Everglades (13 facilities with 147 million gallons of unleaded gasoline and 51.5 million gallons of diesel), Jacksonville (9 facilities with 95.5 million gallons of unleaded gasoline and 53 million gallons of diesel), Pensacola (2 facilities with 13 million gallons of unleaded gasoline and 3 million gallons of diesel), and Cape Canaveral (1 facility with 12.5 million gallons of unleaded gasoline and 5 million gallons of diesel).

Hurricane Katrina caused significant damage to bulk petroleum storage facilities along the Louisiana coast. According to the U.S. Coast Guard, Hurricane Katrina caused 6 major spills (> 100,000 gallons) at such facilities, 4 medium spills (>10,000 gallons), and 134 minor spills (< 10,000 gallons) in Louisiana. The total volume from all spills was approximately 8 million gallons. As of November 5, 2005, 3.5 million gallons had been recovered, 2 million gallons evaporated, and 2 million gallons naturally dispersed, leaving approximately 400,000 gallons to be addressed.[12]

Effect of Proposed Changes

The bill supplements current state law with regard to leasing and permitting for oil and natural gas exploration and production on state-owned submerged lands. The bill prohibits the Trustees from granting any type of use of state-owned submerged lands for the exploration for or the production of oil or natural gas. This would include not only a lease, but also an easement, sale, or consent of use.

Section 163.3177(6)(g), F.S., requires all coastal counties and municipalities to adopt a coastal management element as part of their local comprehensive plans. Section 163.3178, sets forth the required components of the coastal management element that are designed to "protect human life and limit public expenditures in areas that are subject to destruction by natural disasters." One of the required components is the establishment of "high-hazard coastal areas" which are evacuation zones for a category 1 hurricane as established in the regional hurricane evacuation study applicable to the particular local government (see Florida Administrative Code Rule 9J-5.003).

The bill requires terminal facilities that store bulk fuel and which are located in high-hazard coastal areas to have dike fields surrounding the facility that are designed and maintained to withstand the winds and storm surge associated with a hurricane. The dike fields are also to be designed and maintained to manage stormwater and to prevent any discharges from the dike field.

C. SECTION DIRECTORY:

[11] Section 1, Article II, Florida Constitution
[12] http://www.uscgstormwatch.com/go/doc/1008/87976/

Section 1. Amends s. 206.022, F.S., to add subsection (3) relating to requirements for bulk fuel storage terminal facilities.

Section 2. Amends paragraph 253.03, F.S., to add a provision prohibiting the use of sovereignty submerged lands for activities associated with the exploration for or the production of oil or natural gas.

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:

The requirement to design and maintain dike fields around bulk fuel storage terminal facilities to withstand wind and storm surge from hurricanes will result in substantial costs to oil companies. Those costs will depend on the velocity of the wind and the height of the storm surge to which the dike fields must be designed. Therefore, the costs to the industry are indeterminate at this time.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable, because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

The bill does not require the promulgation of rules by nor alter the rulemaking authority of any state agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to the use of land for the exploration,
3 production, and storage of petroleum and natural gas;
4 amending s. 206.022, F.S.; requiring bulk fuel storage
5 terminal facilities located in high-hazard coastal areas
6 to be surrounded by dike fields meeting certain design and
7 maintenance criteria; amending s. 253.03, F.S.;
8 prohibiting the use of sovereignty submerged lands for
9 activities associated with the exploration for and
10 production of oil and natural gas; providing an effective
11 date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Subsection (3) is added to section 206.022,
16 Florida Statutes, to read:
17 206.022 Application for license; terminal operators; bulk
18 fuel storage terminal facility in high-hazard coastal area.--
19 (3) Any bulk fuel storage terminal facility located within
20 an area of the state designated as a high-hazard coastal area as
21 defined in any local government comprehensive plan pursuant to
22 s. 163.3178 shall have dike fields surrounding the facility that
23 are designed and maintained to:
24 (a) Withstand the wind and storm surge effects associated
25 with a hurricane.
26 (b) Manage stormwater and prevent discharges from the dike
27 field.

28 Section 2. Paragraph (b) of subsection (7) of section
29 253.03, Florida Statutes, is amended to read:
30 253.03 Board of trustees to administer state lands; lands
31 enumerated.--
32 (7)
33 (b) With respect to administering, controlling, and
34 managing sovereignty submerged lands, the Board of Trustees of
35 the Internal Improvement Trust Fund also may adopt rules
36 governing all uses of sovereignty submerged lands by vessels,
37 floating homes, or any other watercraft, which shall be limited
38 to regulations for anchoring, mooring, or otherwise attaching to
39 the bottom; the establishment of anchorages; and the discharge
40 of sewage, pumpout requirements, and facilities associated with
41 anchorages. The regulations must not interfere with commerce or
42 the transitory operation of vessels through navigable water, but
43 shall control the use of sovereignty submerged lands as a place
44 of business or residence. <u>The use of sovereignty submerged lands</u>
45 <u>for activities associated with the exploration for or the</u>
46 <u>production of oil or natural gas is expressly prohibited.</u>
47 Section 3. This act shall take effect July 1, 2006.

Bill No. **229**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Water & Natural Resources
2 Committee
3 Representative(s) Clarke offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7
8 Section 1. Department of Environmental Protection to
9 direct a study.—
10 (1) The department shall contract for a study that
11 evaluates the exposure risk and potential adverse effects of
12 hurricane wind and storm surge on field-erected aboveground
13 storage tank systems (tanks, piping, pumps, and related
14 components) at bulk product facilities, as defined in subsection
15 376.031(3). The study's scope shall include, but need not be
16 limited to:
17 (a) Evaluating the frequency, strength, and probability
18 estimates for hurricane winds and storm surge on those areas of
19 Florida coasts where existing bulk product facilities are
20 located and where new bulk product facilities are likely to be
21 constructed;

RAL

22 (b) Evaluating the need and timing for requirements for
23 the establishment of minimum ballast levels for field-erected
24 aboveground storage tanks at bulk product facilities based on
25 the frequency, strength, and probability estimates for hurricane
26 winds and storm surge, and based on levels calculated by a
27 professional engineer specific to each individual field-erected
28 aboveground storage tank, taking into account the type of tank,
29 the type of product stored, tank diameter, tank height, and
30 other relevant factors.
31 (c) Evaluating the need and feasibility for requirements
32 for:
33 1. Professionally engineered permanent anchoring systems
34 for field-erected aboveground storage tanks in high-risk surge
35 zones; and
36 2. Professionally engineered temporary cable tie-down
37 systems that could be pre-constructed or fabricated and retained
38 in storage until needed, that would not interfere with normal
39 daily operations, and that could be set up in advance of an
40 approaching storm.
41 (d) Evaluating the need for potential siting
42 considerations or engineering mitigation that would prevent or
43 limit the installation of new field-erected aboveground storage
44 tank systems at bulk product facilities in areas that are
45 potentially high risk areas for hurricane winds and storm surge
46 unless the systems are designed and engineered to withstand
47 hurricane winds and storm surge.
48 (e) Identifying all current and proposed industry
49 standards for professionally engineered dike-fields surrounding
50 field-erected aboveground storage tanks at bulk product
51 facilities, including standards for materials and designs that
52 will withstand hurricane winds and storm surges yet allow access

53 for emergency fire-fighting vehicles in accordance with industry
54 reference standards contained in National Fire Protection
55 Association (NFPA) 30.
56 (2) The study shall include recommendations for changes,
57 if needed, to aboveground storage tank system laws and agency
58 rules in order to decrease damage from hurricanes and improve
59 recovery of field-erected aboveground storage tank systems after
60 storm damage. All recommendations shall be accompanied by a
61 cost-benefit analysis which shall include an analysis of:
62 (a) The costs for modifying existing field-erected
63 aboveground storage tank systems and dike fields, and the costs
64 associated with new construction of field-erected aboveground
65 storage tank systems and dike fields, to meet any proposed new
66 requirements; and
67 (b) The potential adverse effect on petroleum inventory
68 capacity in Florida resulting from any proposed new
69 requirements. All industry segments with field-erected
70 aboveground storage tanks shall be included in the petroleum
71 inventory capacity analysis (e.g. petroleum, electric utility,
72 etc.).
73 (3) The department shall report the findings and
74 recommendations of the study to the Governor, the President of
75 the Senate, and the Speaker of the House of Representatives by
76 March 1, 2008.
77 Section 2. The Department of Environmental Protection is
78 authorized to use up to $250,000 from the Inland Protection
79 Trust Fund for the 2006-2007 and 2007-2008 fiscal years to pay
80 the expenses of the Study provided for in Section 1.
81 Section 3. The Oceans and Coastal Council to direct a
82 study.-

83 (1) The Oceans and Coastal Council, created in section
84 161.73, Florida Statutes, shall direct a research study to
85 evaluate the risks from all activities associated with the
86 possible future exploration for and production of oil and
87 natural gas in the eastern Gulf of Mexico. The study shall be a
88 collaborative effort between two or more public and private
89 Florida marine science research entities and appropriate federal
90 executive branch agencies identified by the U.S. Committee on
91 Ocean Policy, established by Executive Order of President
92 George W. Bush pursuant to the federal Ocean Action Plan. The
93 study shall take into consideration current technologies for
94 controlling discharges from oil and gas exploration rigs and
95 production platforms, and shall include, but need not be limited
96 to:
97 (a) Evaluating the probability of a discharge from oil and
98 gas exploration rigs and production platforms
99 (b) Evaluating the magnitude of any probable discharge
100 from oil and gas exploration rigs and production platforms.
101 (c) Evaluating Gulf of Mexico currents and circulation
102 patterns and the likelihood of any probable discharge reaching
103 Florida's coastal waters and shorelines.
104 (d) Evaluating the environmental, social and economic
105 impacts of any probable discharge on the fish and wildlife
106 resources in Florida's coastal waters.
107 (e) Evaluating the environmental, social and economic
108 impacts of any probable discharge on Florida's beaches.
109 (2) The Council shall present to the Governor, the
110 President of the Senate, and the Speaker of the House of
111 Representatives the results of this study within 120 days after
112 the effective date of this act.

113 Section 4. There shall be appropriated from General
114 Revenue for FY 2006-2007 an amount of $500,000 for the Study
115 provided for in Section 3.
116 Section 5. This act shall take effect upon becoming a law.
117
118 ========== T I T L E A M E N D M E N T ==========
119 Remove the entire title and insert:
120
121 A bill to be entitled
122 An act relating to risks associated with the storage of
123 materials at bulk product facilities and the exploration
124 and production of oil and natural gas in the eastern Gulf
125 of Mexico; directing a study of exposure risk and potential
126 adverse effects of hurricane wind and storm surge on field-
127 erected aboveground storage tank systems at bulk product
128 facilities; providing for an appropriation from the Inland
129 Protection Trust Fund for the 2006-2007 and 2007-2008
130 fiscal years to pay the expenses of the study; directing a
131 study of the risks from all activities associated with the
132 possible future exploration for and production of oil and
133 natural gas in the eastern Gulf of Mexico; providing for an
134 appropriation from General Revenue to pay the expenses of
135 the study; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 597 CS Contracting for Efficiency or Conservation Measures by State Agencies
SPONSOR(S): Cannon
TIED BILLS: **IDEN./SIM. BILLS:** SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	4 Y, 0 N, w/CS	Brown	Williamson
2) Water & Natural Resources Committee		Winker KW	Lotspeich RAL
3) Fiscal Council			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill adds conservation and efficiency measures for both water and wastewater to the Guaranteed Energy Performance Savings Contracting Act, and adds water and wastewater efficiency and conservation measures to the types of guaranteed performance savings contracts that may be entered into by agencies. The bill expands the express list of conservation measures that may be contemplated.

The bill may have a positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Guaranteed Energy Performance Savings Contracting Act

In 1994, the Legislature enacted the Guaranteed Energy Savings Program,[1] later amended to become the Guaranteed Energy Performance Savings Contracting Act.[2] The program permits agencies, defined as "the state, a municipality, or a political subdivision",[3] to enter into a guaranteed energy performance savings contract, under specified circumstances.[4]

The purpose of a guaranteed energy savings contract is to allow a properly-licensed contractor to create or install energy conservation measures that will reduce the energy or operating costs of an agency facility. The Act contains a number of contract requirements to ensure that the measures will result in a savings to the agency over time, and to ensure that the contractor is financially liable for any failure to achieve such savings.

