

**STORAGE NAME:** h1473s1.ric.doc

**DATE:** February 25, 2002

**HOUSE OF REPRESENTATIVES**

**COUNCIL FOR READY INFRASTRUCTURE  
ANALYSIS**

**BILL #:** CS/HB 1473

**RELATING TO:** Protection of Manatees

**SPONSOR(S):** Council for Ready Infrastructure and Representative(s) Harrington & others

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 8 NAYS 5
  - (2) COUNCIL FOR READY INFRASTRUCTURE YEAS 15 NAYS 3
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

The bill provides for the creation of local rule review committees to review and make recommendations on Fish and Wildlife Conservation Commission (FWCC) rules that propose to regulate the operation and speed of motorboats in areas designated as, or proposed for designation as, manatee protection zones or manatee speed zones. The bill provides that county commissions in areas affected by these proposed rules shall appoint a balanced mix of fishers, boaters, environmentalists, and other traditional waterway users to participate in the local rule review committee process, and establishes a timeframe within which the committees shall perform rule reviews.

The bill requires that the FWCC shall initiate a review of all existing rules, beginning on February 1, 2004, to determine continued effectiveness. The FWCC is authorized to develop a rule review schedule to accommodate the staff workload, beginning with rules affecting Brevard County. Local rule review committees are also authorized to participate in the process.

The bill directs that no later than February 15, 2003, the FWCC, working in conjunction with the United States Fish and Wildlife Service, must develop a measurable biological goal that defines manatee recovery. This goal must be used by the FWCC and the local rule review committees to determine the effectiveness of existing and proposed manatee protection rules, and to determine progress in achieving manatee recovery.

The bill takes effect upon becoming a law.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government: The bill does not provide for less government as the bill requires county commissions to appoint members to a local rule review committee, and requires that the counties provide logistical and administrative staff support to the rule review committees. However, by providing for a balance of input from local citizens affected by proposed rules, the bill may provide relief from the administrative rule challenge process, and prevent lawsuits against the agency for failure to provide adequate protection for manatees.

Individual Freedom: The bill does support individual freedom by providing local citizens with the opportunity to participate in the development of rules that will impact their use and enjoyment of state waters.

B. PRESENT SITUATION:

**Florida Manatee (West Indian Manatee species): Trichechus manatus latirostris**

Manatees in Florida are members of the West Indian manatee species, and can be found throughout our rivers, estuaries, and bays. Manatees are warm-blooded and seek refuge from cold temperatures in natural springs, such as Blue Springs on the St. Johns River, and the springs that form the Homosassa and Crystal Rivers on Florida's west coast. Manatees also congregate in man-made sources of warm water such as power plants and other industrial facilities with thermal plumes. The water temperature danger level for manatees is about 55°F.

Manatees breath air and surface about every four minutes, although they are capable of remaining submerged for up to twenty minutes. Manatees average 10 feet in length, about 1200 pounds in weight, and weigh approximately 66 pounds at birth. Two front flippers help manatees gather as much as 200 pounds of seagrass and other aquatic plants per day. Manatees have a wide, paddle-shaped tail, small eyes that can distinguish colors, shapes, and patterns, and ear openings that allow them to hear at low frequencies.<sup>1</sup>

Florida's first manatee protection law was enacted in 1893 and restricted manatee hunting. Additional protections include the federal Marine Mammal Protection Act of 1972 which prohibited the hunting of marine mammals, the federal Endangered Species Act of 1973 which declare manatees as an "endangered species", and the Florida Manatee Sanctuary Act of 1978, which authorized the state to establish and enforce boating restrictions to protect manatee habitat (further discussed below). Aerial surveys conducted by the FWCC show that manatee populations have increased in recent years. In February of 1991, the aerial count was 1,462. In January of 1997, the

---

<sup>1</sup> "Manatees, Florida's Gentle Giants", Sea Stats, June-2001, Florida Marine Research Institute, FWCC

aerial count was 2,229. In March of 1999, the aerial count was 2,353, and in January of 2001, 3,276 manatees were counted in surveys conducted throughout Florida.

