

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 806

SPONSOR: Senator Laurent

SUBJECT: Aquaculture

DATE: March 8, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>NR</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Since 1996, the Legislature has implemented legislation to streamline the application and permitting procedures for aquaculture activities. This committee substitute further “fine-tunes” these efforts. It:

- Enables the Department of Agriculture and Consumer Services to assume the duties for issuing aquaculture leases by transferring the regulation and licensing of aquaculture from various chapters throughout the statutes to chapter 597.
- Authorizes the department to perform the duties and functions relating to aquaculture lease applications for board of trustees-owned submerged lands.
- Provides for fees collected for aquaculture leases to be deposited into the General Inspection Trust Fund rather than the Marine Resources Conservation Trust Fund.
- Increases the per acre lease surcharge from \$5 to \$10 per annum, beginning January 1, 2001.
- Requires forty percent of the registration fees from commercial vessels to be transferred on a monthly basis by the Department of Highway Safety and Motor Vehicles to the General Inspection Trust Fund to be used for shellfish and aquaculture law enforcement and quality control programs.
- Requires twenty-five percent of licensing revenue be deposited into the Florida Saltwater Products Promotion Trust Fund on a monthly basis to provide marketing and extension services.
- Requires first-time applicants of an Apalachicola Bay oyster harvesting license to attend an educational seminar which covers topics such as oyster biology, sanitary care of oysters, conservation of the Apalachicola Bay, small business management, and water safety.

- Creates the position of Director within the Division of Aquaculture.
- Revises regulation of noncultured shellfish harvesting. Authorizes the Fish and Wildlife Conservation Commission to adopt rules relating to noncultured shellfish harvesting seasons in Apalachicola Bay. Directs the commission to protect the environment and natural resources from improper transport, deployment, and operation of a dredge or scrape. Provides penalties for violations.
- Reallocates the distribution of fees for alligator egg collection permits and alligator hide validation tags to ensure that a portion of those fees are deposited into the General Inspection Trust Fund to provide marketing and education services for alligator products produced in the state.

This bill amends sections 253.002, 253.01, 253.67, 253.71, 253.72, 270.22, 328.76, 370.06, 370.07, 370.071, 370.16, 370.161, 370.26, 372.071, 372.6673, 372.6674, 373.046, 403.814, 409.2598, 500.03, 570.18, 570.29, 597.003, 597.004, 597.0041, 597.005, and 597.006, Florida Statutes.

This bill creates sections 570.61, 570.62, and 597.010, Florida Statutes.

This bill repeals section 370.16(1)(2)(3)(4)(5)(6)(7)(8)(9)(10)(11)(13)(16)(17)(19)(22)(24)(25)(26)(27), Florida Statutes.

II. Present Situation:

Florida's climate, water resources, and investment pool give the state the potential to be a world leader in aquaculture. In spite of these advantages, the aquaculture industry has faced significant developmental problems due to a number of factors such as the need to comply with the complex regulatory requirements of several agencies, lack of technical skills training for potential aquaculture operators, and the fact that aquaculture was not considered agriculture. Changes implemented by the Legislature since 1996 have been significant, creating a more progressive attitude and many new opportunities for aquaculture.

In 1998, the Florida Legislature transferred regulatory authority for aquaculture to the Department of Agriculture and Consumer Services (department), with the exception of those areas required by federal law, rule or cooperative agreement to be regulated by another agency. To further facilitate the development of aquaculture in the state, the next year the Legislature created the Division of Aquaculture within the department. The new division has been coordinating the regulatory activities of the Bureau of Marine Resource Regulation and Development, previously in the Department of Environmental Protection, and the Aquaculture Certificate of Registration Program to create a one-stop office for those involved in aquaculture. Further legislation is needed to "fine-tune" those efforts and to redesignate the deposit of revenues from other trust funds to the General Inspection Trust Fund to sustain the aquaculture industry .

