

**STORAGE NAME:** h3331a.wrm

**DATE:** March 5, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
WATER & RESOURCE MANAGEMENT  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 3331

**RELATING TO:** Organic Material Removal

**SPONSOR(S):** Representative Argenziano

**COMPANION BILL(S):** SB 530(i)

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

- (1) WATER AND RESOURCE MANAGEMENT YEAS 3 NAYS 4
  - (2)
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

HB 3331 would have provided a permit exemption for persons who remove, under certain conditions, decayed leaves, roots and other unconsolidated organic detrital matter from waterbodies adjacent to their property.

The conditions included a limit on how far from shore a property owner may dredge the materials, requirements on disposing the material so that it does not wash back into the waterbody, and replanting a certain percentage of native, non-nuisance aquatic plants incidentally removed through the dredging.

While the property owner would not have been required to obtain an environmental resource permit (ERP) from the Department of Environmental Protection or a water management district, he or she still would have needed a federal dredging permit.

The fiscal impact of HB 3331 was indeterminate, but likely insignificant.

HB 3331 would have taken effect upon becoming a law.

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## II. SUBSTANTIVE RESEARCH:

### A. PRESENT SITUATION:

Most dredging and filling activities in wetlands and surface waters must be approved in advance by DEP or the WMDs, which issue environmental resource permits (or ERPs) stating the conditions under which the activities will be allowed. In many cases, these activities also require a federal Clean Water Act - Section 404 permit.

Section 403.813, F.S., lists 18 activities that are exempt from ERP requirements. Among these exempted activities are:

- ▶ Installation of pilings, as well as repairs and maintenance, for certain docks and piers;
- ▶ Installation and maintenance of certain boat ramps;
- ▶ Maintenance dredging of certain existing manmade canals, channels, and intake and discharge structures;
- ▶ Maintenance of existing mosquito control structures;
- ▶ Construction of certain types of seawalls;
- ▶ Replacement or repair of underwater transmission and distribution lines laid on, or embedded in, waters of the state; and
- ▶ The removal of aquatic plants, tussocks and associated removal of organic matter when such activities are authorized through either an aquatic plant management permit or exemption granted under s. 369.20, F.S., or s. 369.25, F.S.

The latter exemption was adopted by the Legislature in 1996, and clarified in 1997, to streamline the permitting process for property owners and governmental entities wanting to remove nuisance aquatic plants and associated detrital matter from lakes. This ERP exemption is allowable as long as the following conditions are met: organic material that exists on the surface of the natural mineral soils is removed to a depth of 3 feet or only to the soils, whichever is less; all organic material removed must be deposited on an upland site in a manner to prevent it from washing back into the water (with an exception for the GFC and other agencies who are permitted to create wildlife islands from the spoil); and the activities must be performed in a manner consistent with state water quality standards. The 1997 legislation (Chapter 97-22, Laws of Florida, formerly CS/HB 57) also created an aquatic permit control permit exemption under s. 369.20, F.S. In certain freshwater waterbodies, a riparian property owner is able to physically or mechanically remove herbaceous and semi-woody herbaceous aquatic plants in an area equal to either 50 percent of his frontage or 50 feet, whichever is less, and a sufficient distance waterward and perpendicular to the property owner's shoreline, to create a corridor to open water. The permit exemption is not available to property owners living along aquatic preserves, Outstanding Florida Waters, or saltwater bodies. Nor does it apply to property owners who want to use herbicides to kill the aquatic plants, or who need an ERP for other regulated dredging activities.

Again, the 1997 legislation was intended to streamline the state permitting process for lakefront property owners wanting to remove nuisance aquatic plants and the dead leaves, roots and other detritus associated with them. It did not remove the need for lakefront property owners to contact the U.S. Army Corps of Engineers before commencing their projects, to determine if they still were required to obtain a federal 404 dredge-and-fill permit. Depending on the amount of detritus to be dredged, the project could qualify for different types of Corps permits. For example, a project could qualify for inclusion under the Corps "nationwide permit" that automatically allows the excavation of 10 to 15 cubic yards of submerged material. Bigger projects would need to be reviewed under a "state programmatic general permit," where the Corps has delegated to DEP the authority to approve certain dredging and filling activities. Projects requiring extensive dredging and filling of wetlands or submerged lands would have to go through the 404 permitting process.

Shortly after the passage of the 1997 legislation, property owners along Lake Rousseau learned that the exemptions from needing an ERP and an aquatic plant management permit probably would not apply to their plans to dredge muck and organic detrital matter that has collected adjacent to their property and docks. The property owners had wanted to piggy-back their dredging projects with DEP's plan last autumn to draw down the lake to kill aquatic weeds and to remove stumps. However, Lake Rousseau is an Outstanding Florida Water (even though it is man-made), and thus adjacent property owners are ineligible for the aquatic plant management permit exemption. Even with an aquatic plant management permit, the property owners still might not qualify for the ERP exemption in s. 403.813(2)(r), F.S., if they wanted to remove more organic matter than allowed.

Staff of the permitting agencies met with Lake Rousseau property owners to work through the permitting issues, but not all of the property owners were satisfied with the results.