However, the number of manatee deaths from water-related incidents, such as collisions with boats and other watercraft, continues to be of concern. In 1990, 47 manatee deaths were attributed to collisions with watercraft. In 1995, there were 42 watercraft-related deaths, and in 2001, the FWCC reported 81 watercraft-related deaths.<sup>2</sup> In 1997, Florida had 755,000 registered recreational vessels, and in 2000, Florida had almost 841,000 registered recreational vessels.<sup>3</sup> Manatee activists point to the high rates of incidences resulting in manatee deaths as proof of the state's failure to provide adequate protections. Boating enthusiasts point to the increasing number of recreational boaters accessing the waters of the state in relation to the number of incidences resulting in manatee deaths as proof that education and law enforcement efforts are working.

### **Marine Mammal Protection Act of 1972 (Federal)**

The Marine Mammal Protection Act (MMPA), enacted in 1972 and reauthorized in 1994, designates manatees as a marine mammal in danger of extinction or depletion due to human activities. The primary purpose of the Act is to prohibit the taking of marine mammals except under certain conditions such as conducting scientific research, or enhancing the recovery or survival of a species. Portions of the Act authorize the "incidental taking" of marine mammals but only upon the condition that such a taking will have a negligible impact upon a species. This "incidental taking" by industries such as development or commercial fishing cannot be intentional.

In circumstances where persons possessing "incidental take" permits are found to have violated the "incidental take" permit, or failed to comply with provisions of the Marine Mammal Protection Act, the Secretary of the Interior is authorized to withdraw or suspend "incidental take" permits, thereby effectively stopping construction of marinas, docks, boating facilities, or any other structure, including single-family homes, where destruction of manatee habitat may result in an "incidental take" of the species.

### **Endangered Species Act of 1973 (Federal)**

The Endangered Species Act (ESA), enacted in 1973 and amended in 1996, designates that species of fish (including marine mammals), wildlife, and plants which are so depleted they are in danger of or threatened with extinction must be conserved. Section 9 of the Act provides that it is illegal for persons to "take" any species, or violate any regulation protecting any species that are designated as threatened or endangered. Section 10 of the Act provides for "incidental take" permits in the same manner as the MMPA, and Section 17 of the ESA provides that no provision of the Act may take precedence over provisions contained in the Marine Mammal Protection Act.

### **Florida Manatee Sanctuary Act – s. 370.12(2), Florida Statutes (Chapter 78-252, L.O.F.)**

The "Florida Manatee Sanctuary Act" was adopted in 1978 and is designed to protect the West Indian manatee ("sea cow") from injury or harm due to the operation and speed of motorboats in the areas specified within the Act. The Act declared that the entire State was a refuge and sanctuary for manatees, and provided that in order to protect manatees from harmful collisions with boats, the Department of Natural Resources (DNR) was to initiate rules under chapter 120, F.S., to establish seasonal speed zones within Lee, Brevard, Indian River, St. Lucie, Palm Beach, Broward, Citrus, Volusia, and Hillsborough counties. Areas affected by the rules included springs, rivers, and power plant discharge areas. The DNR was directed to adopt rules regulating the operation and speed of motorboat traffic for any new power plant, or other new source of warm water discharge, whenever a concentration of manatees were attracted to the area. Responsibility for law enforcement was shared with the Game and Fresh Water Fish Commission.