An "energy conservation measure" is a training program, facility alteration, or equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or operating costs.[5] Examples of such measures include insulation, storm windows and doors, automatic energy control systems, and cogeneration systems.

Current law requires that, before the installation of conservation measures, agencies obtain from a qualified provider a report that summarizes the costs of the conservation measures and provides the amount of cost savings.[6] The qualified provider must be selected in compliance with s. 287.055, F.S., which provides for competitive bidding requirements for state agencies wanting to procure professional architectural, engineering, or surveying and mapping services.

A guaranteed energy performance contracting contract must contain the following provisions:

- A written energy guarantee by the qualified provider that the energy or operating cost savings will meet or exceed the cost of energy conservation measures.
- A provision that all payments may be made over time, but may not exceed 20 years from the date of installation and acceptance by the agency.
- A requirement that the qualified provider provide a 100 percent project value bond to the state for its faithful performance, as required by s. 255.05, F.S.
- Provisions for an allocation of any excess savings among the parties.

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[1] Ch. 94-112, L.O.F., codified at s. 489.145, F.S.
[2] Ch. 2001-81, L.O.F.
[3] Section 489.145(3)(a), F.S.
[4] See Section 489.145(4), F.S.
[5] Section 489.145(3)(b), F.S.
[6] Section 489.145(4), F.S.

- The qualified provider must provide an annual reconciliation of the cost savings and if there is a shortfall, the provider must be liable.
- A statement that the contract does not constitute a debt, liability, or obligation of the state.

The Department of Management Services may, within reasonable resources, provide technical assistance to state agencies contracting for energy conservation measures and engage in other activities to promote such contracting. The Office of the Chief Financial Officer may develop model contracts and related documents for use by state agencies and require them to submit contracts to the Office for its approval.

Water and Wastewater Conservation and Efficiency

Both the state Department of Environmental Protection (DEP), each of the state's water management districts, and the federal Environmental Protection Agency (EPA) has each established programs for the efficient use of and conservation of water and wastewater. According to the EPA, conserving water means saving costs for electric power, gas, chemicals, and wastewater disposal. Efficient water use can have major environmental, public health, and economic benefits by helping to improve water quality, maintain aquatic ecosystems, and protecting drinking water sources. According to the EPA, the efficient use of water, through behavioral, operational, or equipment changes, if practiced broadly, can help mitigate the effects of drought.

According to the DEP, protecting the amount and quality of our water resources and implementing efficient wastewater management practices is critical to maintaining sufficient and potable water for domestic, industrial, agricultural, and governmental use. Improperly disposing of wastewater can damage drinking water supply, wildlife, and other important environmental resources.

Effect of Proposed Changes

The bill expands the scope of the Act beyond energy conservation to include water and wastewater conservation and efficiency.

The bill adds the following energy conservation measures:

- Equipment upgrades that improve the accuracy of billable revenue generating systems.
- Automated electronic or remotely controlled systems or measures that reduce direct personnel costs.
- Such other energy, water, or wastewater efficiency or conservation measures as may provide measurable, long-term operating cost reductions or billable revenue increases.
- Cool roof coating.

The bill requires the contractor to include in the report a summary of the costs associated with "operational improvements" if such improvements are the basis for the proposed cost savings.

The bill removes the word "energy" from the section heading of s. 489.145, F.S., and changes the short title to the "Guaranteed Performance Savings Contracting Act," in order to better reflect the additional scope of the act. Similar conforming changes are made throughout the bill. "Water and wastewater" are added to "energy" as the objects of the contracting process, and "efficiency" is added to "conservation" for the types of measures contemplated.

The bill conforms the terminology in s. 287.064, F.S. (addressing the consolidated financing of deferred payment purchases) with the substantive statute by adding "water and wastewater efficiency" to the section.

C. SECTION DIRECTORY:

Section 1 amends s. 489.145, F.S., adding "water and wastewater efficiency" to the scope of the re-titled "Guaranteed Performance Savings Contracting Act;" and adding additional measures to those permitted to achieve conservation and efficiency in energy, water, and wastewater use.

Section 2 amends s. 287.064, F.S., adding "water and wastewater efficiency" to the statute addressing consolidated financing of deferred payment purchases.

Section 3 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that provide energy, water, or wastewater conservation consulting or equipment may have increased business opportunities.

D. FISCAL COMMENTS:

The bill provides an opportunity for agencies to reduce energy, water, and wastewater costs by increasing conservation and efficiency. If the contractor's initial analysis is favorable and conservation measures are installed, the resulting savings are guaranteed by the contractor, pursuant to statute. The bill should have the effect of creating an incentive for agencies to procure guaranteed performance savings contracts and for contractors to maximize the potential savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 8, 2006, the House Governmental Operations Committee adopted an amendment which adds "cool roof coating" to the express list of conservation measures contained in s. 489.145(3)(b), F.S.

The bill was reported favorably with committee substitute.

CHAMBER ACTION

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1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to contracting for efficiency or
7 conservation measures by state agencies; amending s.
8 489.145, F.S.; including water and wastewater efficiency
9 and conservation in the measures encouraged by the
10 Legislature; revising definitions; providing for inclusion
11 of water and wastewater efficiency and conservation
12 measures in guaranteed performance savings contracts
13 entered into by a state agency, municipality, or political
14 subdivision; amending s. 287.064, F.S., relating to
15 consolidated financing of deferred-payment purchases, to
16 conform; providing an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Section 489.145, Florida Statutes, is amended
21 to read:
22 489.145 Guaranteed ~~energy~~ performance savings
23 contracting.--

24 (1) SHORT TITLE.--This section may be cited as the
25 "Guaranteed ~~Energy~~ Performance Savings Contracting Act."
26 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
27 investment in energy, water, and wastewater efficiency or
28 conservation measures in agency facilities can reduce the amount
29 of energy and water consumed and wastewater to be treated and
30 produce immediate and long-term savings. It is the policy of
31 this state to encourage each agency ~~agencies~~ to invest in
32 energy, water, and wastewater efficiency or conservation
33 measures that provide such reductions ~~reduce energy consumption~~,
34 produce a cost savings for the agency, and, for energy measures,
35 improve the quality of indoor air in public facilities and to
36 operate, maintain, and, when economically feasible, build or
37 renovate existing agency facilities in such a manner as to
38 minimize energy and water consumption or wastewater production
39 and maximize energy, water, and wastewater savings. It is
40 further the policy of this state to encourage agencies to
41 reinvest any ~~energy~~ savings resulting from energy, water, and
42 wastewater efficiency or conservation measures in additional
43 energy, water, and wastewater efficiency or conservation
44 measures ~~efforts~~.
45 (3) DEFINITIONS.--As used in this section, the term:
46 (a) "Agency" means the state, a municipality, or a
47 political subdivision.
48 (b) "Energy, water, and wastewater efficiency or
49 conservation measure" means a training program, facility
50 alteration, or equipment purchase to be used in new facilities
51 or in retrofitting or adding to existing facilities or

52 infrastructure ~~new construction, including an addition to an~~
53 ~~existing facility,~~ which reduces energy, water, wastewater, or
54 operating costs and includes, but is not limited to:
55 1. Insulation of the facility structure and systems within
56 the facility.
57 2. Storm windows and doors, caulking or weatherstripping,
58 multiglazed windows and doors, heat-absorbing, or heat-
59 reflective, glazed and coated window and door systems,
60 additional glazing, reductions in glass area, and other window
61 and door system modifications that reduce energy consumption.
62 3. Automatic energy control systems.
63 4. Heating, ventilating, or air-conditioning system
64 modifications or replacements.
65 5. Replacement or modifications of lighting fixtures to
66 increase the energy efficiency of the lighting system, which, at
67 a minimum, must conform to the applicable state or local
68 building code.
69 6. Energy recovery systems.
70 7. Cogeneration systems that produce steam or forms of
71 energy such as heat, as well as electricity, for use primarily
72 within a facility or complex of facilities.
73 8. Energy conservation measures that provide long-term
74 operating cost reductions or significantly reduce Btu consumed.
75 9. Renewable energy systems, such as solar, biomass, or
76 wind systems.
77 10. Devices that reduce water consumption or wastewater
78 ~~sewer~~ charges.

79 11. Equipment upgrades that improve the accuracy of
80 billable revenue generating systems.
81 12. Automated electronic or remotely controlled systems or
82 measures that reduce direct personnel costs.
83 13. Such other energy, water, or wastewater efficiency or
84 conservation measures as may provide measurable operating cost
85 reductions or billable revenue increases.
86 14.~~11.~~ Energy storage systems, such as fuel cells and
87 thermal storage.
88 15.~~12.~~ Energy generating technologies, such as
89 microturbines.
90 16. Cool roof coating.
91 17.~~13.~~ Any other repair, replacement, or upgrade of
92 existing equipment.
93 (c) "Energy, water, and wastewater cost savings" means a
94 measured reduction in the cost of fuel, energy or water
95 consumption, or wastewater production, and stipulated
96 improvement in the operation and maintenance created from the
97 implementation of one or more energy, water, and wastewater
98 efficiency or conservation measures when compared with an
99 established baseline for the previous cost of fuel, energy, or
100 water consumption, or wastewater production, and stipulated
101 operation and maintenance.
102 (d) "Guaranteed ~~energy~~ performance savings contract" means
103 a contract for the evaluation, recommendation, and
104 implementation of energy, water, and wastewater efficiency or
105 conservation measures, which, at a minimum, shall include:

106 1. The design and installation of equipment to implement
107 one or more of such measures and, if applicable, operation and
108 maintenance of such measures.
109 2. The amount of any actual annual savings that meet or
110 exceed total annual contract payments made by the agency for the
111 contract.
112 3. The finance charges incurred by the agency over the
113 life of the contract.
114 (e) "Guaranteed ~~energy~~ performance savings contractor"
115 means a person or business that is licensed under chapter 471,
116 chapter 481, or this chapter, and is experienced in the
117 analysis, design, implementation, or installation of energy,
118 water, or wastewater efficiency or conservation measures through
119 ~~energy~~ performance contracts.
120 (4) PROCEDURES.--
121 (a) An agency may enter into a guaranteed ~~energy~~
122 performance savings contract with a guaranteed ~~energy~~
123 performance savings contractor to significantly reduce energy,
124 water, or wastewater or operating costs of an agency facility
125 through one or more energy, water, and wastewater efficiency or
126 conservation measures.
127 (b) Before design and installation of energy, water, and
128 wastewater efficiency and conservation measures, the agency must
129 obtain from a guaranteed ~~energy~~ performance savings contractor a
130 report that summarizes the costs associated with the ~~energy~~
131 ~~conservation~~ measures and provides an estimate of the amount of
132 the associated ~~energy~~ cost savings or operational improvements.
133 The agency and the guaranteed ~~energy~~ performance savings

134 contractor may enter into a separate agreement to pay for costs
135 associated with the preparation and delivery of the report;
136 however, payment to the contractor shall be contingent upon the
137 report's projection of ~~energy~~ cost savings being equal to or
138 greater than the total projected costs of the design and
139 installation of the report's ~~energy~~ conservation or efficiency
140 measures.
141 (c) The agency may enter into a guaranteed ~~energy~~
142 performance savings contract with a guaranteed ~~energy~~
143 performance savings contractor if the agency finds that the
144 amount the agency would spend on the ~~energy~~ conservation or
145 efficiency measures will not likely exceed the amount of the
146 associated ~~energy~~ cost savings for up to 20 years from the date
147 of installation, based on the life cycle cost calculations
148 provided in s. 255.255, if the recommendations in the report
149 were followed and if the qualified provider or providers give a
150 written guarantee that such ~~the energy~~ cost savings will meet or
151 exceed the costs of the system. The contract may provide for
152 installment payments for a period not to exceed 20 years.
153 (d) A guaranteed ~~energy~~ performance savings contractor
154 must be selected in compliance with s. 287.055; except that if
155 fewer than three firms are qualified to perform the required
156 services, the requirement for agency selection of three firms,
157 as provided in s. 287.055(4)(b), and the bid requirements of s.
158 287.057 do not apply.
159 (e) Before entering into a guaranteed ~~energy~~ performance
160 savings contract, an agency must provide published notice of the
161 meeting in which it proposes to award the contract, the names of

162 the parties to the proposed contract, and the contract's
163 purpose.
164 (f) A guaranteed ~~energy~~ performance savings contract may
165 provide for financing, including tax exempt financing, by a
166 third party. The contract for third party financing may be
167 separate from the ~~energy~~ performance savings contract. A
168 separate contract for third party financing must include a
169 provision that the third party financier must not be granted
170 rights or privileges that exceed the rights and privileges
171 available to the guaranteed ~~energy~~ performance savings
172 contractor.
173 (g) In determining the amount the agency will finance to
174 acquire the efficiency or ~~energy~~ conservation measures, the
175 agency may reduce such amount by the application of any grant
176 moneys, rebates, or capital funding available to the agency for
177 the purpose of buying down the cost of the guaranteed ~~energy~~
178 performance savings contract. However, in calculating the life
179 cycle cost as required in paragraph (c), the agency shall not
180 apply any grants, rebates, or capital funding.
181 (5) CONTRACT PROVISIONS.--
182 (a) A guaranteed ~~energy~~ performance savings contract must
183 include a written guarantee that may include, but is not limited
184 to the form of, a letter of credit, insurance policy, or
185 corporate guarantee by the guaranteed ~~energy~~ performance savings
186 contractor that annual associated ~~energy~~ cost savings will meet
187 or exceed the amortized cost of the efficiency and ~~energy~~
188 conservation measures.