III. Effect of Proposed Changes:

Section 1. Amends s. 253.002, F.S., to authorize the Department of Agriculture and Consumer Services (department) to perform the staff duties and functions related to the leasing of board of trustees-owned submerged lands. Authorizes the department to take final agency action on behalf of the board of trustees on leases pursuant to ss. 253.67-253.75 and s. 597.010, F.S. Requires the department to provide notice to the Department of Environmental Protection when an aquaculture lease is issued.

Section 2. Amends s. 253.01, F.S., to require aquaculture lease fees to be deposited into the General Inspection Trust Fund of the Department of Agriculture and Consumer Services.

Section 3. Amends s. 253.67, F.S., to revise the definition of “department” to mean the Department of Agriculture and Consumer Services instead of the Department of Environmental Protection.

Section 4. Amends s. 253.71, F.S., to increase the lease contract surcharge from \$5 to \$10 per acre, or any fraction of an acre, per annum starting January 1, 2001. Revises the performance requirements for effective cultivation to reflect the business plan provided for in the lease contract.

Section 5. Amends s. 253.72, F.S., to require lessees to stake off and mark areas under lease according to the conditions of the lease agreement and rules of the board. Corrects a cross-reference.

Section 6. Amends s. 270.22, F.S., to require rental fees for aquaculture leases to be deposited into the General Inspection Trust Fund of the Department of Agriculture and Consumer Services.

Section 7. Amends s. 328.76, F.S., to require forty percent of the registration fees from commercial vessels to be transferred by the Department of Highway Safety and Motor Vehicles, on a monthly basis, to the General Inspection Trust Fund. Provides for such funds to be used for shellfish and aquaculture law enforcement and quality control programs. Clarifies that, on a monthly basis, twenty-five percent of the funds collected shall be transferred to the Florida Saltwater Products Promotion Trust Fund within the Department of Agriculture and Consumer Services to provide marketing and extension services.

Section 8. Amends s. 370.06, F.S., to delete the department’s authority to issue special activity licenses for the harvest or cultivation of oysters, clams, mussels, and crabs when the activities relate to quality control, sanitation, public health regulations, innovative technologies, or the protection of shellfish resources. Requires first-time applicants for an Apalachicola Bay oyster harvesting license to attend an educational seminar regarding oyster biology and sanitation, small business management, and water safety.

Section 9. Amends s. 370.07, F.S., to require the Department of Revenue to transfer the Apalachicola Bay oyster surcharge to the General Inspection Trust Fund of the Department of Agriculture and Consumer Services rather than the Marine Resources Conservation Trust Fund of

the Department of Environmental Protection. Transfers responsibility from the Department of Environmental Protection to the Department of Agriculture and Consumer Services for supplying the Department of Revenue with a current list of wholesale dealers in the state.

Section 10. Amends s. 370.16, F.S., to revise the regulation of noncultured shellfish harvesting. Repeals language relating to regulation and enforcement of oyster and shellfish leases by the Department of Environmental Protection. Deletes the Department of Environmental Protection's responsibility to improve, enlarge, and protect the natural oyster and clam reefs of the state. Authorizes the Fish and Wildlife Conservation Commission to adopt rules relating to noncultured shellfish harvesting seasons in Apalachicola Bay. Removes dates previously designated for noncultured shellfish harvesting and dates the bay must be closed for the purpose of oyster relaying and transplanting and shell planting. Includes the Department of Agriculture and Consumer Services in monitoring the impact of new harvesting schedules on the bay and on local shellfish harvesters in the event that the commission changes the schedules by rule. Deletes language relating to special activity licenses for the harvest of shellfish by mechanical means. Deletes language requiring notification of the commission when a leaseholder plans to use a dredge or scrape on a lease. Deletes language that limits the number of dredges or scrapes to be operated on a lease at a time. Directs the commission to apply other statutes, rules, or conditions necessary to protect the environment and natural resources from improper transport, deployment, and operation of a dredge or scrape. Provides penalties for violations. Requires persons dealing in shellfish harvested from public reefs or beds to keep a record of items purchased, used, or handled, as well as other information. Requires vessels used for harvesting, gathering or transporting noncultured shellfish to be constructed and maintained to prevent contamination of oysters. Deletes a definition for "commercial use."