---

<sup>2</sup> "Manatee Mortality Statistics", 1990-2001, Florida Marine Research Institute, FWCC

<sup>3</sup> Florida Boating Accident Statistical Reports, 1997-2000, Division of Law Enforcement, FWCC

In 1982, the Legislature amended the Florida Manatee Sanctuary Act to provide for seasonal speed zones in Sarasota, Collier, and Martin counties, and added language stating that the Legislature did not intend DNR to generally regulate boat speeds within the areas, thereby interfering with recreational or commercial waterway users. In 1983, the Legislature enacted Chapter 83-81, Laws of Florida, which removed requirements for seasonal speed zones, and provided the DNR with authority to regulate the operation and speed of motorboats in areas on a year-round basis. Additional areas in Manatee and Dade counties were identified, further provisions for Brevard county were added, and the DNR was authorized to adopt manatee protection rules in all areas of the state where manatees were frequently sighted.

Amendments to the Florida Manatee Sanctuary Act in 1984 included an appropriation of \$250,000 from the Motorboat Revolving Trust Fund to fund the DNR's manatee protection efforts. Chapter 84-338, Laws of Florida, also provided that the appropriation could be reduced **when the federal and state governments delisted manatees.**

The last major amendment to the Florida Manatee Sanctuary Act occurred in 1990, when the Legislature enacted chapter 90-219, Laws of Florida. This change was made in response to a DNR recommendation for manatee protection plans for thirteen specific counties, and also recommended the counties develop an Interim Boating Facility Expansion Policy to address marinas with wet slips and dry storage, and boat ramps. The Legislature enacted the CS/SB 760, which among other things, directed DNR to follow chapter 120 procedures when adopting rules for the expansion of existing, or construction of new marine facilities and mooring or docking slips, by the addition or construction of five or more powerboat slips.

### **Manatee Protection Plans**

In June of 1989, the Governor and the Cabinet directed the Department of Natural Resources to develop recommendations for specific actions to protect manatees, and to make the state's waters safe for boaters. These recommendations were presented to the Governor and the Cabinet in October of 1989, and were contained in a report entitled *Recommendations to Improve Boating Safety and Manatee Protection for Florida Waterways*. The DNR report recommended the following actions with relation to manatee protections:

- Establishing shoreline slow speed zones
- Creating new manatee protection zones
- Designating manatee preserves
- Improving speed zone sign posting
- Instituting an Interim Boating Facility Expansion Policy
- Legislative amendments to the Florida Manatee Sanctuary Act
- Education and Information Campaign

The report recommended that in thirteen key manatee protection counties (Brevard, Broward, Citrus, Collier, Dade, Duval, Indian River, Lee, Martin, Palm Beach, St. Lucie, Sarasota and Volusia) shoreline slow speed zones should be established for all inland waters accessible to manatees. The counties would be responsible for posting manatee information signs and speed zone signs at key access points such as marinas, boat ramps, and waterfront parks. Further, the report suggested that county governments develop site-specific manatee protection regulations and recommended a schedule for development of those regulations. To provide an incentive, the report suggested that boundaries for shoreline slow speed zones should be increased if manatee regulations were not in place by the recommended deadline.

The report suggested that the construction of new or expanded boating facilities within the thirteen counties would be limited to a maximum of one powerboat slip per hundred linear feet of shoreline owned or controlled by the permit applicant unless a county had developed and implemented a manatee protection plan approved by DNR and a boating facility siting policy applicable to facilities

with more than five boat slips or expanding to more than five boat slips. DNR's approval of a local ordinance was to be based on a determination that the ordinance did not permit dock densities harmful to manatees, did not allow destruction of essential habitat, and did not allow dock construction in areas used by manatees. Manatee protection plans were to be based on comprehensive manatee mortality, abundance, and distribution data, and interim plans could be developed using the best available information as approved by DNR.<sup>4</sup>

The Governor and the Cabinet adopted the recommendations contained in the report, and the requirement for counties to adopt and implement a manatee protection plan was put in place through the permitting process. **There are no statutory provisions or agency rules requiring the development or implementation of manatee protection plans.**

To date, the FWCC has approved manatee protection plans for Citrus, Collier, Dade, Duval, and Indian River counties.