189 (b) The guaranteed ~~energy~~ performance savings contract
190 must provide that all payments, except obligations on
191 termination of the contract before its expiration, may be made
192 over time, but not to exceed 20 years from the date of complete
193 installation and acceptance by the agency, and that the annual
194 savings are guaranteed to the extent necessary to make annual
195 payments to satisfy the guaranteed ~~energy~~ performance savings
196 contract.
197 (c) The guaranteed ~~energy~~ performance savings contract
198 must require that the guaranteed ~~energy~~ performance savings
199 contractor to whom the contract is awarded provide a 100-percent
200 public construction bond to the agency for its faithful
201 performance, as required by s. 255.05.
202 (d) The guaranteed ~~energy~~ performance savings contract may
203 contain a provision allocating to the parties to the contract
204 any annual associated ~~energy~~ cost savings that exceed the amount
205 of the associated ~~energy~~ cost savings guaranteed in the
206 contract.
207 (e) The guaranteed ~~energy~~ performance savings contract
208 shall require the guaranteed ~~energy~~ performance savings
209 contractor to provide to the agency an annual reconciliation of
210 the guaranteed associated ~~energy~~ cost savings. If the
211 reconciliation reveals a shortfall in such annual ~~energy~~ cost
212 savings, the guaranteed ~~energy~~ performance savings contractor is
213 liable for such shortfall. If the reconciliation reveals an
214 excess in such annual ~~energy~~ cost savings, the excess savings
215 may be allocated under paragraph (d) but may not be used to

216 cover potential ~~energy~~ cost savings shortages in subsequent
217 contract years.
218 (f) The guaranteed ~~energy~~ performance savings contract
219 must provide for payments of not less than one-twentieth of the
220 price to be paid within 2 years from the date of the complete
221 installation and acceptance by the agency, and the remaining
222 costs to be paid at least quarterly, not to exceed a 20-year
223 term, based on life cycle cost calculations.
224 (g) The guaranteed ~~energy~~ performance savings contract may
225 extend beyond the fiscal year in which it becomes effective;
226 however, the term of any contract expires at the end of each
227 fiscal year and may be automatically renewed annually for up to
228 20 years, subject to the agency making sufficient annual
229 appropriations based upon continued realized energy, water, or
230 wastewater savings.
231 (h) The guaranteed ~~energy~~ performance savings contract
232 must stipulate that it does not constitute a debt, liability, or
233 obligation of the state.
234 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
235 Department of Management Services, with the assistance of the
236 Office of the Chief Financial Officer, may, within available
237 resources, provide technical assistance to state agencies
238 contracting for energy, water, and wastewater efficiency or
239 conservation measures and engage in other activities considered
240 appropriate by the department for promoting and facilitating
241 guaranteed ~~energy~~ performance contracting by state agencies. The
242 Office of the Chief Financial Officer, with the assistance of
243 the Department of Management Services, may, within available

244 resources, develop model contractual and related documents for
245 use by state agencies. Prior to entering into a guaranteed
246 ~~energy~~ performance savings contract, any contract or lease for
247 third-party financing, or any combination of such contracts, a
248 state agency shall submit such proposed contract or lease to the
249 Office of the Chief Financial Officer for review and approval.
250 Section 2. Subsection (10) of section 287.064, Florida
251 Statutes, is amended to read:
252 287.064 Consolidated financing of deferred-payment
253 purchases.--
254 (10) Costs incurred pursuant to a guaranteed ~~energy~~
255 performance savings contract, including the cost of energy,
256 water, and wastewater efficiency and conservation measures, each
257 as defined in s. 489.145, may be financed pursuant to a master
258 equipment financing agreement; however, the costs of training,
259 operation, and maintenance may not be financed. The period of
260 time for repayment of the funds drawn pursuant to the master
261 equipment financing agreement under this subsection may exceed 5
262 years but may not exceed 10 years.
263 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 733 Airboats
SPONSOR(S): Dean and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee		Winker KW	Lotspeich RAL
2) Agriculture & Environment Appropriations Committee			
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill addresses several issues relating to the operation of airboats. Specifically, the bill:

- Amends s. 327.02(1), F.S., by defining the terms "airboat" and "muffler" for airboats.
- Creates s. 327.391, F.S., providing for the regulation by the Fish and Wildlife Conservation Commission (FWCC) of airboats and their operation and equipment.
- Requires that airboats be operated in a reasonable and prudent manner and that airboats must not be operated in a reckless manner.
- Requires that airboats have a muffler on their engine capable of adequately muffling the sound of the exhaust from the engine.
- Provides that an airboat cited for a violation of the muffler requirement must show proof of the installation of a muffler before the airboat can be operated on the waters of the state.
- Requires airboats to be equipped with a 20" by 20" orange flag flying at least 6 feet above the deck of the airboat and that failure to have the flag would be a violation constituting the reckless operation of a vessel.
- Requires that airboats be operated and equipped in compliance with numerous provisions of Chapter 327, F.S., just as these provisions apply to all vessels.
- Authorizes the adoption of local ordinances for the operation and equipping of airboats as long as the ordinances are not in conflict with the provisions of Chapter 327. F.S., and do not discriminate against airboats.

The bill has no fiscal impact and becomes effective on October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill provides for additional regulations by Fish and Wildlife Conservation Commission for the operation and equipping of airboats.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Background

Airboats have a long history going as far back as the early 1900s. Around 1905, Alexander Graham Bell joined a team of aviation and boating inventors, including Glenn H. Curtis, early aviator and the inventor of aircraft engines, in Halifax, Nova Scotia where experiments were conducted combining aircraft engines and props and boats. Around 1920, Curtis moved to South Florida and introduced the first airboat to the Florida Everglades.[1]

According to the American Airboat Corporation an airboat is defined as a "buoyant self-propelled multi-terrain vehicle that depends on air thrust for propulsion."[2] Airboats have also been defined as flat-bottomed boats (or punts) powered by a propeller attached to an automobile or aircraft engine. The propeller spins at high speed and requires a large metal cage to protect passengers. The flat bottom of the boat allows airboats to navigate easily through shallow swamps and marshes as well as canals, rivers, and lakes. Drivers of airboats sit high on a platform to improve visibility and for spotting floating obstacles and animals in the airboat's path. Steering of the airboat is accomplished by swiveling vertical fins positioned in the propeller wash. Airboats vary in size from up to 20 (or more) person tour airboats to trail airboats for two to three passengers.

According to the American Airboat Corporation, airboats can reach speeds of 45 mph on land, 60 mph on water, and 70 mph on ice, with the top speed of about 135 mph on smooth, shallow water.

Before 1980, 90% of the airboats used aircraft engines to power the propeller. The rest used automotive engines. Since 1980, 90% of the airboats built have automotive engines because of their ease of maintenance and more readily available parts. Because of the engines used on airboats and the use of the propeller for moving the airboat, airboats typically generate high noise levels.

National Association of State Boating Law Administrators Model Motorboat Noise Act

The National Association of State Boating Law Administrators (NASBLA) represents the boating authorities of all 50 states. In 1989, the NASBLA adopted a model act for motorboat noise. On September 21, 2005, the act was made a part of the 2005 NASBLA Model Acts Review and Standardization Project. The act requires that all motorboats with above-water exhaust install mufflers to reduce exhaust noise and limit shoreline sound level to 75 decibels.

According to the NASBLA (see www.nasbla.org), 32 states have adopted noise regulations equivalent to the requirements described in the Model Act for Motorboat Noise.

The intent of the Model Act is to address motorboat noise and does not address noise generated from other means such as the propeller on an airboat. However, since many airboat associations, including

[1] See http://www.glenncurtissmemorialpark.com/curtisshistory.html
[2] See http://www.americanairboats.com-FAQ.htm

many Florida airboat associations, have expressed the desire that airboats not be discriminated against in the application of noise regulations, it is useful to briefly discuss the NASBLA Model Act.

In the Model Act, the term "muffler" is defined "as a sound suppression device or system designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and which prevents excessive or unusual noise."

The Model Act provides for noise level restrictions for motorboats. Under the provisions of the Model Act, no motorboat operator shall operate a motor boat that exceeds the following noise levels:

- For engines manufactured before January 1, 1993, a noise level of 90 decibels.
- For engines manufactured on or after January 1, 1993, a noise level of 88 decibels.

The Model Act establishes requirements for mufflers which include the following:

- Every motorboat shall at all times be equipped with a muffler or a muffler system in good working order and in constant operation and effectively installed to prevent any excessive or unusual noise.
- No person shall operate any motorboat that is equipped with an altered muffler or a muffler cutout or bypass or that otherwise reduces or eliminates the effectiveness of any muffler or muffler system.
- No person shall remove, alter, or otherwise modify in any way a muffler or muffler system in a manner that prevents it from being operated in accordance with the provisions of the act.

The Act provides that no person shall manufacture or sell any motorboat with a muffler or muffler system which does not comply with the noise restrictions stated above.

The Act provides exemptions for the motorboat noise restrictions. Such restrictions do not apply to motorboats registered and actually participating in a racing event or tune-up periods for such racing events which must be conducted in accordance with and permitted by the United States Coast Guard or the state boating authority.

And finally, the Act includes provisions for the enforcement of the noise restrictions. Any law enforcement officer authorized to enforce the noise level provisions of the act who has reason to believe that a motorboat is not in compliance with the noise levels of the act, may direct the person operating the motorboat to submit the motorboat to an on-site test to measure the noise level. If the motorboat exceeds the noise level, the officer may direct the operator to take immediate and reasonable measures to correct the violation, including returning the motorboat to a mooring and keeping the motorboat at the mooring until the violation is corrected and ceases.

Florida Airboats Associations

There are a number of airboat associations throughout Florida and a statewide airboat association called the Florida Airboat Association (FAA). The FAA was established in 1994 and according to its website (www.flairboat.com) is "dedicated to the conservation of our natural resources, the preservation of sportsmen's rights and the promotion of boating safety through community involvement and public education." In addition to the statewide airboat association, there are a number of local airboat associations, including:

- Brevard Airboat and Powerboat Association
- Broward County Airboat, Halftrack, and Conservation Club
- Citrus County Airboat Alliance
- Glades Airboat and Buggy Association
- Highlands Airboat Association
- Indian River County Boat Association

- Kissimmee River Valley Sportsman Association
- Lake County Airboat Association
- Lake Okeechobee Airboat Association
- National Airboat Racing Association (Florida branch)
- Osceola Airboat Association
- Orange County Airboat Association
- Palm Beach County Airboat and Halftrack Conservation Club
- Peace River Valley Airboat Club
- Seminole County Airboat Club
- Volusia County Airboat Association
- Airboat Association of Florida
- West Coast Airboat Club
- Withlacoochee Region Airboat Association

Current Law

Chapter 327, F.S., the Florida Vessel Safety Law, provides the FWCC with authority over the operation, regulation, and safety of vessels on Florida waters. Section 327.02(37), F.S., defines a vessel to be synonymous with "boat" as referenced in s. 1(b), Art. VII of the State Constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

Sections of Chapter 327 address numerous issues relating to the regulation of vessels including such areas as: the reporting of accidents (s. 327.30, F.S.); reckless and careless operation of vessels (s. 327.33, F.S.); boating under the influence (s. 327.35, F.S.); testing for alcohol, chemical or controlled substances (s. 327.352, F.S.); personal watercraft regulations (s. 327.39, F.S.); boating safety courses and identification cards (s. 327.395, F.S.); the creation of the Boating Advisory Council (s. 327.803, F.S.); and muffling devices on vessels (s. 327.65, F.S.).