Section 11. Amends s. 370.161, F.S., to correct a cross-reference.

Section 12. Amends s. 372.071, F.S., to expand the arrest powers of law enforcement officers for the Department of Environmental Protection and the Fish and Wildlife Conservation Commission.

Section 13. Amends s. 372.6673, F.S., to reduce the alligator egg collection permit fee from \$5 to \$4 per egg. Authorizes the commission to collect a marketing assessment fee of \$1 per alligator egg, excluding those collected on private wetland management areas, to be transferred to the General Inspection Trust Fund.

Section 14. Amends s. 372.6674, F.S., to reduce the fee for issuance of an alligator hide validation tag. Authorizes the commission to collect a marketing assessment fee of \$5 per validated hide, excluding those validated from public hunt programs, to be transferred into the General Inspection Trust Fund.

Section 15. Amends s. 373.046, to revise the Department of Agriculture and Consumer Services' regulatory responsibility for aquacultural activities that meet or exceed the thresholds for aquaculture general permits authorized pursuant to ss. 370.26 and 403.814, F.S.

Section 16. Amends s. 403.814, F.S., to correct a cross-reference.

Section 17. Amends s. 409.2598, F.S., to allow for the suspension of a shellfish lease for any obligor with a delinquent child support obligation or who fails to comply with subpoenas, orders to appear, orders to show cause, or similar orders relating to paternity or child support hearings.

Section 18. Amends s. 500.03, F.S., to correct a cross-reference.

Section 19. Amends s. 570.18, F.S., to increase the number of divisions within the Department of Agriculture and Consumer Services from eleven to twelve.

Section 20. Amends s. 570.29, F.S., to add a new Division of Aquaculture to the Department of Agriculture and Consumer Services.

Section 21. Creates s. 570.61, F.S., to provide for the powers and duties of the Division of Aquaculture.

Section 22. Creates s. 570.62, F.S., to provide for the duties of the Director of the Division of Aquaculture. Provides that the director shall be appointed by the Commissioner of Agriculture.

Section 23. Amends s. 597.003, F.S., to expand the powers and duties of the Department of Agriculture and Consumer Services for aquaculture activities. Requires a portion of profits from aquaculture contracts to be set aside for funding aquaculture projects that have been recommended by the Aquaculture Review Council. Directs the department to provide assistance in developing technologies applicable to aquaculture activities, to evaluate practicable production alternatives, and to provide agreements to develop innovative culture practices.

Section 24. Amends s. 597.004, F.S., to revise provisions relating to aquaculture certificates of registration. Provides a preemption for regulation for aquaculture in the state. Revises provisions for the sale of aquaculture products.

Section 25. Amends s. 597.0041, F.S., to provide penalties for violations of shellfish leases or by shellfish processors.

Section 26. Amends s. 597.005, F.S., to require the Aquaculture Review Council to review the annual aquaculture legislative budget requests for research projects that have been submitted to the Department of Agriculture and Consumer Services and to rank them according to the state aquaculture plan.

Section 27. Amends s. 597.006, F.S., to revise the membership of the Aquaculture Interagency Coordinating Council. Deletes the water management districts from the council. Deletes an obsolete reference to the Department of Commerce and replaces it with the Office of Tourism, Trade, and Economic Development.

Section 28. Creates s. 597.010, F.S., to provide for regulation and enforcement of shellfish leases by the Department of Agriculture and Consumer Services.

Lease, Application Form

Requires any qualified person who desires to lease a part of the bottom, water column, or bed of any of the water of the state to submit a written application.

Lands to be Leased

Requires lands leased to be as compact as possible. Provides conditions to be considered before lands are leased.

Surveys, Plats, and Maps of Reefs

Requires the department to use official maps, surveys, and reports as evidence of natural oyster and clam reefs and beds. Authorizes the department to make surveys of any natural oyster or clam reefs or beds when necessary, at the applicant's expense.