### **Save the Manatee Club vs US Fish & Wildlife Service – Settlement Agreement**

In January of 2000, Save the Manatee Club and others sued the Army Corps of Engineers (Corps) and the US Fish & Wildlife Service at the Department of the Interior (DOI) for failure to protect manatees under the Marine Mammal Protection Act and the Endangered Species Act. The lawsuit claimed that by authorizing dredge and fill projects, and the construction of boat marinas, DOI and the Corps adversely modified habitat critical to manatees. The lawsuit further claimed that by authorizing the construction of marinas and boat slips, the Corps was responsible for increased boat traffic which resulted in harm to manatees and caused an intentional "taking" of an endangered species, without requiring the projects to apply for an "incidental take permit" under the terms of the MMPA.

In January 2001, the United States District Court ratified a settlement agreement between the Save the Manatee Club and the defendants. The settlement agreement established target dates for completion of manatee protection tasks, including a comprehensive review of current manatee protection areas throughout Florida, and establishing additional areas of protection where necessary, some of which duplicate the areas involved in the lawsuit against the state (discussed below).

However, in October 2001, the plaintiffs in this case served the defendants with a formal notice that the terms of the settlement agreement have been breached by the DOI's failure to adopt a comprehensive network of manatee refuges and sanctuaries as called for in the settlement. The notice further states that the interim management policy adopted by DOI is more harmful than what was agreed to because the federal government is still permitting marinas, docks, and boat slips but is not collecting an impact fee to be assessed against single-family and other dock permit applicants to pay for the implementation of manatee conservation measures.

### **Save the Manatee Club vs FWCC – Settlement Agreement**

In January of 2000, Save the Manatee Club and others sued Dr. Allan Egbert as Executive Director of the FWCC. The lawsuit, also filed in federal court, charged the FWCC with violations of the ESA and the MMPA for failure to provide adequate protection for manatees by allowing motorboats and other watercraft to travel at high speed through manatee habitat. The Save the Manatee Club charged that the FWCC was authorizing the illegal taking of manatees due to the increasing numbers of manatees that were killed, injured, maimed, or harassed by collisions with boats.

In November 2001, the United States District Court entered a settlement agreement that called for protective measures very similar to those required in the settlement with the federal agencies. The

---

<sup>4</sup> "Recommendations to Improve Boating Safety and Manatee Protection for Florida Waterways", Final Report to the Governor and Cabinet, October 24, 1989, Florida Department of Natural Resources

FWCC is required to revise the Brevard County speed zone rules. Upon completion of the Brevard County rules, the FWCC will propose speed zone rules or changes to eight "hot spots" in the state where manatee mortality has been identified as a special problem. These areas include Lemon Bay and the Peace River in Charlotte County, the Alafia River in Hillsborough County, Terra Ceia Bay in Manatee County, portions of the Halifax River in Volusia County, the Jungle Trail Area in Indian River County, the Crossroads Area in Martin County, and the confluence of the Loxahatchee River and the Intracoastal Waterway in Palm Beach County.

At the same time the "hot spot" rules are being developed, the FWCC will prepare a rulemaking proposal to include eight areas as "safe havens" which can include "limited entry" or "no access" restrictions. The areas proposed for the safe havens include the Blue Waters in the Homosassa River in Citrus County, Warm Mineral Springs in Sarasota County, a portion of Turtle Bay in Charlotte County, the Vero Beach Power Plant discharge areas in Indian River County, the Blue Lagoon and Sky Lakes in Dade County, DeLeon Springs in Volusia County, and Pansy Bayou in Sarasota County.

When rules for the eight "hot spots" and eight "safe havens" have been completed, the FWCC will prepare a rulemaking proposal for Tampa Bay, and a rulemaking proposal for six additional safe havens in Hillsborough, Marion, Putnam, St. Lucie and Palm Beach counties. Finally, under the settlement agreement, the FWCC will study boating and manatee conflicts in the Caloosahatchee River and Mullock Creek in Lee County, evaluate existing rules for Lee County and the downtown portions of Duval County, and the Ten Thousand Islands in Collier County. The FWCC must provide enhanced law enforcement statewide, and must specifically increase law enforcement in the Caloosahatchee River.