Section 327.65(1), F.S., requires that the exhaust of every internal combustion engine used on any vessel operated on the waters of the state must be "effectively muffled" by equipment constructed and used to muffle the noise of the exhaust in a "reasonable manner." The use of "muffler cutouts" (cutouts, bypasses or other devices that increase sound pressure levels or change the original manufactured exhaust system of the vessel) is prohibited, except for vessels competing in a boating regatta or official boat race and for vessels while on trial runs.

Section 327.65(2)(a)1., F.S., authorizes counties to impose additional noise pollution and exhaust regulations on vessels by way of county ordinances. A county may adopt an ordinance which prohibits a person from operating any vessel in such a manner as to exceed 90dB A at a distance of 50 feet from the vessel. The term "dB A" means "the composite abbreviation for the A-weighted sound level and the unit of sound level, the decibel." "Sound level" means "the A-weighted sound pressure measured with fast response using an instrument complying with the specifications for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only a weighting and fast dynamic response need be provided."[3]

Section 327.65(2)(a)2., F.S., provides that any person operating a vessel and who refuses to submit to a sound level test when requested to do so by a law enforcement officer can be cited and could be found guilty of a misdemeanor of the second degree.

Airboats and Noise Issues

According to the FWCC, the language in s. 327.65(1), F.S., regarding a vessel's (including airboats) exhaust to be "effectively muffled . . . in a reasonable manner," lacks specificity and allows for

[3] Section 327.65(2)(b), F.S.

considerable room for interpretation. The FWCC, adopting the interpretation by the former Game and Fresh Water Fish Commission, permitted the use of "flex-pipe" (flexible tubing that diverts engine exhaust to behind the airboat) as an effective muffling device for airboats. Such devices became common and accepted by the airboat community. However, as the number of waterfront residences and airboats has increased over the years, the "effectiveness" of muffling airboats with "flex-pipe" has raised considerable concerns relate to the noise of airboats on Florida's waterways.

In 2003, a bill was filed (SB 1012) which would have restricted airboat noise statewide to 90 decibels at 50 feet. The bill was heard in the Senate Natural Resources Committee and was amended to authorize the FWCC to adopt a rule which would provide a uniform ordinance for vessel sound regulation that could be adopted by any county or municipality. The bill did not pass out of the Senate committee; but there was an expectation that the FWCC would hold public workshops on airboat noise.

Following several public workshops held across the state, the FWCC asked the Florida Boating Advisory Council to develop a code of ethics for airboat operators (see below). In addition, FWCC staff was directed to initiate a research project (see below) that would provide direction on the types of muffling devices that could effectively muffle airboat engines.

Code of Ethics

The FWCC requested the state's Boating Advisory Council to develop an Airboat User Code of Ethics. An April 26, 2004 version of the code of ethics included the following:

- Respect the rights of everyone to enjoy Florida's waterways.
- Learn and observe all State of Florida boating regulations, navigation rules, and vessel safety equipment requirements.
- Recognize that the noise generated from an airboat propeller and engine exhaust system may annoy other people in the area.
- Equip the airboat with an approved muffling device and operate the airboat in a manner that will reduce engine exhaust sound levels.
- Operate an airboat at a slow speed on or near boat ramps and move away from the boat ramp an adequate distance before powering up the airboat, and where possible, no power loading of the airboat on to the trailer.
- Use slow speeds to reduce noise near residential and public use areas.
- Be extra cautious to reduce sound levels of an airboat during nighttime hours.
- Understand that the public will judge all airboat users by the actions of one.
- Protect natural resources and do not needlessly disturb wildlife.

Noise Study

FWCC contracted with a research team from the Florida Atlantic University (FAU) College of Engineering to conduct tests and analysis on airboat sound/noise.

The FWCC/FAU airboat sound/noise research project intended to answer the following questions:

- What level of sound can be obtained from an airboat using various automotive-type muffling devices, "flex-pipe," or other devices on the wider range of airboat propulsion systems?
- How do sound levels generated by an airboat's engine's exhaust compare to those sound levels generated by the airboat's propeller blades?
- To what extent do environmental factors affect the resonance and nature of the sound generated by an airboat?
- What mechanical and technological changes and devices could be developed and used to help quiet airboats?

The research project was conducted on a lake in the Ocala National Forest using 13 different airboat configurations with a variety of different engines, propellers, and mufflers. Sound measurement equipment and methodology were used to record and analyze the sounds generated by the test airboats at idle, 50%, and 100% operating conditions for both stationary and drive-by tests.

The findings from the research project were as follows:

- When running at full speed, airboats noise levels exceeded the current statutorily prescribed 90 decibels at 50 feet.
- When running at full speed, mufflers have little or no effect on the noise radiated by airboats.
- Mufflers do reduce an airboat's radiated noise levels at minimal planing speeds by about 4 decibels.
- At minimum planing speeds or less, most airboats meet the current statutorily prescribed 90 decibel noise limit at 50 feet.
- Flex pipes without mufflers provide some level of noise attenuation at higher airboat engine RPM, but not at lower RPM.
- Measurement of the effect of mufflers on airboats showed that they provide broadband noise attenuation at lower airboat operational speeds.
- When operating under different conditions, the noise level for an airboat's given configuration of engine, gearbox, propeller, and muffler was only a function of engine RPM, and not a function of vessel weight or speed.
- Airboat operators are likely to be at risk of hearing damage and it is likely that noise exposure limits could be exceeded for bystanders in the vicinity of boat ramps where airboats are maneuvering or power loading onto trailers.
- Sound levels generated by airboats when running at full speed are dominated by propeller noise.

In addition, the authors of the research project made the following recommendations:

- Airboat engine and propeller RPM should be minimized to reduce noise levels.
- Airboat propellers should be designed to maximize thrust at lower tip speed to reduce the noise levels of propellers.

Based on these findings and recommendations, on September 21, 2005, the FWCC directed staff to draft a new policy that would require airboats to be equipped with mufflers and that the use of flex-pipes alone would no longer be acceptable to help reduce the noise levels of airboats. FWCC staff also continued to hold public meetings throughout the state for the purpose of taking testimony from the airboat user community and persons who are or may be adversely affected by the noise generated by airboats.

On January 24, 2006, the FWCC issued a Marine Enforcement Alert establishing a law enforcement protocol requiring airboats to use automotive-style mufflers to reduce engine exhaust sound levels. "Muffler" is defined as "an automotive-style sound suppression device or system designed and installed to abate the sound of exhaust gasses emitted from an internal combustion engine and which prevents excessive or unusual noise."

Through June 2006, the FWCC will implement a formal education effort making airboat operators and users aware of the required muffler provisions and by July 1, 2006, FWCC law enforcement officers will begin an education/enforcement phase where officers will issue warnings for non-compliance and citations for repeated non-compliance. Persons violating the muffler requirement will be charged under Section 327.65(1), F.S., as a failure to meet vessel engine exhaust muffling requirements.

EFFECT OF PROPOSED CHANGES

The bill amends s. 327.02, F.S., to add definitions for the terms "airboat" and "muffler." An "airboat" is defined as "a flat-bottomed vessel, designed for use in shallow waters, powered by a combustion engine with an airplane-type propeller mounted above the stern used to push air across a single set of rudders." A "muffler" is defined as "a sound suppression device or system designed to abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such engine."

The bill creates s. 327.391, F.S., to provide for the regulation by the FWCC of airboats and their operation and equipment. Specifically, the provisions of the new s. 327.391:

- Require that airboats be operated in a reasonable and prudent manner and that airboats must not be operated in a reckless manner.
- Require that an airboat must have a muffler on its engine capable of adequately muffling the sound of the exhaust of the engine.
- Prohibit the use of cutouts, except for vessels competing in a regatta or official boat race and for vessels while on trial runs at such events.
- Provide that an airboat cited for a violation of the muffling requirements of the bill, must show proof of the installation of a muffler before the airboat can be operated on the waters of the state.
- Require airboats to be equipped with a mast or flagpole bearing a flag at a height of at least 6 feet above the deck of the airboat. The flag must be at least 20 inches in height and width and international orange in color. Airboat operators not complying with the flag requirement may be cited for reckless operation of a vessel, punishable as provided in s. 327.33(1). F.S.
- Require that airboats be subject to the provisions of Chapter 327, F.S., known as the Florida Vessel Safety Law.
- Provide that nothing in the newly created s.327.391, F.S., shall prevent the adoption of any ordinance or local law relating to the operation of airboats and their equipment, except that the ordinance or local law may not discriminate against airboats.
- Exempt from the requirements of the section a performer engaged in a professional exhibition and persons who are preparing to participate or who are participating in a regatta, race, marine parade, tournament or exhibition which is held in compliance with s. 327.48.

The bill makes conforming changes and corrects cross-references to several sections of statute.

The bill has an effective date of October 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 327.02, F.S., by creating definitions for "airboat" and "muffler."

Section 2: Creates s. 327.391, F.S., regulating the operation of airboats.

Section 3: Amends s. 320.08, F.S., to conform a cross-reference.

Section 4: Amends s. 328.17, F.S., to conform a cross-reference.

Section 5: Amends s. 342.07, F.S., to conform a cross-reference.

Section 6: Amends s. 616.242, F.S., to conform terminology.

Section 7: Amends s. 713.78, F.S., to conform terminology.

Section 8: Amends s. 715.07, F.S., to conform a cross-reference.

Section 9: Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires airboat owners and the airboat industry to modify/retrofit/replace equipment to meet the requirements of this legislation. Costs associated with compliance efforts will vary and cannot be determined at this time.

D. FISCAL COMMENTS:

The bill requires proof of a muffler installation before the airboat can be further operated, if a citation is issued. This would create a tracking obligation of the part of FWCC and the development on an inspection plan to ensure compliance by persons who have been cited for a violation of the muffler requirements of the bill. FWCC is unable to provide a cost estimate for the compliance tracking system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds. Nor does the bill reduce the authority that cities and counties have to raise revenues in the aggregate or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Although not specified in the bill, the bill may require FWCC to adopt rules relating to the operation of airboats and equipment required on airboats.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the bill addresses the suppression of noise from the operation of airboats emanating from the engine by requiring a specified muffler, the bill does not address nor provide any provisions or requirements that would address the suppression of airboat noise emanating from the airplane-type propeller mounted above the stern of the airboat.

FWCC staff has provided the following comments on and concerns with the bill.

The bill defines an airboat as "a flat-bottomed vessel, designed for use in shallow waters, powered by a combustion engine with an airplane-type propeller mounted above the stern used to push air across a single set of rudders." Not all airboats are truly flat-bottomed and this definition could exclude certain airboats from the provisions of the bill. Technically, any vessel using an engine driving an aircraft-type propeller system to provide rearward thrust for propulsion should be considered an airboat. Additionally, the word "internal" should be added before "combustion" when describing the engine powering the vessel.

The bill provides a list of maneuvers that constitute reckless operation of an airboat. These violations are similar to those in place for personal watercraft and may not be applicable to airboat operation. For example, airboats are generally not observed being operated in a manner where they are weaving through congested vessel traffic or swerving at the last possible moment to avoid a collision. Airboat maneuvers such as these can be charged as reckless operation under current Florida law, depending upon the totality of the circumstances.