Execution of Leases; Lessee to Stake Off Boundaries; Penalty for Failure to Comply with Regulations

Requires the department to provide the applicant with a copy of the lease and to retain a registered copy in a lease book. Requires the lessees to comply with lease provisions. Requires the lessee to stake off the water bottoms leased. Authorizes the department to stipulate specifications in each individual lease contract for the markers or corner posts. Requires the lessee to keep the markers in good condition. Authorizes the department to impose a fine not exceeding \$100 for each and every offense.

Leases in Perpetuity; Rent

Requires all leases previously issued to be enforced under the authority of this chapter and to continue in perpetuity. Provides for an annual rental fee of \$15 per acre, to be adjusted every five years based on the Consumer Price Index. Requires fees collected to be deposited into the General Inspection Trust Fund and to be used for shellfish aquaculture activities.

Forfeiture for Nonpayment

Requires lease contracts to stipulate that failure to timely pay the rent on or before January 1 of each year shall cause the department to terminate and cancel the lease after 30-day notice to the lessee. Provides for a late fee. Authorizes the department to take possession of leases after notice has expired.

Surcharge for Improvement or Rehabilitation

Provides for a surcharge of \$10 per acre per year for the purpose of providing available resources for improvement of lease areas and for cleanup and rehabilitation of abandoned or vacated lease sites. Authorizes the department to adopt rules necessary to carry out the provisions of this subsection. Provides for use of the moneys in the fund when not needed for cleanup and rehabilitation.

Cultivation Requirements

Provides cultivation requirements for leased lands. Authorizes the department to stipulate in each individual lease contract the types, shape, depth, size, and height of cultch materials on lease bottoms. Provides lessee with a time frame for cultivation of leased area. Authorizes the department to revoke leases and return the bottoms to the public domain when evidence

conclusively shows a lack of effective cultivation. Authorizes the department to adopt rules pertaining to the water column over shellfish leases.

Leases Transferable, Etc.

Prohibits the transfer of leases under this section without the written approval of the department. Provides for a \$50 transfer fee. Requires the department to keep proper indexes so that all original leases and all subsequent changes and transfers can be easily and accurately ascertained.

Cancellation of Leases to Natural Reefs or Beds

Provides for cancellation of a lease to natural reefs or beds when a petition is filed with the department. Provides for a deposit of \$500 to defray investigation expenses. Provides conditions for return of the deposit to the petitioner.

When Natural Reefs or Beds May Be Included in Lease

Authorizes the department, if it deems it to be in the best interest of the state, to include natural reefs or beds in a lease. Authorizes the department to fix a reasonable value on the natural area, to be paid by the applicant for lease of such submerged land. Prohibits any natural reefs to be included in any shellfish or aquaculture lease granted in Franklin County. Requires the department to settle all disputes as to boundaries between lessees.

Trespass on Leased Beds; Protection of Lease Areas

Prohibits trespassing on leased beds. Prohibits harvesting of shellfish within a distance of 25 feet outside lawfully marked lease boundaries or within setback and access corridors.

Shellfish Development

Charges the department, as well as the Fish and Wildlife Conservation Commission, with improvement, enlargement and protection of the state's natural oyster and clam reefs and beds. Requires the department, in cooperation with the commission, to provide the Legislature with recommendations for development and protection of the rights of the state and private holders with respect to the oyster and clam business.

Special Activity Licenses

Authorizes the department to issue special activity licenses to permit the harvest or cultivation of oysters, clams, mussels, and crabs.

Staking Off Water Bottoms or Bedding Oysters Without Obtaining Lease

Creates a violation for staking off water bottoms or bedding oysters without first obtaining a lease. Provides certain exceptions.

Shellfish Harvesting Seasons; Special Provisions Relating to Apalachicola Bay

Authorizes the Fish and Wildlife Conservation Commission to adopt rules for setting the noncultured shellfish harvesting seasons in Apalachicola Bay. Requires the commission, in cooperation with the department to monitor the impacts of any new harvesting schedules on the bay and on local shellfish harvesters. Provides criteria for monitoring the new schedule and for preparing a report.