### **Brevard County**

Brevard County, located on Florida's East Coast, encompasses most of the Indian River Lagoon system that provides a natural forage area for manatees by containing large seagrass beds and other aquatic plants. Brevard County has a large year round and migratory manatee population, and has one of the highest watercraft-related manatee mortality rates in the state. Prior to the settlement agreement, the FWCC was drafting amendments to rules regulating the speed and operation of motorboats within Brevard County. The rules proposed new limits on motorboat speeds that were being calculated to reduce manatee injuries and mortality.

As part of the settlement agreement, the FWCC was required to move forward with revisions to the Brevard County rule. Under the settlement agreement, rule proposals to create eight "hot spots" could not move forward until the Brevard County rule had been adopted, or until final adjudication of any legal challenges to the Brevard rule amendments.

In May of 2001, the FWCC approved the Brevard County amendments with some minor changes, and in June of 2001, the FWCC published a Notice of Change regarding the revised rule in the Florida Administrative Weekly. Administrative challenges to the proposed amendments are currently pending before the State Division of Administrative Hearings, and the amended rule cannot be finally adopted or implemented until those challenges are resolved.

The FWCC is moving forward with proposals to develop rules for the eight "hot spots" as listed in the settlement agreement pending resolution of the Brevard rule challenge by the administrative law judge.

#### **C. EFFECT OF PROPOSED CHANGES:**

The bill provides the following:

### **Rule Review Committee**

- County commissions of counties affected by proposed rules must appoint local rule review committees consisting of a balance of fishers, boaters, environmentalist, water skiers, and other traditional water users.
- Existing advisory groups may function as local rule review committees so long as a balance of interests is maintained.
- Authorizes other state, federal, county, municipal, or local agency representatives to participate in the local rule review committee as nonvoting members.
- Requires that the counties provide staff support to the local rule review committees.

### **Rule Review Process**

- Proposed rules of the FCC must be submitted to counties where the rules will take effect for review by local rule review committees.
- Provides that local rule review committees will have sixty days from receipt of a draft rule and the supporting data to review the draft rule and submit a written report to FWCC members and staff (**rule development process**).
- Requires that the FWCC respond in writing to a local rule review committee report.
- Provides for majority and minority opinions of local rule review committee reports.
- Provides that local rule review committees must conduct a review of a proposed rule and submit a written report to the FWCC (**rulemaking process**).
- Requires the FWCC members to fully consider timely submitted local rule review committee written reports, and provides that written reports are part of the rulemaking record.
- Authorizes review of existing manatee protection zone and speed zone rules by the FWCC beginning February 1, 2004.
- Provides for a rule review schedule established by the FWCC but beginning with Brevard County.
- Authorizes a delay in review of existing rules when a rule challenge is filed for up to 18 months or until a rule challenge is resolved, whichever occurs first.

### **Other Issues**

- Provides that the FWCC will regulate the operation and speed of motorboats only in areas where manatee sightings are frequent, and the best available science justifies the conclusion that manatees inhabit these areas on a frequent basis.
- Establishes the Legislature's intent that the FWCC may establish access lanes or corridors in areas where such lanes or corridors are consistent with manatee protection and recovery goals.
- Authorizes local governments to adopt ordinances regulating motorboat speed and operation within jurisdictional waters only when the best available science justifies the conclusion that manatees inhabit those waters on a regular or continuous basis.
- Requires that no later than February 15, 2003, the FWCC (in conjunction with US Fish & Wildlife Service) must develop a measurable biological goal that defines manatee recovery.
- Establishes the Legislature's intent that provisions of the bill may not be retroactively applied.

