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DATE: February 13, 2002

HOUSE OF REPRESENTATIVES

COUNCIL FOR READY INFRASTRUCTURE ANALYSIS

BILL #: CS/CS/HB 101

RELATING TO: Environmental Control

SPONSOR(S): Committee on General Government Appropriations, Committee on Natural Resources & Environmental Protection and Representative(s) Argenziano & others

TIED BILL(S):

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

- (1) NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION YEAS 13 NAYS 0
 - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 15 NAYS 0
 - (3) COUNCIL FOR READY INFRASTRUCTURE
 - (4)
 - (5)
-

I. SUMMARY:

The bill exempts from regulation the removal by riparian owners of organic detrital material from freshwater lakes and rivers. Such removal is allowed along the length of the riparian owner's shoreline, and may occur to the rocky substrate. Property owners shall also be permitted to leave a channel to open water for boating and swimming purposes. All material removed must be deposited in an upland site to prevent its reintroduction into waters of the state and replanting of native aquatic vegetation shall also be required.

The bill also creates an exemption for existing permitted docks to utilize floating vessel platforms provided they do not exceed the docks current slip or certain other parameters if no slip exists.

The bill has an indeterminate, but likely insignificant, fiscal impact to public agencies but would provide a savings to individual property owners.

The bill requires the Department of Environmental Protection and the Fish and Wildlife Conservation Commission to prepare a report evaluating the effects of implementing the provisions of this legislation on the overall water quality and aquatic and fishery habitat of water bodies where the statutory exemptions have been utilized. This report must be submitted to the Governor and the Legislature by November 1, 2004.

The bill provides that the act shall take effect July 1, 2002.

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

B. PRESENT SITUATION:

Many wetland and surface water dredging and filling activities require environmental resource permits (ERPs) that are issued by either the Florida Department of Environmental Protection (FDEP) or the water management districts. These permits describe the conditions under which the activities will be allowed. In addition to state permits, many of these activities also require a federal Clean Water Act-Section 404 permit that is issued by the US Army Corps of Engineers.

Currently, multiple activities are exempt from ERP requirements. These exempted activities are listed in section 403.813, F.S. and include:

- The installation of overhead transmission lines, and the installation, replacement, or repair of subaqueous transmission and distribution lines;
- The installation and repair of certain mooring pilings, and the replacement and repair of certain existing docks, piers, and boat ramps;
- The restoration and construction of particular seawalls, and the construction of some private docks;
- Maintenance dredging of existing manmade canals, channels, intake, and discharge structures;
- The maintenance and restoration of existing insect control structures;
- The construction, operation, or maintenance of stormwater management facilities, and the repair or replacement of existing stormwater conveyance structures;
- The construction and maintenance of swales;
- The installation of aids to navigation;
- The repair or replacement of certain existing bridges; 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 exemption for organic matter removal was adopted by the Legislature in 1996, and amended in 1997. It was designed 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 available to those with an aquatic plant control permit or to those operating under an exemption to such a permit under s. 369.20, F.S., or s. 369.25, F.S. The ERP exemption is allowable under the following conditions. Organic material that exists on the surface of the natural, mineral soils may be 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 its reintroduction into waters of the state (with an exception for agencies who are permitted to create wildlife islands from the spoil as part of restoration and enhancement projects). And, the activities must be performed in a manner consistent with state water quality standards.

The 1997 legislation (Chapter 97-22, Laws of Florida) also created an aquatic plant control permit exemption under s. 369.20, F.S. Under this exemption, 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 in certain freshwater water bodies. 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.

While the 1997 legislation was intended to streamline the state permitting process for lakefront property owners wanting to remove nuisance aquatic plants and associated detritus, it did not remove the requirement for lakefront property owners to obtain a Section 404 permit from the US Army Corps of Engineers for these projects. 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" (NWP #19-Minor Dredging) that automatically allows the excavation of 25 cubic yards of submerged material below the line of ordinary high water, provided no more than 1/10 acre of wetlands will be lost, and the District Engineer of the Corps is notified for any dredging involving more than 10 cubic yards. Projects requiring more dredging and filling of wetlands or submerged lands than is authorized by the above NWP would have to go through an individual Section 404 permitting process.

Docks are currently permitted and regulated under chapters 253, 373, or 403, Florida Statutes. Section 253.12, F.S., contains requirements and procedures for the use and lease of submerged lands on which docks are located. Provisions of chapter 373, F.S., deal with the conveyance of lands to the water management districts and allowable uses of such lands. Thus, many individuals with docks may fall under the purview of the districts. Finally, provisions of section 403, part V, F.S., outline general permitting procedures concerning activities involving the waters of the state. In addition, this section of law also deals with permits issued by the DEP district offices. Recently developments in boat storage have introduced a new product that is used in boat slips to lift boats out of the water thus helping in preserving their condition and reducing expenditures concerning maintenance. Regulatory authorities in addressing these floating vessel platforms have chosen to treat this technology as a modification to existing dock permits. Because this technology has been determined to be a modification permit holders are required to seek changes and have their existing permits reviewed.

