

**STORAGE NAME:** h1285s1.ric.doc

**DATE:** February 28, 2002

## HOUSE OF REPRESENTATIVES

### COUNCIL FOR READY INFRASTRUCTURE ANALYSIS

**BILL #:** CS/HB 1285

**RELATING TO:** Environmental Protection

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

**TIED BILL(S):**

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

- (1) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 11 NAYS 0
  - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 11 NAYS 0
  - (3) COUNCIL FOR READY INFRASTRUCTURE YEAS 17 NAYS 0
  - (4)
  - (5)
- 

I. SUMMARY:

The bill amends s. 403.813(2), F.S., to create additional exemptions from permitting for certain projects with small impacts. The new exemptions in the bill include the construction, installation, operation, or maintenance of floating vessel platforms or floating boat lifts of limited size that are not used for commercial purposes, provided certain location and construction requirements are met. Additionally, the bill authorizes the Department of Environmental Protection to adopt by rule a general permit for floating vessel platforms or floating boat lifts (platforms or lifts) that do not qualify for the exemption, but do not cause significant adverse impacts. County road and bridge repair within the Northwest Florida Water Management District is also exempted provided it meets certain conditions.

The bill also clarifies an existing exemption in this section to clarify that an exemption for certain maintenance dredging includes control devices that permit return flow.

Finally, the bill amends s. 403.08725, F.S., to extend the time by which the U.S. Environmental Protection Agency may approve legislation regarding citrus processing facilities.

The bill shall take effect upon becoming a law.

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:

**Dock Permitting**

Docks are currently permitted and regulated under chapters 253, 373, or 403, F.S. 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 water management 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 platforms or lifts 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.

**Wetlands Permitting – Northwest Florida Water Management District**

The 1993 Environmental Reorganization Act merged the Department of Natural Resources (DNR) and the Department of Environmental Regulation (DER) into the Department of Environmental Protection (DEP) for the purpose of streamlining the delivery of government services to the public. One of the outcomes of the legislation was the creation of an "environmental resource permit" (ERP) which consolidated the old DER wetlands dredge-and-fill permits, with the water management districts' permit for the management and storage of surface waters (MSSW) into a single permit. The water management districts have assumed the lead in issuing ERPs. Four of the state's five water management districts have implemented an ERP program.

The Northwest Florida Water Management District (NFWMD) has been financially unable to implement an ERP program due to the constitutional and statutory millage cap on ad valorem taxes of .05 mill, the lowest cap in the state. The state's other four water management districts have a constitutional millage cap of 1 mill, and none of the other districts has a statutory cap lower than .60 mill.

In 1993, the Legislature created section 373.4145, F.S., to provide for a five-year, interim environmental permitting program for the NFWMD. Within the district, DEP's permitting authority is limited to wetlands permitting rules in effect under the Henderson Wetlands Act of 1984, which primarily differs from the ERP program in that activities in isolated wetlands, or activities in uplands

that could impact water quality or wildlife habitat are not regulated by the state. Consideration of the impacts of stormwater runoff also is not part of the Henderson Act wetlands resource permits. The NFWFMD only processes permits for the construction, operation, and maintenance of dams used in agricultural operations. It regulates agricultural and silvicultural activities largely using "best management practices."

### **Citrus Processing**

In 1990, the President signed a series of amendments to the Clean Air Act into law. These amendments represented significant changes designed to achieve enhanced air quality goals and cover a wide range of air pollution issues.

In 1992 and 1993, the Legislature passed legislation that enabled the state to administer the federal Clean Air Title V program pursuant to 42 U.S.C. s. 7661a. Section 403.0872, F.S., allows the DEP to issue operation permits for major sources of air pollution. Each permitted source of air pollution must pay an annual operation license fee in an amount determined by the DEP that is sufficient to cover all reasonable direct and indirect costs required to develop and administer the major stationary source air-operation permit program.

Currently thousands of facilities, operations, or sources are subject to air permitting either by the U.S. Department of Environmental Protection (EPA) or the DEP or both. Most are subject to Title V permitting because they have air emissions of 100 tons per year or more. Essentially all citrus processing plants in Florida have some type of air permit and most need Title V permits. Many of these need to obtain retroactive Prevention of Significant Deterioration permits and perform case-by-case Best Available Control Technology determinations for Volatile Organic Compound emissions (VOC). This involves extensive permitting work for both the industry and the department. A comprehensive air sampling study was conducted in 1997 to determine the quantity of VOC emissions from peel dryers. The VOC emissions were over 100 tons per year from the smaller dryers and over 1,000 tons per year for the large plants.

HB 1425 was passed by the Florida Legislature and signed into law by the Governor June 15, 2000 as Chapter 2000-304, Laws of Florida. Chapter 2000-304, Laws of Florida, established a new method for regulating air emissions from citrus juice processing facilities. These facilities, as defined in the chapter law include all units at a plant that processes citrus fruit to produce single-strength or frozen concentrated juice and other related products or byproducts.

Because Title V is a delegated federal permit, any proposed changes must be submitted to the EPA for review and approval. To accomplish this the legislation that was passed in 2000 contained a provision that directed the DEP to submit the state's proposed change to the EPA. The EPA was expected to review and either approve or deny the proposal by February 2003. Because of recent administration changes and other issues, the potential exists that this review will not be completed in time. Failure of the EPA to act would invalidate the act and direct that citrus processing facilities be governed under current permitting programs.