#### D. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Amends subsection (2) of s. 370.12, F.S., to create a new paragraph (f) which takes effect June 15, 2002. Provides that rules of the FWCC proposing to govern the speed and operation of motorboats for purposes of manatee protection must be submitted to the counties where the rules will take effect for review by local rule review committees. Provides that no less than 60 days prior to filing a notice of rule development, the FWCC must notify the affected counties that a rule is being proposed.

Requires the counties to establish local rule review committees, and provides that several counties can combine local rule review committees. Provides that the county commission of each affected

county shall designate the members of the local rule review committee, and provides for a balance of fishers, boaters, environmentalists, water skiers, and other traditional waterway users. Provides that existing manatee advisory committees can be local rule review committees if a balance of membership is established. Authorizes the counties to invite other state, federal, county, municipal, or local agency representatives to participate in the local rule review committee as non-voting members. Requires the counties to provide logistical and administrative staff support to the local rule review committee. Authorizes the local rule review committee to elect a chair and a recording secretary from among the voting members.

Requires staff of the FWCC to submit a draft rule and the supporting data used to develop the draft rule to the local rule review committee. Provides that the local rule review committee will have 60 days from receipt of the draft rule and the supporting data to submit a written report to the FWCC members and staff. Provides that the written report may contain any local rule review committee recommendations for changes to the proposed rule, including a recommendation that no change be made, or that no rule be adopted.

Provides that prior to filing a Notice of Proposed Rulemaking, the FWCC staff shall provide a written response to the local rule review committee reports to the appropriate counties, and to FWCC members. Provides that when reviewing a proposed manatee protection rule, the local rule review committee can consider factors such as the use of the best available science, to balance manatee protection and public access to and the use of state waters.

Provides that all local rule review committee written reports must contain a majority opinion. Provides that local rule review committee written reports must contain a minority opinion, if the majority opinion is not unanimous. Requires FWCC members to fully consider all timely submitted local rule review committee reports prior to authorizing FWCC staff to move forward with proposed rulemaking, and prior to final rule adoption. Provides that the local rule review committee reports, and the FWCC staff written responses are part of the rulemaking record.

Renumbers existing paragraph (f) as paragraph (g). Clarifies the FWCC's authority to provide comments to agencies that permit the expansion of or construction of new marine facilities, and mooring or docking slips. Clarifies that the FWCC will adopt rules under Chapter 120, Florida Statutes, to regulate the operation and speed of motorboat traffic in specified areas only where manatee sightings are frequent, and the best available science justifies the conclusion that manatee inhabit these areas on a regular or continuous basis.

Creates a new paragraph (j) to require that beginning February 1, 2004, FWCC staff shall initiate a review of all currently existing manatee protection zone and manatee speed zone rules, including those that are considered "no access" or "limited entry" rules. Provides that all rules reviewed under this provision must also be reviewed by local rule review committees using procedures set forth above. Authorizes the FWCC to establish a rule review schedule and requires that the first county to be reviewed is Brevard County. Provides that each year, at least two counties shall be reviewed until all rules in all counties have been reviewed. Provides that the rule review schedule may be accelerated at the discretion of the FWCC staff. Provides that in the event of a rule challenge, the rule review schedule can be delayed for up to 18 months or until a rule challenge is resolved, whichever occurs first.

Establishes the Legislature's intent that the FWCC's regulation of boat speeds within state waters shall not unduly interfere with the rights of fishers, boaters, and other traditional waterway users, who access state waters for recreational and commercial purposes. Further establishes the Legislature's intent that the FWCC may provide for access lanes and corridors in areas where such access lanes and corridors are consistent with manatee protection and recovery goals.



Provides that local governments adopt ordinances to regulate the operation and speed of motorboats within waters under their jurisdiction, only when the best available science justifies the conclusion that manatees inhabit those waters on a regular or continuous basis. Provides that local ordinances may not take effect until the FWCC has reviewed and approved those ordinances using the best available science to justify the ordinance.