**B. EFFECT OF PROPOSED CHANGES:**

HB 3331 would allow a property owner to remove from lakes and other types of waterbodies unconsolidated organic detrital that is adjacent to his or her property under the following conditions:

- ▶ The material may be removed from the waterbody out to a distance of 150 feet, measured perpendicularly from the "fractal mean shoreline" of the property;
- ▶ The removed material shall be disposed of or contained in an upland site and shall not be allowed to re-enter the waterbody;
- ▶ Property owners, in the course of removing the material, have the "right" to also remove non-indigenous, nuisance or invasive aquatic plants;
- ▶ The incidental removal of native, non-nuisance, non-invasive plants and animals during the process of dredging the material shall result in the property owner replanting 25 percent (by mass) of the removed plants.

- ▶ The removal of inorganic bottom material, regardless of whether it contains organic matter, is not allowed under this exemption.

The net effect of HB 3331 may be the creation of several unintended consequences. First, the broad exemption in the proposed s. 403.813(2)(s), F.S., seems to conflict with, or even obviate, the existing exemption in s. 403.813(2)(r), F.S. Second, by not limiting the property owner to removing only the organic detrital matter that is within his frontage on the waterbody, he conceivably could remove material that while adjacent to his land, is part of his neighbor's frontage, thus violating the neighbor's riparian rights. Also, allowing the removal of the material out to a distance of 150 feet also may create the same conflict with property owners on the opposite shore.

The bill also would introduce the concept of mitigation -- replanting 25 percent of the incidentally removed plant biota -- into an activity that is exempt from needing a permit. There also are the questions of who would determine what type of biota to replant, and why mitigate for the lost plant life, but not the animal life.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

To the extent that persons who now need an environmental resource permit to conduct these dredging activities wouldn't if HB 3331 becomes law, DEP and the water management districts would receive less in permit fee revenue. It is difficult even to estimate the amount of revenue loss, since ERPs can not currently be tracked based on the specific activity they authorize. The revenue loss is likely to be minimal, however.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

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3. Personal Responsibility:

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes, to the extent that HB 3331 gives waterfront property owners the ability to exercise more options to remove unconsolidated organic detrital matter without needing an environmental resource permit. However, an unintended consequence of the bill may be conflicts between waterfront property owners who want to exercise their right to the exemption, and their neighbors who feel their property rights have been violated.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

Not applicable.

D. STATUTE(S) AFFECTED:

Section 403.813, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 403.813, F.S., to add a new exemption from needing an environmental resource permit, or ERP. Lists conditions under which a waterfront property owner could remove unconsolidated organic detrital matter.

Section 2: Provides that this act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Passage of HB 3331 would result in an indeterminate loss of revenue from ERP fees, but that loss likely would be minimal.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Not applicable.

2. Recurring Effects:

Indeterminate. Some local governments are waterfront property owners, and thus in the event they wanted to take advantage of the exemption would not have to pay ERP fees. The savings is likely insignificant.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Eligible riparian property owners would benefit from not having to bear the costs associated with obtaining ERPs to remove unconsolidated organic detrital matter from adjacent waterbodies. The savings are difficult to calculate at this time.

3. Effects on Competition, Private Enterprise and Employment Markets:

Not applicable.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to a research discussion of HB 3331 because the bill does not require cities or counties to spend funds or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

V. COMMENTS:

In addition to the possible unintended consequences of HB 3331, as discussed in Section II.B. above, there are several words and phrases in the bill which should be defined, such as "fractal mean shoreline," "biota" and "unconsolidated organic detrital matter." The definitions would help property owners and the enforcing agencies clearly understand the proposed new law.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 5, 1998, the Committee on Water and Resource Management adopted by voice vote a strike-everything-after-the-enacting-clause amendment and an amendment to the amendment. Key provisions of the strike-everything amendment were:

- \* A riparian property owner would have been allowed to dredge muck up to 100 feet or to the boundary of any other riparian owner's interest, whichever is less, waterward from and perpendicular to riparian owner's shoreline, without needing an ERP. The original bill had a distance of 150 feet.
- \* Allowed the riparian owner to remove aquatic vegetation, except for certain species of mangroves and cypress, without needing an aquatic plant management permit. The property owner, however, would have had to replant 10 percent, by mass, of the vegetation removed by the muck-dredging. In the original bill, there were no exemptions for cypress or mangrove, and the mitigation replanting requirement was 25 percent of the removed vegetation.
- \* Created a threshold below which the use of certain sized draglines and other dredging equipment would have been allowed for use. The original bill had referenced an obsolete statute containing identical language.

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- \* Defined, for the purposes of this bill, "bodies of water" as meaning fresh, marine or brackish. As mentioned above, the original bill had referenced an obsolete statutes containing identical language.
- \* Prohibited DEP from adopting rules to implement this exemption. This change clarified the sponsor's original intent.

The amendment to the amendment would have deleted from s. 369.20(8), F.S. references to Outstanding Florida Waters(OFWs). This section of law, adopted in 1997, creates an exemption from needing an aquatic plant management permit, under certain conditions, to remove aquatic vegetation in freshwater bodies. The exemption is not available to property owners along aquatic preserves or OFWs. The amendment was in response to the fact that there an estimated 300 OFWs, including artificially created waterbodies such as Lake Rousseau.

After the bill was amended, the committee voted 3-4 against the bill. Thus, HB 3331 was reported unfavorable.

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Legislative Research Director:

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Joyce Pugh

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