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

#### **Floating Vessel Platforms and Floating Boat Lifts**

The bill amends s. 403.813(2), F.S., to create an exemption from permitting and proprietary requirements for installation of certain platforms or lifts under certain circumstances and requires DEP to develop a general permit for their use.

The bill provides a permit exemption for a platform or lift if:

- The structure floats at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;

- The structures are wholly contained within a boat slip previously permitted or when associated with a dock that is exempt under subsection 403.813(2), F.S., or a permitted dock with no defined boat slip and such structures do not exceed a combined total of 500 square feet or 200 square feet in an Outstanding Florida Water;
- The structures cannot be used for any commercial purposes or for mooring additional vessels that remain in the water when not in use, cannot substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners;
- The structures shall be constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities; and
- The structures cannot be constructed in areas specifically prohibited for boat mooring under conditions of a permit.

Structures that qualify for this exemption are relieved from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund (Trustees) and shall not be subject to any more stringent regulation by any local government.

By January 1, 2003, the DEP shall adopt a general permit by rule for those platforms or lifts that do not qualify for the exemptions, but do not cause significant adverse impacts to occur individually or cumulatively. The issuance of a general permit also constitutes permission to use or occupy lands owned by the Trustees. Upon the adoption of the rule creating such general permit, no local government shall impose a more stringent regulation on floating vessel platforms covered by the general permit.

The bill also amends, s. 403.813(2)(f), F.S., to clarify that an existing permit exemption for certain maintenance dredging done in man-made canals may include devices that allow for return flow.

#### **Road and bridge repair - NFWFMD**

The bill additionally amends s. 403.813(2), F.S., to create a permit exemption for existing county roads and bridges that are in need of repair, stabilization, or replacement within the NFWFMD provided that:

- The road and associated bridge(s) were in existence and maintained by the county before January 1, 2002;
- The construction activity does not realign the road or expand the number of traffic lanes. However, work may include provisions of safety shoulders, clearance of vegetation and other work necessary to stabilize, pave, or repair the road;
- The construction activity does not expand the existing width of a vehicular bridge in excess of that reasonably necessary to properly connect it with the improved road (no debris from the original bridge shall remain in state waters or wetlands);
- Best management practices for erosion control shall be employed as necessary to prevent water quality for road and bridge replacement or repair;
- Roadside swales or other effective means of stormwater treatment must be incorporated as part of the project; and

- No more dredging or filling of wetlands or waters of the state than is necessary to stabilize, pave or repair the bridge.

### **Citrus Processing**

Lastly, the bill amends s. 403.08725(9), F.S., to extend the time for EPA review, of proposed changes to Title V permits for citrus juice processing facilities, from February 2003 to February 2004.

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

Section 1: Amends s. 403.813, F.S., to create an exemption to allow limited installation of platforms or lifts within permitted boat slips or outside of slips subject to certain size, resource, and riparian rights restrictions. Provides structures installed under this exemption do not require additional authorization from the Trustees and are not subject to more stringent local regulations. Directs DEP to develop a general permit to address the installation of larger floating vessel platforms or lifts where such structures have minimal individual or cumulative impact. Clarifies an existing exemption for maintenance dredging will include structures used for back flow purposes. Provides a permit exemption for certain county road and bridge repair within the NFWFMD.

Section 2: Amends s. 403.08725, F.S., extending the time by one year for the U.S. Environmental Protection Agency to approve legislation.

Section 3: Provides the bill shall take effect upon becoming a law.

#### **III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

##### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

###### **1. Revenues:**

Minimal. There will be a small, un-measurable reduction in revenues to the Permit Fee Trust Fund to the extent that activities, which formerly required a permit and a permit application fee, are conducted under this exemption.

###### **2. Expenditures:**

None.

##### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

###### **1. Revenues:**

None.

###### **2. Expenditures:**

There is an indeterminate economic and timesavings to local governments that exist in the NFWFMD that need to conduct road and bridge repair.

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

There is an economic savings for those that own or use floating vessel platforms or lifts provided by the provisions of the bill. They are:

- Those floating vessels platforms or lifts that fall under the exemption criteria provided by the bill will be exempt from a department dock permit.
- Those floating vessel platforms or lifts that do not meet the requirements of this bill and need a department general permit are expected to require less monetary resources and time than if the floating vessel platforms or lifts were permitted as a modification to existing dock permits under current law.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

DEP is authorized by this bill to adopt a general permit by rule for those floating vessel platforms or lifts that do not qualify for the exemptions, but do not cause significant adverse impacts to occur individually or cumulatively. The issuance of a general permit also constitutes permission to use or occupy lands owned by the Trustees.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 19, 2002, the General Government Appropriations Committee unanimously adopted one amendment by Rep. Clarke that clarifies the maintenance dredging permit exemption to allow for the discharge or return from spoil material.

On February 26, 2002, the Council for Ready Infrastructure adopted two amendments to HB 1285. The amendments made the following changes.

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- Provides an exemption for certain county road repair within the NFWFMD.
- Amends s. 403.08725, F.S., extending the time by which the U.S. Environmental Protection Agency may approve legislation.

The bill was reported favorably as a council substitute.

VII. SIGNATURES:

COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

Noah C. McKinnon III

Staff Director:

Wayne Kiger

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

C. Scott Jenkins

Council Director:

Thomas J. Randle