Creates new paragraph (t) to require that no later than February 15, 2003, the FWCC, working in conjunction with the US Fish & Wildlife Service, must develop a measurable biological goal that defines manatee recovery. Requires the FWCC to use the measurable biological goal when developing manatee management plans and work plans. Provides that the FWCC and local rule review committees must use the measurable biological goal when evaluating the effectiveness of existing and proposed manatee rules, and in determining the progress in achieving manatee recovery.

**Section 2.** Amends s. 327.41, F.S., to correct a cross-reference.

**Section 3.** Establishes the Legislature's intent that the provisions of the bill may not be retroactively applied to manatee protection rules existing on the effective date of the act. Exempts proposed rules for Brevard County from the provisions of the act unless a court or administrative hearing office finds the proposed rules invalid.

**Section 4.** Provides that the bill will take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The FWCC may see an expenditure of funds for staff to participate in the local rule review process. However, the sponsor of the bill believes that the FWCC may see some savings if administrative challenges to rules of the agency are reduced.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

Local governments are required to expend funds to provide logistic and administrative support to the local rule review committees. However, local governments may be authorized to use funds from boating improvement grants or manatee education grants for these purposes.

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

The private sector may see some economic benefit from the provisions of the bill. By requiring a balance of local citizens to participate in the rule development and review process from the start, it is possible that administrative challenges to the rules will decrease.

D. FISCAL COMMENTS:

None.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require municipalities or counties to spend money or to take action that requires a significant expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax revenues shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The Legislature's ability to statutorily delegate manatee regulation to the FWCC is the subject of a lawsuit filed immediately after the merger of the Game & Fresh Water Fish Commission with the Marine Fisheries Commission in 1999. Although the Florida First District Court of Appeals ruled that the Legislature's statutory delegation of authority over manatees to the FWCC was constitutional, that decision has been appealed to the Florida Supreme Court. The Supreme Court has not rendered a decision to hear arguments in the case, or confirm the District Court ruling. (See Caribbean Conservation Corporation, Inc., and Save the Manatee Club, Inc. v FWCC - Trial Court No. 99-4188. FWCC, Appellant v CCC, Inc., et al, Appellees - Case No. 1D00-1389 & 1D00-1804)

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 13, 2002, the members of the Natural Resources & Environmental Protection adopted a series of thirteen amendments that are traveling with the bill. Major provisions of the amendments include the following:

- Brevard County, currently the subject of a challenge to a rule proposed pursuant to the federal settlement agreement, is exempt from the provisions of the bill until February of 2004 unless the proposed rule is declared invalid.
- Areas proposed under the state settlement agreement as potential sites for "hot spots" or "speed zones," and currently in rule development, are exempt from the provisions of the bill unless the FWCC is not authorized to move forward with rulemaking.

- Persons filing rule challenges may submit a rule review committee report as evidence in that proceeding.
- Clarification that existing manatee rules are exempt from the provisions of the bill unless the FWCC proposes changes or revisions to those rules.
- The FWCC is authorized to look at available studies of food sources and water depths as part of the “best available science” criteria of the bill.

On February 21, 2002, the Council for Ready Infrastructure adopted a “strike-everything” amendment to HB 1473 that incorporated all of the amendments adopted by the Natural Resources & Environmental Protection Committee. The “strike-everything” amendment made the following changes and the bill was moved as a council substitute.

- Clarified the FWCC’s authority to provide comments to agencies that permit the expansion or construction of new marine facilities.
- Clarified the FWCC’s authority to adopt rules under Chapter 120 to regulate the operation and speed of motorboats in manatee protection areas.

VI. SIGNATURES:

COMMITTEE ON HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

Karon A. Molloy

Wayne S. Kiger

AS REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

Council Director:

C. Scott Jenkins

Thomas J. Randle