The bill specifies muffler requirements for airboat engines. Such muffler equipment requirements are pre-empted by federal regulations as follows:

> "Unless permitted by the Secretary under section 4305 of this title, a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard or imposing a requirement for associated equipment (except insofar as the State or political subdivision may, in the absence of the Secretary's disapproval, regulate the carrying or use of marine safety articles to meet uniquely hazardous conditions or circumstances within the State) that is not identical to a regulation prescribed under section 4302 of this title." (TITLE 46 – Shipping, Subtitle II – Vessels and Seamen – Part B – Inspection and Regulation of Vessels CHAPTER 43 – Recreational Vessels, Sec. 4306 – Federal Preemption)

The FWCC has requested an opinion from the U.S. Coast Guard as to whether FWCC is exempt from this rule.

The bill requires an "airboat" cited for a muffler violation to show proof of muffler installation before it is further operated on state waters. The language should refer to "airboat operator" since an "airboat" cannot be cited for a violation. Further, the bill does not specify to whom this proof must be shown or the form this proof must take. This requirement creates a tracking obligation for FWCC and the necessity to develop an inspection plan to ensure compliance by those who have been cited for a muffler violation. The cost for such tracking/inspection plan is not known at this time.

The bill creates a flag requirement for airboat operation and makes operation without a flag reckless operation of a vessel. This provision enacts a flag requirement for airboats in conflict with current FWCC Rules for flags on airboats in the Everglades. The bill requires that the flag must be at least 6 feet above the deck of an airboat. However, on many airboats, the metal cage housing the propeller extends higher than 6 feet above the deck of the airboat. Because a violation of the flag requirement is declared to be reckless operation, a person whose flag is lost or broken is subject to up to one year imprisonment, a fine of up to $1000, or both. Such a violator would lose his or her boating privilege upon conviction (even if adjudication was withheld and the sentence suspended) until a state-approved

boating course could be completed. Moreover, an airboat operator whose orange flag was defective or missing and who was involved in a fatal boating accident would be guilty of "vessel homicide" under s. 782.072, F. S., even if he or she was otherwise entirely without fault in the accident. FWCC staff recommends that consideration should be given to making a violation of this provision less severe.

Aside from the prohibition against local ordinances discriminating against airboats, subsection (5) in Section 2 of the bill is redundant to existing s. 327.60, Florida Statutes. It is internally inconsistent in that it first specifically allows "the adoption of any ordinance or local law relating to airboat operation and equipment" and then specifically prohibits ordinances and local laws that "discriminate against airboats as defined in s. 327.02."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to airboats; amending s. 327.02, F.S.;
3 defining the terms "airboat" and "muffler"; conforming
4 terminology; creating s. 327.391, F.S.; providing for
5 regulation of airboat operation and equipment; requiring
6 airboats to be operated in a reasonable and prudent
7 manner; requiring described sound-muffling device;
8 requiring display of described flag; providing penalties;
9 providing for application of specified provisions to
10 airboat operation and equipment; providing exceptions;
11 amending ss. 320.08, 328.17, 342.07, 713.78, and 715.07,
12 F.S.; correcting cross-references; amending s. 616.242,
13 F.S.; conforming terminology; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Present subsection (37) of section 327.02,
18 Florida Statutes, is amended, subsections (1) through (22) are
19 renumbered as subsections (2) through (23), respectively,
20 subsections (23) through (38) are renumbered as subsections (25)
21 through (40), respectively, and new subsections (1) and (24) are
22 added to that section, to read:
23 327.02 Definitions of terms used in this chapter and in
24 chapter 328.--As used in this chapter and in chapter 328, unless
25 the context clearly requires a different meaning, the term:
26 (1) "Airboat" means a flat-bottomed vessel, designed for
27 use in shallow waters, powered by a combustion engine with an

28 airplane-type propeller mounted above the stern used to push air
29 across a single set of rudders.
30 (24) "Muffler" means a sound-suppression device or system
31 designed to abate the sound of exhaust gases emitted from an
32 internal combustion engine and prevent excessive sound when
33 installed on such engine.
34 (39) ~~(37)~~ "Vessel" is synonymous with boat as referenced in
35 s. 1(b), Art. VII of the State Constitution and includes every
36 description of watercraft, barge, and airboat ~~air boat~~, other
37 than a seaplane on the water, used or capable of being used as a
38 means of transportation on water.
39 Section 2. Section 327.391, Florida Statutes, is created
40 to read:
41 327.391 Airboats regulated.--
42 (1) An airboat must at all times be operated in a
43 reasonable and prudent manner. Maneuvers that unreasonably or
44 unnecessarily endanger life, limb, or property, including, but
45 not limited to, weaving through congested vessel traffic,
46 swerving at the last possible moment to avoid collision, and not
47 keeping proper lookout, constitute reckless operation of a
48 vessel as provided in s. 327.33(1). Any person operating an
49 airboat must comply with the provisions of s. 327.33.
50 (2) The exhaust of every internal combustion engine used
51 on any airboat operated on the waters of this state shall be
52 provided with a stock factory muffler, underwater exhaust, or
53 other manufactured device capable of adequately muffling the
54 sound of the exhaust of the engine as described in s.
55 327.02(24). The use of cutouts is prohibited, except for vessels

56 competing in a regatta or official boat race, and for such
57 vessels while on trial runs.
58 (3) An airboat cited for an infraction of s. 327.65(1)
59 shall be required to show proof of installation of a muffler as
60 defined in s. 327.02 before such airboat can be further operated
61 on the waters of the state.
62 (4) An airboat may not operate on the waters of the state
63 unless it is equipped with a mast or flagpole bearing a flag at
64 a height of at least 6 feet above the deck. The flag must be
65 square or rectangular, at least 20 inches in height and width,
66 international orange in color, and displayed so that the
67 visibility of the flag is not obscured in any direction. Any
68 person who violates this subsection commits reckless operation
69 of a vessel, punishable as provided in s. 327.33(1).
70 (5) The provisions of this section and ss. 327.01, 327.02,
71 327.30-327.40, 327.44-327.50, 327.54, 327.56, 327.65, 328.40-
72 328.48, 328.52-328.58, 328.62, and 328.64 shall govern airboat
73 operation and equipment and all other matters relating thereto
74 whenever any airboat is operated on the waters of the state or
75 when any activity regulated under this section takes place on
76 the waters of the state. Nothing in this section or any of such
77 sections shall be construed to prevent the adoption of any
78 ordinance or local law relating to airboat operation and
79 equipment, except that such ordinances or local laws may not
80 apply to the Florida Intracoastal Waterway and shall be
81 operative only when they are not in conflict with this chapter
82 or any rule adopted pursuant thereto. An ordinance or local law

83 adopted pursuant to this section or any other state law may not
84 discriminate against airboats as defined in s. 327.02.
85 (6) This section does not apply to a performer engaged in
86 a professional exhibition or a person preparing to participate
87 or participating in a regatta, race, marine parade, tournament,
88 or exhibition held in compliance with s. 327.48.
89 Section 3. Paragraphs (d) and (e) of subsection (5) of
90 section 320.08, Florida Statutes, are amended to read:
91 320.08 License taxes.--Except as otherwise provided
92 herein, there are hereby levied and imposed annual license taxes
93 for the operation of motor vehicles, mopeds, motorized bicycles
94 as defined in s. 316.003(2), and mobile homes, as defined in s.
95 320.01, which shall be paid to and collected by the department
96 or its agent upon the registration or renewal of registration of
97 the following:
98 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
99 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.--
100 (d) A wrecker, as defined in s. 320.01(40), which is used
101 to tow a vessel as defined in s. 327.02(38) ~~(36)~~, a disabled,
102 abandoned, stolen-recovered, or impounded motor vehicle as
103 defined in s. 320.01(38), or a replacement motor vehicle as
104 defined in s. 320.01(39): $30 flat.
105 (e) A wrecker, as defined in s. 320.01(40), which is used
106 to tow any motor vehicle, regardless of whether or not such
107 motor vehicle is a disabled motor vehicle as defined in s.
108 320.01(38), a replacement motor vehicle as defined in s.
109 320.01(39), a vessel as defined in s. 327.02(38) ~~(36)~~, or any
110 other cargo, as follows:

111 1. Gross vehicle weight of 10,000 pounds or more, but less
112 than 15,000 pounds: $87 flat.
113 2. Gross vehicle weight of 15,000 pounds or more, but less
114 than 20,000 pounds: $131 flat.
115 3. Gross vehicle weight of 20,000 pounds or more, but less
116 than 26,000 pounds: $186 flat.
117 4. Gross vehicle weight of 26,000 pounds or more, but less
118 than 35,000 pounds: $240 flat.
119 5. Gross vehicle weight of 35,000 pounds or more, but less
120 than 44,000 pounds: $300 flat.
121 6. Gross vehicle weight of 44,000 pounds or more, but less
122 than 55,000 pounds: $572 flat.
123 7. Gross vehicle weight of 55,000 pounds or more, but less
124 than 62,000 pounds: $678 flat.
125 8. Gross vehicle weight of 62,000 pounds or more, but less
126 than 72,000 pounds: $800 flat.
127 9. Gross vehicle weight of 72,000 pounds or more: $979
128 flat.
129 Section 4. Subsection (4) of section 328.17, Florida
130 Statutes, is amended to read:
131 328.17 Nonjudicial sale of vessels.--
132 (4) A marina, as defined in s. 327.02(20) ~~(19)~~, shall have
133 a possessory lien upon any vessel for storage fees, dockage
134 fees, repairs, improvements, or other work-related storage
135 charges, and for expenses necessary for preservation of the
136 vessel or expenses reasonably incurred in the sale or other
137 disposition of the vessel. The possessory lien shall attach as
138 of the date the vessel is brought to the marina, or as of the

139 date the vessel first occupies rental space at the marina
140 facility. However, in the event of default, the marina must give
141 notice to persons who hold perfected security interests against
142 the vessel under the Uniform Commercial Code in which the owner
143 is named as the debtor.
144 Section 5. Subsection (2) of section 342.07, Florida
145 Statutes, is amended to read:
146 342.07 Recreational and commercial working waterfronts;
147 legislative findings; definitions.--
148 (2) As used in this section, the term "recreational and
149 commercial working waterfront" means a parcel or parcels of real
150 property that provide access for water-dependent commercial
151 activities or provide access for the public to the navigable
152 waters of the state. Recreational and commercial working
153 waterfronts require direct access to or a location on, over, or
154 adjacent to a navigable body of water. The term includes water-
155 dependent facilities that are open to the public and offer
156 public access by vessels to the waters of the state or that are
157 support facilities for recreational, commercial, research, or
158 governmental vessels. These facilities include docks, wharfs,
159 lifts, wet and dry marinas, boat ramps, boat hauling and repair
160 facilities, commercial fishing facilities, boat construction
161 facilities, and other support structures over the water. As used
162 in this section, the term "vessel" has the same meaning as in s.
163 327.02(39)~~(37)~~. Seaports are excluded from the definition.
164 Section 6. Paragraph (a) of subsection (10) of section
165 616.242, Florida Statutes, is amended to read:
166 616.242 Safety standards for amusement rides.--

167 (10) EXEMPTIONS.--
168 (a) This section does not apply to:
169 1. Permanent facilities that employ at least 1,000 full-
170 time employees and that maintain full-time, in-house safety
171 inspectors. Furthermore, the permanent facilities must file an
172 affidavit of the annual inspection with the department, on a
173 form prescribed by rule of the department. Additionally, the
174 Department of Agriculture and Consumer Services may consult
175 annually with the permanent facilities regarding industry safety
176 programs.
177 2. Any playground operated by a school, local government,
178 or business licensed under chapter 509, if the playground is an
179 incidental amenity and the operating entity is not primarily
180 engaged in providing amusement, pleasure, thrills, or
181 excitement.
182 3. Museums or other institutions principally devoted to
183 the exhibition of products of agriculture, industry, education,
184 science, religion, or the arts.
185 4. Conventions or trade shows for the sale or exhibit of
186 amusement rides if there are a minimum of 15 amusement rides on
187 display or exhibition, and if any operation of such amusement
188 rides is limited to the registered attendees of the convention
189 or trade show.
190 5. Skating rinks, arcades, lazer or paint ball war games,
191 bowling alleys, miniature golf courses, mechanical bulls,
192 inflatable rides, trampolines, ball crawls, exercise equipment,
193 jet skis, paddle boats, airboats ~~air boats~~, helicopters,
194 airplanes, parasails, hot air or helium balloons whether