Removing Oysters, Clams, or Mussels From Natural Reefs; Licenses, Etc.; Penalty

Prohibits the use of a dredge or any implement other than hand tongs in removing oysters from natural or artificial state reefs or beds. Clarifies that this restriction applies to all areas of Apalachicola Bay, excluding private grounds leased or granted prior to July 1, 1989, if the lease or grant specifically authorizes the use of implements other than hand tongs for harvesting. Provides for the commission to issue a special activity license for harvesters wishing to use a dredge or machinery for harvesting clams or mussels. Provides conditions under which the department may approve harvesting of shellfish by dredge or other mechanical means from privately held leases or grants in Apalachicola Bay. Provides for revocation of the license and/or lease if violations are committed.

Fishing for Relaying or Transplanting Purposes

Authorizes the department to designate areas, as well as conditions, for the taking of oysters and clams to be transplanted on leases, grants, and public areas. Requires all transplanting operations to take place under the direction of the department.

Oyster and Clam Rehabilitation

Allows the boards of county commissions to appropriate and expend funds for the purpose of planting and transplanting shellfish to enhance the oyster and clam industries of the state.

Dredging of Dead Shells Prohibited

Prohibits the dredging of dead shell deposits in the state.

Cooperation with United States Fish and Wildlife Service

Requires the department to cooperate with the United States Fish and Wildlife Service. Authorizes the department to accept donations, grants, and matching funds from the federal government to carry out its oyster resource and development responsibilities.

Oyster and Clam Shells Property of Department

Authorizes the department to claim 50 percent of all shells from oysters and clams shucked commercially in the state, with some exceptions. Authorizes the department to sell excess shells to private growers for use in oyster or clam cultivation. Requires the department to sell the shells for the amount it cost the department to gather and stockpile the shell. Any shells not claimed and used after 10 years may be sold at auction to the highest bidder. Requires money derived from the sale of shell to be deposited into the General Inspection Trust Fund for shellfish programs.

Oyster Culture

Provides for protection of all clam beds, oyster beds, shellfish grounds, and oyster reefs by the department, in cooperation with the Fish and Wildlife Conservation Commission and the Department of Environmental Protection. Authorizes the Department of Health to make available its laboratory testing facilities and apparatus when needed.

Requirements for Oyster or Clam Vessels

Requires all vessels used for harvesting, gathering, or transporting oysters or clams for commercial purpose to be constructed and maintained to prevent contamination or deterioration of shellfish. Prohibits dogs or other animals on vessels used to harvest or transport shellfish.

Defines “harvesting, gathering, or transporting of oysters or clams for commercial purpose” to mean to harvest, gather, or transport oysters or clams with the intent to sell. The definition applies to a quantity of two or more bags of oysters per vessel or more than one 5-gallon bucket of unshucked hard clams per person or more than two 5-gallon buckets of unshucked hard clams per vessel.

Section 29. Renumbers s. 370.071 as s. 597.020, F.S., and amends it to authorize the Department of Agriculture and Consumer Services to regulate shellfish processors. Clarifies that regulation of shellfish processors includes processors processing scallops. Authorizes the department to require a fee for licensure or certification of processing facilities. Authorizes an administrative fine for violation of rules relating to regulation of shellfish processors.

Section 30. Provides that this act shall take effect July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Cultured Shellfish Theft Reward Program was created in 1999, but was not funded. The \$5 increase in the aquaculture lease surcharge will fund the program, and consequently, individuals who report theft will receive a minimum of \$500. This would discourage theft and increase productivity for farmers.

C. Government Sector Impact:

	Trust Fund	FY 2000-01	FY 2001-02	FY 2002-03
TOTAL EXPENDITURES:		0	0	0
TOTAL REVENUES: (Increase in surcharge for leased lands)	GITF	\$9,000	\$9,000	\$9,000

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
