

STORAGE NAME: h0763z.ep
DATE: May 22, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
FINAL ANALYSIS**

BILL #: HB 763

RELATING TO: Outer Continental Shelf Support Activities Permit

SPONSOR(S): Representative Ritchie

TIED BILL(S):

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

- (1) ENVIRONMENTAL PROTECTION
 - (2) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
 - (3) FINANCE & TAXATION
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

This bill provides that no person is to offer support to anyone conducting activities permitted under the Continental Shelf Lands Act, unless that person first obtains an outer continental shelf activity support permit from the Board of Trustees of the Internal Improvement Trust Fund.

Under this bill, the Board of Trustees is to issue a permit if: the applicant submits an application along with a \$1,500 application fee to the board; the board determines that the activities supported will not threaten marine, aquatic or estuarine resources of the state; the activities supported will have a net positive impact on the state's resources; and the activities supported are in the public interest.

Lastly, this bill provides that the support permit is to be valid for 1 year and the applicant is subject to a \$1,000 renewal fee.

This bill does have indeterminate fiscal revenue impacts.

(On March 14, 2000, HB 763 failed to pass the Committee on Environmental Protection by a vote of 3 YEAS 12 NAYS and was laid on the table. On March 16, 2000, the senate companion, SB 1392, was withdrawn from further consideration.)

II. 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 type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

This bill purports to create a new government requirement by requiring an individual to obtain a permit in order to support activities federally permitted in the outer continental shelf (OSC). Such support activities are currently lawful and presently a permit is not required.

B. PRESENT SITUATION:

Florida's jurisdiction extends into the Gulf of Mexico roughly 9 miles off of Florida's coast. The outer continental shelf is the seabed that exists beyond Florida's jurisdiction. Therefore, the OCS is under the jurisdiction and control of the United States. The term "outer continental shelf" is defined as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters ... and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control" OCS Lands Act (43 U.S.C. 1331(a)).

The United States divided the OCS into four regions, the: Gulf of Mexico; Atlantic; Pacific and Alaska OCS Regions. In 1953, Congress amended the Outer Continental Shelf Act Lands Act (Act), 43 U.S.C. 1331, as amended, and directed the Secretary of Interior to govern and administer mineral exploration and development of the entire OCS, including the Gulf of Mexico and Atlantic Regions. This Act directs the Secretary to:

- conserve the Nation's natural resources;
- develop natural gas and oil reserves in an orderly and timely manner;
- make resources available to meet the energy needs of the country;
- balance resource development with human, marine, and coastal environments; and
- ensure the public a fair and equitable return on the resources of the OCS.

This Act empowers the Secretary of Interior to grant leases to the highest qualified bidder on the basis of sealed competitive bids and formulate regulations to carry out the provisions of the Act. This Act also provides guidelines for carrying out the OCS gas and oil development program.

Presently, various corporations and individuals provide a vast array of support to the activities permitted under the Outer Continental Shelf Lands Act, as amended. Support is given in the form of port facilities, construction materials, drills, pipes etc.

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Presently there is not a permit requirement for Florida corporations and/or individuals to conduct such support activities.

C. EFFECT OF PROPOSED CHANGES:

This bill would create a system of gatekeeping as to who can provide support to federally permitted activities in the outer continental shelf contingent upon showing evidence that their support will not threaten marine life; would have a positive effect on marine, aquatic and estuarine resources of this state; and is in the public interest. Without such evidence, a permit will not be issued. In addition to satisfying certain requirements, these persons would also be required to submit a \$1,500 application fee to the board of trustees. This fee would generate some revenue to the state of Florida, although it is unknown at this time how many permits would be issued, therefore the amount of revenue that would be generated is indeterminate. This bill would filter out certain support activities that may harm the resources of this state and generate minimal revenue for the state.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate.

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private individuals or corporations would incur an initial \$1,500 fee and \$1,000 fee annually thereafter to engage in business that supports certain federally permitted activities.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill provides that “no person” shall provide support federally permitted activities under the Outer Continental Shelf Lands Act without first obtaining a permit from the states of Florida. However, this terminology raises three separate constitutional concerns:

First, this bill requires any person to obtain a permit prior to placing goods into federal interstream commerce which may place an unreasonable burden upon individuals and corporations, in violation of the interstate commerce clause. Art. 1, §8, U.S. Const.

Second, the terminology “no person” does not specify whether this includes, or is limited to Florida corporations, private groups, not-for-profit corporations, corporations outside Florida that provide supplies, private persons outside Florida, etc., therefore the intended person may not be on notice of his or her due process rights and permitting requirements in violation of the vagueness doctrine. Art.1, S. 14, U.S. Const.

Third, this statute requires a permit to supply materials which are to be used in federal territorial waters and such activities are already permitted and regulated by the Outer Continental Shelf Act, among other federal acts, and therefore, any federal regulation would pre-empt this Florida law under the Supremacy Clause. Art. VI, U.S. Const.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

1. This bill states that the applicant is to submit an application “along with a \$1,500 application fee”, and \$1,000 fee annually thereafter, however, is not clear as to which fund this revenue is to be deposited into, nor for what purpose this revenue is to be used.
2. This bill states that the board of trustees is to determine whether the applicant’s activity “will not threaten marine, aquatic, or estuarine resources of the state,” however, does not set forth a standard or test to measure what “threatens” and does not “threaten” the resources of this state.
3. This bill states that the board of trustees is to determine whether the applicant’s activity “will have a net positive impact” on this state’s resources, however, does not set forth a standard or test to measure “net positive impact”.
4. This bill allows for a permit and then a renewal permit to be issued, however, does not set forth a permitting process to be used by the board of trustees nor does it grant the board the authority to develop or adopt such a process.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON ENVIRONMENTAL PROTECTION:

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