195 tethered or untethered, theatres, batting cages, stationary
196 spring-mounted fixtures, rider-propelled merry-go-rounds, games,
197 side shows, live animal rides, or live animal shows.
198 6. Go-karts operated in competitive sporting events if
199 participation is not open to the public.
200 7. Nonmotorized playground equipment that is not required
201 to have a manager.
202 8. Coin-actuated amusement rides designed to be operated
203 by depositing coins, tokens, credit cards, debit cards, bills,
204 or other cash money and which are not required to have a
205 manager, and which have a capacity of six persons or less.
206 9. Facilities described in s. 549.09(1)(a) when such
207 facilities are operating cars, trucks, or motorcycles only.
208 10. Battery-powered cars or other vehicles that are
209 designed to be operated by children 7 years of age or under and
210 that cannot exceed a speed of 4 miles per hour.
211 11. Mechanically driven vehicles that pull train cars,
212 carts, wagons, or other similar vehicles, that are not confined
213 to a metal track or confined to an area but are steered by an
214 operator and do not exceed a speed of 4 miles per hour.
215 Section 7. Paragraph (b) of subsection (1) of section
216 713.78, Florida Statutes, is amended to read:
217 713.78 Liens for recovering, towing, or storing vehicles
218 and vessels.--
219 (1) For the purposes of this section, the term:
220 (b) "Vessel" means every description of watercraft, barge,
221 and <u>airboat</u> ~~air boat~~ used or capable of being used as a means of

222 transportation on water, other than a seaplane or a "documented
223 vessel" as defined in s. 327.02(9) ~~(8)~~.
224 Section 8. Paragraph (b) of subsection (1) of section
225 715.07, Florida Statutes, is amended to read:
226 715.07 Vehicles or vessels parked on private property;
227 towing.--
228 (1) As used in this section, the term:
229 (b) "Vessel" means every description of watercraft, barge,
230 and airboat used or capable of being used as a means of
231 transportation on water, other than a seaplane or a "documented
232 vessel" as defined in s. 327.02(9) ~~(8)~~.
233 Section 9. This act shall take effect October 1, 2006.

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Water & Natural Resources
2 Committee
3 Representative(s) Dean offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Subsections (1) and (24) are added to Section
8 327.02, F.S, and subsection (37)is amended to read:
9 327.02 Definitions of terms used in this chapter and in
10 chapter 328.--As used in this chapter and in chapter 328, unless
11 the context clearly requires a different meaning, the term:
12 (1) "Airboat" means a vessel, designed for use in shallow
13 waters, powered by an internal combustion engine with an
14 airplane-type propeller mounted above the stern used to push air
15 across a set of rudders.
16 (24) "Muffler" means an automotive style sound-suppression
17 device or system designed to abate the sound of exhaust gases
18 emitted from an internal combustion engine and prevent excessive
19 sound when installed on such engine.
20 (39) ~~(37)~~ "Vessel" is synonymous with boat as referenced in
21 s. 1(b), Art. VII of the State Constitution and includes every
22 description of watercraft, barge, and airboat ~~air boat~~, other

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23 than a seaplane on the water, used or capable of being used as a
24 means of transportation on water.
25 Section 2. Section 327.391, Florida Statutes, is created
26 to read:
27 327.391 Airboats regulated.--
28 (1) The exhaust of every internal combustion engine used
29 on any airboat operated on the waters of this state shall be
30 provided with an automotive style factory muffler, underwater
31 exhaust, or other manufactured device capable of adequately
32 muffling the sound of the exhaust of the engine as described in
33 s. 327.02(24). The use of cutouts or flex pipe is prohibited,
34 except as provided in subsection (4).
35 (2) An airboat operator cited for an infraction of this
36 section shall not operate until a muffler as defined in s.
37 327.02 is installed. Second or subsequent violations of this
38 section shall be a second degree misdemeanor punishable as
39 provided in s.775.083.
40 (3) An airboat may not operate on the waters of the state
41 unless it is equipped with a mast or flagpole bearing a flag at
42 a height of at least 10 feet above the deck. The flag must be
43 square or rectangular, at least 10 inches by 12 inches in size,
44 international orange in color, and displayed so that the
45 visibility of the flag is not obscured in any direction. Any
46 person who violates this subsection commits an infraction
47 punishable as provided in s. 327.733(1).
48 (4) This section does not apply to a performer engaged in
49 a professional exhibition or a person preparing to participate
50 or participating in a regatta, race, marine parade, tournament,
51 or exhibition held in compliance with s. 327.48.
52 Section 3. Paragraphs (v) and (w) are added to subsection
53 (1) of section 327.73, Florida Statutes, to read:

54 327.73 Noncriminal infractions.—
55 (1) Violations of the following provisions of the vessel
56 laws of this state are noncriminal infractions:
57 (v) Failure to display a flag as described in s. 327.391
58 (3).
59 (w) Failure to have adequate muffling device as described
60 in s. 327. 391 (1).
61 Section 4. Subsection (1) of section 327.731, Florida
62 Statutes, is amended to read:
63 327.731 Mandatory education for violators.--
64 (1) Every person convicted of a criminal violation of this
65 chapter, every person convicted of a noncriminal infraction
66 under this chapter if the infraction resulted in a reportable
67 boating accident, and every person convicted of two noncriminal
68 infractions as defined in s. 327.73(1)(h)-(k), (m), (o), (p),
69 and (s)-~~(u)~~(w), said infractions occurring within a 12-month
70 period, must:
71 (a) Enroll in, attend, and successfully complete, at his
72 or her own expense, a boating safety course that meets minimum
73 standards established by the commission by rule; however, the
74 commission may provide by rule pursuant to chapter 120 for
75 waivers of the attendance requirement for violators residing in
76 areas where classroom presentation of the course is not
77 available;
78 (b) File with the commission within 90 days proof of
79 successful completion of the course;
80 (c) Refrain from operating a vessel until he or she has
81 filed the proof of successful completion of the course with the
82 commission.
83 Section 5. Paragraphs (d) and (e) of subsection (5) of
84 section 320.08, Florida Statutes, are amended to read:

85 320.08 License taxes.--Except as otherwise provided
86 herein, there are hereby levied and imposed annual license taxes
87 for the operation of motor vehicles, mopeds, motorized bicycles
88 as defined in s. 316.003(2), and mobile homes, as defined in s.
89 320.01, which shall be paid to and collected by the department
90 or its agent upon the registration or renewal of registration of
91 the following:
92 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
93 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.--
94 (d) A wrecker, as defined in s. 320.01(40), which is used
95 to tow a vessel as defined in s. 327.02(39) ~~(36)~~, a disabled,
96 abandoned, stolen-recovered, or impounded motor vehicle as
97 defined in s. 320.01(38), or a replacement motor vehicle as
98 defined in s. 320.01(39): $30 flat.
99 (e) A wrecker, as defined in s. 320.01(40), which is used
100 to tow any motor vehicle, regardless of whether or not such
101 motor vehicle is a disabled motor vehicle as defined in s.
102 320.01(38), a replacement motor vehicle as defined in s.
103 320.01(39), a vessel as defined in s. 327.02(39) ~~(36)~~, or any
104 other cargo, as follows:
105 1. Gross vehicle weight of 10,000 pounds or more, but less
106 than 15,000 pounds: $87 flat.
107 2. Gross vehicle weight of 15,000 pounds or more, but less
108 than 20,000 pounds: $131 flat.
109 3. Gross vehicle weight of 20,000 pounds or more, but less
110 than 26,000 pounds: $186 flat.
111 4. Gross vehicle weight of 26,000 pounds or more, but less
112 than 35,000 pounds: $240 flat.
113 5. Gross vehicle weight of 35,000 pounds or more, but less
114 than 44,000 pounds: $300 flat.

115 6. Gross vehicle weight of 44,000 pounds or more, but less
116 than 55,000 pounds: $572 flat.
117 7. Gross vehicle weight of 55,000 pounds or more, but less
118 than 62,000 pounds: $678 flat.
119 8. Gross vehicle weight of 62,000 pounds or more, but less
120 than 72,000 pounds: $800 flat.
121 9. Gross vehicle weight of 72,000 pounds or more: $979
122 flat.
123 Section 6. Subsection (4) of section 328.17, Florida
124 Statutes, is amended to read:
125 328.17 Nonjudicial sale of vessels.--
126 (4) A marina, as defined in s. 327.02(20) ~~(19)~~, shall have
127 a possessory lien upon any vessel for storage fees, dockage
128 fees, repairs, improvements, or other work-related storage
129 charges, and for expenses necessary for preservation of the
130 vessel or expenses reasonably incurred in the sale or other
131 disposition of the vessel. The possessory lien shall attach as
132 of the date the vessel is brought to the marina, or as of the
133 date the vessel first occupies rental space at the marina
134 facility. However, in the event of default, the marina must give
135 notice to persons who hold perfected security interests against
136 the vessel under the Uniform Commercial Code in which the owner
137 is named as the debtor.
138 Section 7. Subsection (2) of section 342.07, Florida
139 Statutes, is amended to read:
140 342.07 Recreational and commercial working waterfronts;
141 legislative findings; definitions.--
142 (2) As used in this section, the term "recreational and
143 commercial working waterfront" means a parcel or parcels of real
144 property that provide access for water-dependent commercial
145 activities or provide access for the public to the navigable

146 waters of the state. Recreational and commercial working
147 waterfronts require direct access to or a location on, over, or
148 adjacent to a navigable body of water. The term includes water-
149 dependent facilities that are open to the public and offer
150 public access by vessels to the waters of the state or that are
151 support facilities for recreational, commercial, research, or
152 governmental vessels. These facilities include docks, wharfs,
153 lifts, wet and dry marinas, boat ramps, boat hauling and repair
154 facilities, commercial fishing facilities, boat construction
155 facilities, and other support structures over the water. As used
156 in this section, the term "vessel" has the same meaning as in s.
157 327.02(39) ~~(37)~~. Seaports are excluded from the definition.
158 Section 8. Paragraph (a) of subsection (10) of section
159 616.242, Florida Statutes, is amended to read:
160 616.242 Safety standards for amusement rides.--
161 (10) EXEMPTIONS.--
162 (a) This section does not apply to:
163 1. Permanent facilities that employ at least 1,000 full-
164 time employees and that maintain full-time, in-house safety
165 inspectors. Furthermore, the permanent facilities must file an
166 affidavit of the annual inspection with the department, on a
167 form prescribed by rule of the department. Additionally, the
168 Department of Agriculture and Consumer Services may consult
169 annually with the permanent facilities regarding industry safety
170 programs.
171 2. Any playground operated by a school, local government,
172 or business licensed under chapter 509, if the playground is an
173 incidental amenity and the operating entity is not primarily
174 engaged in providing amusement, pleasure, thrills, or
175 excitement.