C. EFFECT OF PROPOSED CHANGES:

The bill provides two new exemptions to current permitting requirements. The first deals with the removal of organic detrital material or "muck" as it is commonly referred and the second addresses the use of floating vessel platforms used at current docks to lift boats out of the water.

Removal of Organic Detrital Material

The bill creates paragraph (s) of subsection (2), section 403.813, F.S. new statutory language which will provide an exemption from current permitting requirements concerning the removal of this material in freshwater lakes and streams. Specific requirements of the exemption are:

- No activity shall be conducted in wetland areas.
- No filling or peat mining shall be allowed.
- No removal of native wetland trees shall be allowed.
- No removal of underlying mineral soils or rocky substrate may be performed.
- All removed material shall be placed in an upland site so as not to cause water quality violations.
- Sufficient turbidity controls shall be utilized.
- Replanting of native aquatic plants shall occur in a minimum of 25% of the effected area.
- Allowing for an access corridor that shall not exceed 50 feet or 50% of an owner's frontage property, whichever is less.
- Replanting shall occur in an area in which water depth does not exceed 3 feet or is beyond 5 feet from the ordinary high water line.
- No muck removal may occur waterward of 100 feet beyond the ordinary high water line.

Additional requirements contained in the bill address notification procedures for the property owner and rights of the Department of Environmental Protection concerning evaluation and review of the removal project.

Floating Vessel Platforms

The bill creates paragraph (t) of subsection (2), section 403.813, F.S. to provide new statutory language that will provide an exemption for the use of floating vessel platform systems for existing dock permits. Specific provisions of the exemption:

- Provide that platforms or lifts must float at all times and only be used for the purpose of supporting a vessel.
- Require that the device shall only be used for docks that are properly permitted and if no dock exists, the device shall not exceed certain square footage limitations.
- Prohibit the use of the devices for commercial purposes. Additionally, the devices may not: substantially impede water flow; create a navigational hazard; or infringe upon adjacent property owners riparian rights.
- Require the devices to be constructed in manner to minimize impacts to submerged lands, wetlands, shellfish areas, aquatic plants, and biological communities.
- Prohibit the use of these devices in areas specifically prohibited for boat mooring.

Any structures exempted under this section shall also be exempt from obtaining permission from the Board of Trustees for use of state-owned lands and may not be subject to any local regulation that may be more stringent.

The bill directs the DEP to adopt necessary rules by January 1, 2003 to govern the granting of an exemption for the use of floating vessel platforms.

The bill provides that the act shall take effect July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 403.813, F.S., to create an exemption for activities related to the removal of organic detrital material from freshwater lakes and streams. Specific methods for removal of the material are described and notification procedures are outlined. This section is also amended to create an exemption for the installation of floating vessel platforms at permitted docking facilities.

Section 2: Provides for a report to be prepared by the Department of Environmental Protection and the Fish and Wildlife Conservation Commission on the effects of implementing s. 403.813(2), F.S. on the overall water quality and aquatic and fishery habitat of water bodies where the exemptions have been utilized. The report must be presented to the Governor and the Legislature by November 1, 2004.

Section 3: Provides that the act shall take effect July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill would result in an indeterminate, but likely minimal, loss of revenue from ERP fees to the DEP and the water management districts for activities related to the removal of muck.

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

A likely insignificant savings would result for local governments that are waterfront property owners and wanted to take advantage of the exemption, as they would not have to pay ERP fees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 water bodies. However, it is difficult to estimate the amount of the savings as the potential number of participating property owners is uncertain.

The use of floating vessel platforms is anticipated to result in a savings to boat owners thru less maintenance requirements.

D. FISCAL COMMENTS:

It is difficult to estimate the exact amount of the fiscal impact resulting from the muck removal exemption, since ERPs cannot currently be tracked based on the specific authority they authorize.

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 expend 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 state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On October 24, 2001, the Committee on Natural Resources & Environmental Protection heard the bill and adopted one amendment. The amendment creates an exemption for existing permitted docks to utilize floating vessel platforms without the need to obtain additional approvals. The bill was then passed as a committee substitute.

On January 24, 2002, the Committee on General Government Appropriations heard the bill, adopted four amendments, and reported the bill favorably as a committee substitute. The first three amendments clarified language in the bill. The fourth provided for a report to be prepared and submitted to the Governor and the Legislature.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

Wayne Kiger

Wayne Kiger

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AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Staff Director:

Lynn Dixon

Lynn Dixon

AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

Council Director:

C. Scott Jenkins

Thomas J. Randle