176 3. Museums or other institutions principally devoted to
177 the exhibition of products of agriculture, industry, education,
178 science, religion, or the arts.
179 4. Conventions or trade shows for the sale or exhibit of
180 amusement rides if there are a minimum of 15 amusement rides on
181 display or exhibition, and if any operation of such amusement
182 rides is limited to the registered attendees of the convention
183 or trade show.
184 5. Skating rinks, arcades, lazer or paint ball war games,
185 bowling alleys, miniature golf courses, mechanical bulls,
186 inflatable rides, trampolines, ball crawls, exercise equipment,
187 jet skis, paddle boats, airboats ~~air boats~~, helicopters,
188 airplanes, parasails, hot air or helium balloons whether
189 tethered or untethered, theatres, batting cages, stationary
190 spring-mounted fixtures, rider-propelled merry-go-rounds, games,
191 side shows, live animal rides, or live animal shows.
192 6. Go-karts operated in competitive sporting events if
193 participation is not open to the public.
194 7. Nonmotorized playground equipment that is not required
195 to have a manager.
196 8. Coin-actuated amusement rides designed to be operated
197 by depositing coins, tokens, credit cards, debit cards, bills,
198 or other cash money and which are not required to have a
199 manager, and which have a capacity of six persons or less.
200 9. Facilities described in s. 549.09(1)(a) when such
201 facilities are operating cars, trucks, or motorcycles only.
202 10. Battery-powered cars or other vehicles that are
203 designed to be operated by children 7 years of age or under and
204 that cannot exceed a speed of 4 miles per hour.
205 11. Mechanically driven vehicles that pull train cars,
206 carts, wagons, or other similar vehicles, that are not confined

207 to a metal track or confined to an area but are steered by an
208 operator and do not exceed a speed of 4 miles per hour.
209 Section 9. Paragraph (b) of subsection (1) of section
210 713.78, Florida Statutes, is amended to read:
211 713.78 Liens for recovering, towing, or storing vehicles
212 and vessels.--
213 (1) For the purposes of this section, the term:
214 (b) "Vessel" means every description of watercraft, barge,
215 and airboat ~~air-boat~~ used or capable of being used as a means of
216 transportation on water, other than a seaplane or a "documented
217 vessel" as defined in s. 327.02(9) ~~(8)~~.
218 Section 10. Paragraph (b) of subsection (1) of section
219 715.07, Florida Statutes, is amended to read:
220 715.07 Vehicles or vessels parked on private property;
221 towing.--
222 (1) As used in this section, the term:
223 (b) "Vessel" means every description of watercraft, barge,
224 and airboat used or capable of being used as a means of
225 transportation on water, other than a seaplane or a "documented
226 vessel" as defined in s. 327.02(9) ~~(8)~~.
227 Section 11. This act shall take effect October 1, 2006.
228
229 ========== T I T L E A M E N D M E N T ==========
230 Remove the entire title and insert:
231 A bill to be entitled
232 An act relating to airboats; amending s. 327.02, F.S.;
233 defining the terms "airboat" and "muffler"; conforming
234 terminology; creating s. 327.391, F.S.; providing for
235 regulation of airboat operation and equipment; requiring
236 described sound-muffling device; requiring display of
237 described flag; providing penalties; amending s.327.73,

238 F.S.; providing penalties; amending s. 327.731, F.S.;
239 providing for mandatory education; amending ss. 320.08,
240 328.17, 342.07, and 715.07, F.S.; correcting cross-
241 references; amending s. 713.78, F.S.; correcting cross-
242 references and conforming terminology; amending s.
243 616.242, F.S.; conforming terminology; providing an
244 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 889 Fran Reich Aquatic Preserve
SPONSOR(S): Machek
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee		Winker KW	Lotspeich RPL
2) Agriculture & Environment Appropriations Committee			
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill designates the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan sponsored by the South Florida Water Management District (SFWMD) as the Fran Reich Aquatic Preserve. The bill directs the SFWMD to erect suitable markers designating the Fran Reich Aquatic Preserve.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

The Site 1 Impoundment Project is a joint project between the U.S. Army Corps of Engineers and the South Florida Water Management District as part of the Comprehensive Everglades Restoration Plan. The purpose of the project, which is located in Palm Beach County, is to supplement water deliveries to the Hillsboro Canal by capturing and storing excess water currently discharged to the Intracoastal Waterway. The supplemental water deliveries are intended to reduce the demands upon Lake Okeechobee.

As part of the project, an impoundment pool will also provide groundwater recharge, reduce seepage from adjacent natural areas, and prevent saltwater intrusion by releasing impounded water back into the Hillsboro Canal when conditions dictate. Some measure of flood protection may also be provided by the project along with water quality improvements. The project includes canal and structure relocations, canal conveyance improvements, water control structures, and an aboveground impoundment with a total storage capacity of 13,280 acre-feet located in the Hillsboro Canal Basin in southern Palm Beach County.

Fran Reich was born in New York City in 1914. After graduating from Queens College, Fran worked in a law office and married her husband Allan. She raised a family and continued to work and be active in numerous educational and civic group issues. In 1978, Fran and her husband moved to Boca Raton, Florida where she founded the West Boca Community Council in 1980. Fran served as the Council's President and Board Chair. Fran served on many local and county advisory committees including the Infrastructure Task Force, Traffic Performance Standards, Ethics Committee, and the Land Use Advisory Board.

Fran's many accomplishments include:

- Bringing a new middle school to West Boca.
- Leading the fight against a West Boca landfill and incinerator by convincing the County that there was no need for such facilities.
- Defeating a proposed airport in West Boca.
- Assisting in the establishment of a West Boca Medical Center.
- Advocating for parks, libraries, schools, post offices, fire stations, and youth activity centers in West Boca.

With Fran's leadership, the West Boca Community Council fought the establishment by the County of a landfill on the southeastern edge of the Loxahachee Wildlife Refuge and what has become the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan.

Fran died in February 2005.

C. SECTION DIRECTORY:

Section 1: Designates the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan as the Fran Reich Aquatic Preserve; directs the South Florida Water Management District to erect suitable markers.

Section 2: Provides that the act becomes effective on July 1, 2006.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds. Nor does the bill reduce the authority that cities and counties have to raise revenues in the aggregate or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to Department of Environmental Protection staff, designating the Site 1 Project water body as an aquatic preserve would place numerous restrictions upon the water body and would make it difficult to use it for the intended purpose of the Site 1 Project, which is essentially a water holding pond or an impoundment area. Staff recommends that the phrase "aquatic preserve" be removed from the bill and another appropriate designation be used.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to the Fran Reich Aquatic Preserve;
3 designating the Site 1 Impoundment project of the
4 Comprehensive Everglades Restoration Plan sponsored by the
5 South Florida Water Management District as the Fran Reich
6 Aquatic Preserve; directing the South Florida Water
7 Management District to erect suitable markers; providing
8 an effective date.
9
10 WHEREAS, Fran Reich founded the West Boca Community Council
11 and proudly served on the council as President, Chairman of the
12 Board, and Chairman Emeritus, and
13 WHEREAS, Fran Reich was a dedicated activist who worked
14 diligently to protect the communities of South Florida and to
15 improve the lives of others, and
16 WHEREAS, Fran Reich successfully led the victory that
17 protected and preserved the Loxahatchee Wildlife Refuge, and
18 WHEREAS, such effort and commitment generated a legacy of
19 community awareness and involvement, NOW, THEREFORE,
20
21 Be It Enacted by the Legislature of the State of Florida:
22
23 Section 1. Fran Reich Aquatic Preserve designated; South
24 Florida Water Management District to erect suitable markers.--
25 (1) The Site 1 Impoundment project of the Comprehensive
26 Everglades Restoration Plan sponsored by the South Florida Water
27 Management District is designated the "Fran Reich Aquatic
28 Preserve."

29 (2) The South Florida Water Management District is
30 directed to erect suitable markers designating the Fran Reich
31 Aquatic Preserve as described in subsection (1).
32 Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 889**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Water & Natural Resources
2 Committee
3 Representative(s) Machek offered the following:
4
5 **Amendment (with title amendments)**
6 On line(s) 23, 27, and 31 remove the word Aquatic
7
8 ========== T I T L E A M E N D M E N T ==========
9 On line(s) 2 and 6 remove the word Aquatic

000000

RAL

HB 923

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 923 Troup-Indiantown Water Control District, Martin County
SPONSOR(S): Machek
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	DiVagno	Hamby
2) Water & Natural Resources Committee		Winker	Lotspeich
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill amends the charter of the Troup-Indiantown Water Control District (District), an independent special district located in Martin County, Florida. The bill amends the legal boundaries of the District to correct an error in the District's charter.

The bill also creates an exception to general law by changing the residency requirements of individuals who sit on the board of supervisors. Under current law, a supervisor must be a resident of a county in which the district is located and own land in the district. The bill changes the requirement so that a supervisor must be a resident of the State of Florida and a citizen of the United States.

The bill would take effect upon becoming law.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2006-07 or 2007-08.

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill may create such an exemption.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Troup-Indiantown Water Control District (District) was re-codified in chapter 2002-366, L.O.F. The re-codification incorporated the general provisions of chapters 189 and 291, F.S., into the District's charter. The District has all powers, functions, and duties of a water control district for revenue-raising, budget preparation and approval, liens and foreclosure of liens, use of tax deeds and certificates, and contractual agreements. The District is comprised of 13,780.68 acres.

Section 298.11(1), F.S., provides that the board of supervisors for a district be composed of three elected individuals who are owners of land in the district and residents of a county in which the district is located. This has been seen as a two part requirement, requiring both ownership and residency. This requirement prevents corporations from serving on the board of supervisors through an officer of the company, unless the officer meets the qualification independently.[1]

Pursuant to Article III, section 11 of the State Constitution, s. 298.76, F.S., provides that there shall be no special or general law of local application granting additional authority, powers, rights, or privileges to any water control district formed under chapter 298, F.S. However, s. 298.76(3), F.S., provides that special or local legislation may be enacted by the Legislature to change the term of office or qualifications of the board of supervisors for a water control district.

Effect of Proposed Changes

The bill removes the land ownership and residency requirements of s. 298.11, F.S., from the District's charter. Instead, the bill requires that a member of the board of supervisors for the District be a resident of the State of Florida and a citizen of the United States. This would enable corporate officers who are citizens of the United States and Florida residents to serve on the board of supervisors for the District.

The bill changes the boundary of the District by adding approximately 960 acres to the Northeast section of the District and deleting approximately 880 acres in the Southwest section of the District at the consent of the landowner.[2] The area being added to the District is currently being taxed by the District, and the area being removed from the District is not taxed by the District.[3]

C. SECTION DIRECTORY:

Section 1: Amends Section1 of chapter 2002-366, Laws of Florida; changes the Troup-Indiantown Water Control District's boundaries.

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[1] Florida Attorney General Opinion 2000-31
[2] Martin County Legislation Delegation, Participation Request Form (2006 Legislative Session).
[3] Estimated Economic Impact Statement

Section 2: Amends Subsection (4) of section 2 of section 1 of chapter 2002-366, Laws of Florida; requires members of the board of supervisors of the Troup-Indiantown Water Control District to be residents of Florida and citizens of the United States.

Section 3: Provides the effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 30, 2005

WHERE? *Stuart News*, St. Lucie and Martin Counties, Florida

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

The economic impact statement suggests that the property being added in the District's boundary change is currently paying and will continue to pay taxes, and the property that is being removed has not and will not pay taxes, indicating there will be no economic impact on the individuals, businesses, or governments in the District.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The boundaries are being changed to correspond with the area that is actually being taxed and serviced by the District. There was a typo made in the legal description in chapter 2002-366, L.O.F., and the proposed changes would correct the problem.[4]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

[4] E-mail from James Watt of Caldwell & Pacetti, March 2, 2006.

1 A bill to be entitled
2 An act relating to the Troup-Indiantown Water Control
3 District, Martin County; amending chapter 2002-366, Laws
4 of Florida; correcting the legal description of the
5 boundaries of the district; revising requirements for
6 membership on the board of supervisors; clarifying
7 applicability of general law; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Section 1 of section 1 of chapter 2002-366,
12 Laws of Florida, is amended to read:
13 Section 1. Status and boundaries of Troup-Indiantown Water
14 Control District.--The Troup-Indiantown Water Control District
15 is hereby declared to be an independent water control district
16 and a public corporation of the State of Florida pursuant to
17 chapter 298, Florida Statutes, as it may be amended from time to
18 time, and the lands lying within the area described as follows
19 in Martin County, Florida, shall hereby constitute the Troup-
20 Indiantown Water Control District:
21
22 Beginning at the southeast corner of Section 28 ~~33~~,
23 Township 39 South, Range 39 East, run thence East with
24 the South line of Section 27 ~~34~~ a distance of 60 feet
25 to a point; run thence North on a line 60 feet East of
26 and parallel to the East lines of Sections ~~33,~~ 28, 21
27 and 16 to a point in the North line of Section 15
28 which is 60 feet East of the Northwest corner of said

29 Section 15; run thence in a straight line to the
30 Northeast corner of Section 9; run thence North
31 ~~Northward~~ with the East line of Section 4 to the
32 Northeast corner thereof; thence run West ~~Westward~~
33 with the North lines of Section 4, 5, and 6 to a point
34 in the North line of Section 6, which is 50 feet East
35 of the Northwest corner of said Section 6; run thence
36 South ~~Southward~~ with a line which is 50 feet East of
37 and parallel to the West lines of Sections 6 and 7 and
38 the North one-half of Section 18 to a point; run
39 thence Southeastward in a straight line to the
40 Northeast corner of Section 30; run thence
41 Southeastward to the Southwest corner of the East one-
42 half of the Southwest one-quarter of Section 29; run
43 thence East ~~Eastward~~ with the South line of Sections
44 28 and ~~Section~~ 29 ~~a distance of 1329.12 feet to the~~
45 ~~Northwest corner of the East one-half of Section 32;~~
46 ~~run thence South with the West line of the East one-~~
47 ~~half of Section 32 a distance of 1675.73 feet to a~~
48 ~~concrete monument which is on the Southwest bank of a~~
49 ~~drainage canal; run thence South 23E 49' 29" East a~~
50 ~~distance of 614.2 feet to a point on the Southwest~~
51 ~~bank of said drainage canal; run thence South 20E 16'~~
52 ~~59" East a distance of 873.6 feet to a point on the~~
53 ~~Southwest bank of said drainage canal; run thence~~
54 ~~South 37E 49' 39" East a distance of 1426.46 feet to a~~
55 ~~point on the Southwest bank of said drainage canal;~~
56 ~~run thence South 42E 05' 24" East a distance of 429.70~~

57 ~~feet to a point on the Southwest bank of said drainage~~
58 ~~canal; run thence South 22E 51' 04" East a distance of~~
59 ~~830.8 feet to a point on the Southwest bank of said~~
60 ~~drainage canal; run thence South 32E 45' 39" East a~~
61 ~~distance of65.38 feet to an intersection point with~~
62 ~~the South line of Section 32, which point is 569.23~~
63 ~~feet West of the Southeast corner of said Section 32;~~
64 ~~run thence East with the South lines of Sections 32~~
65 ~~and 33~~ to the point of beginning.
66
67 and
68
69 Beginning at a point on the South line of the North
70 1/2 of Section 34, Township 39 South, Range 39 East,
71 which point is 60 feet East of the Southwest corner of
72 the North 1/2 of said Section 34, thence run East
73 along the South boundary line of the North 1/2 of
74 Sections 34 and 35 to the Southeast corner of the
75 Northwest 1/4 of Section 35; thence run North along
76 the East boundary line of the West 1/2 of Sections 35,
77 26, 23, 14, ~~and~~ 11, and 2, to the North line of
78 Section 2 ~~11~~; thence run West along the North lines of
79 Sections 2 ~~10~~ and 3 ~~11~~ to the Northwest corner of
80 Section 3 ~~10~~; and thence run South along the West line
81 of Section 3 to the Southwest corner thereof; thence
82 Southward ~~South~~ in a straight line to a point on the
83 South line of Section 10, which point is 60 feet East
84 of the Southwest corner of Section 10; thence run

85 South parallel to 60 feet East of the West lines of
86 Section 15, 22, 27 and 34 to the point of beginning.
87 All of said lands lying and being in Township 34
88 South, Range 39 East.
89
90 ~~and~~
91
92 ~~Beginning at a point on the South line of the North~~
93 ~~1/2 of Section 34, Township 39 South, Range 39 East,~~
94 ~~which point is 60 feet East of the Southwest corner of~~
95 ~~the North 1/2 of said Section 34, thence run East~~
96 ~~along the South boundary line of the North 1/2 of~~
97 ~~Sections 34 and 35, to the Southeast corner of the~~
98 ~~Northwest 1/4 of Section 35; thence run North along~~
99 ~~the North-South quarter-section lines of Section 35,~~
100 ~~26, 23, 14 and 11, to the North line of Section 11;~~
101 ~~thence run West along the North lines of Section 11~~
102 ~~and 10 to the Northwest corner of Section 10; thence~~
103 ~~run South in a straight line to a point in the South~~
104 ~~line of Section 10, which point is 60 feet East of the~~
105 ~~Southwest corner of Section 10; thence run South~~
106 ~~parallel to and 60 feet East of the West lines of~~
107 ~~Sections 15, 22, 27 and 34, to the Point of Beginning.~~
108 ~~All of said lands lying and being in Township 39 S,~~
109 ~~Range 39E.~~
110 Section 2. Subsection (4) of section 2 of section 1 of
111 chapter 2002-366, Laws of Florida, is amended to read:

112 Section 2. Minimum charter requirements.--In accordance
113 with section 189.404(3), Florida Statutes, the following
114 subsections shall constitute the charter of the Troup-Indiantown
115 Water Control District:
116 (4) In accordance with this act and chapters ~~chapter~~ 189
117 and 298, Florida Statutes, to the extent not inconsistent with
118 this act, ~~and section 298.11, Florida Statutes,~~ the district is
119 governed by a three-member board, elected on a one-acre, one-
120 vote basis by the landowners ~~landowner~~ in the district; however,
121 landowners owning less than one acre shall be entitled to one
122 vote. Landowners with more than one acre shall be entitled to
123 one additional vote for any fraction of an acre greater than 1/2
124 acre owned, when all of the landowner's acreage has been
125 aggregated for purposes of voting. Notwithstanding s. 298.11(1),
126 Florida Statutes, members of the board of supervisors do not
127 have to be owners of lands in the district and residents of the
128 county or counties in which the district is located but must be
129 residents of the State of Florida and citizens of the United
130 States. The membership and organization of the board shall be as
131 set forth in this act and chapter 298, Florida Statutes, as they
132 may be amended from time to time, provided this act controls
133 with respect to any inconsistency.
134 Section 3. This act shall take effect upon becoming a law.

Water & Natural Resources Committee

Wednesday March 15, 2006
2:30 p.m.—5:00 p.m.
Reed Hall

ADDENDUM A

Allan G. Bense
Speaker

Donna Clarke
Chair

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Water & Natural Resources
2 Committee
3 Representative(s) Clarke offered the following:
4
5 **Substitute Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7
8 Section 1. Department of Environmental Protection to
9 direct a study.—
10 (1) The department shall contract for a study that
11 evaluates the exposure risk and potential adverse effects of
12 hurricane wind and storm surge on field-erected aboveground
13 storage tank systems (tanks, piping, pumps, and related
14 components) at bulk product facilities, as defined in subsection
15 376.031(3). The study's scope shall include, but need not be
16 limited to:
17 (a) Evaluating the frequency, strength, and probability
18 estimates for hurricane winds and storm surge on those areas of
19 Florida coasts where existing bulk product facilities are
20 located and where new bulk product facilities are likely to be
21 constructed;

22 (b) Evaluating the need and timing for requirements for
23 the establishment of minimum ballast levels for field-erected
24 aboveground storage tanks at bulk product facilities based on
25 the frequency, strength, and probability estimates for hurricane
26 winds and storm surge, and based on levels calculated by a
27 professional engineer specific to each individual field-erected
28 aboveground storage tank, taking into account the type of tank,
29 the type of product stored, tank diameter, tank height, and
30 other relevant factors.
31 (c) Evaluating the need and feasibility for requirements
32 for:
33 1. Professionally engineered permanent anchoring systems
34 for field-erected aboveground storage tanks in high-risk surge
35 zones; and
36 2. Professionally engineered temporary cable tie-down
37 systems that could be pre-constructed or fabricated and retained
38 in storage until needed, that would not interfere with normal
39 daily operations, and that could be set up in advance of an
40 approaching storm.
41 (d) Evaluating the need for potential siting
42 considerations or engineering mitigation that would prevent or
43 limit the installation of new field-erected aboveground storage
44 tank systems at bulk product facilities in areas that are
45 potentially high risk areas for hurricane winds and storm surge
46 unless the systems are designed and engineered to withstand
47 hurricane winds and storm surge.
48 (e) Identifying all current and proposed industry
49 standards for professionally engineered dike-fields surrounding
50 field-erected aboveground storage tanks at bulk product
51 facilities, including standards for materials and designs that
52 will withstand hurricane winds and storm surges yet allow access

53 for emergency fire-fighting vehicles in accordance with industry
54 reference standards contained in National Fire Protection
55 Association (NFPA) 30.
56 (2) The study shall include recommendations for changes,
57 if needed, to aboveground storage tank system laws and agency
58 rules in order to decrease damage from hurricanes and improve
59 recovery of field-erected aboveground storage tank systems after
60 storm damage. All recommendations shall be accompanied by a
61 cost-benefit analysis which shall include an analysis of:
62 (a) The costs for modifying existing field-erected
63 aboveground storage tank systems and dike fields, and the costs
64 associated with new construction of field-erected aboveground
65 storage tank systems and dike fields, to meet any proposed new
66 requirements; and
67 (b) The potential adverse effect on petroleum inventory
68 capacity in Florida resulting from any proposed new
69 requirements. All industry segments with field-erected
70 aboveground storage tanks shall be included in the petroleum
71 inventory capacity analysis (e.g. petroleum, electric utility,
72 etc.).
73 (3) The department shall report the findings and
74 recommendations of the study to the Governor, the President of
75 the Senate, and the Speaker of the House of Representatives by
76 March 1, 2008.
77 Section 2. The Department of Environmental Protection is
78 authorized to use up to $250,000 from the Inland Protection
79 Trust Fund for the 2006-2007 and 2007-2008 fiscal years to pay
80 the expenses of the Study provided for in Section 1.
81 Section 3. The Department of Environmental Protection to
82 review and compile existing data and information relating to

83 environmental risks associated with oil and natural gas
84 exploration and production in the Gulf of Mexico.-
85 (1) The Department of Environmental Protection shall
86 review and compile existing data and information to evaluate the
87 environmental risks from all activities associated with the
88 possible future exploration for and production of oil and
89 natural gas in the eastern Gulf of Mexico currently subject to
90 federal moratoria. The department shall immediately request
91 from the appropriate state agencies and private research
92 institutes all available data and information necessary to
93 complete this task. The appropriate state agencies must submit
94 the data and information to the department at the earliest
95 possible date, and private research institutes are encouraged to
96 submit relevant data and information to the maximum extent
97 practicable. The department's effort shall include data and
98 information available through appropriate federal executive
99 branch agencies. To the maximum extent practicable, the
100 department's efforts shall take into consideration current
101 technologies for controlling discharges from oil and gas
102 exploration rigs and production platforms, and shall include,
103 but need not be limited to:
104 (a) Evaluating the probability of a discharge from oil and
105 gas exploration rigs and production platforms
106 (b) Evaluating the magnitude of any probable discharge
107 from oil and gas exploration rigs and production platforms.
108 (c) Evaluating Gulf of Mexico currents and circulation
109 patterns and the likelihood of any probable discharge reaching
110 Florida's coastal waters and shorelines.
111 (d) Evaluating the environmental impacts of any probable
112 discharge on the fish and wildlife resources in Florida's
113 coastal waters.

114 (2) The department shall present to the Governor, the
115 President of the Senate, and the Speaker of the House of
116 Representatives the results of this task within 120 days after
117 the effective date of this act.
118 Section 4. This act shall take effect upon becoming a law.
119
120 ========== T I T L E A M E N D M E N T ==========
121 Remove the entire title and insert:
122
123 A bill to be entitled
124 An act relating to risks associated with the storage of
125 materials at bulk product facilities and the exploration
126 and production of oil and natural gas in the eastern Gulf
127 of Mexico; directing a study of exposure risk and potential
128 adverse effects of hurricane wind and storm surge on field-
129 erected aboveground storage tank systems at bulk product
130 facilities; providing for an appropriation from the Inland
131 Protection Trust Fund for the 2006-2007 and 2007-2008
132 fiscal years to pay the expenses of the study; directing an
133 evaluation of the risks from all activities associated with
134 the possible future exploration for and production of oil
135 and natural gas in the eastern Gulf of Mexico; providing an
136 effective date.

Bill No. **229**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

Council/Committee hearing bill: Water & Natural Resources Committee

Representative(s) Greenstein offered the following:

Amendment to Substitute Amendment (1) by Representative Clarke

On line 118 insert:

Section 4. Drilling or exploration for oil or natural gas is prohibited within sovereignty submerged lands and within 200 miles waterward of the coastline to the maximum extent allowed by the United States or international law.

[Renumber subsequent sections.]