

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 508

SPONSOR: Natural Resources Committee and Senator Brown-Waite

SUBJECT: Environmental Control

DATE: January 9, 2002 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|---------------------|
| 1. | <u>Branning</u> | <u>Voigt</u> | <u>NR</u> | <u>Favorable/CS</u> |
| 2. | <u>Bowman</u> | <u>Yeatman</u> | <u>CA</u> | <u>Favorable</u> |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This bill provides an exemption from certain environmental permitting requirements for the removal of organic detrital material from freshwater lakes or rivers that have a natural sand or rocky substrate. Exempts certain floating vessel platforms from having to obtain a permit. Provides for the Department of Environmental Protection to adopt by rule a general permit for certain floating vessel platforms. Requires the Department of Environmental Protection and the Fish and Wildlife Conservation Commission to jointly prepare a report evaluating the effects of implementing the exemption for the removal of detrital material.

This bill amends s. 403.813, F.S.

II. Present Situation:

Many wetland and surface water dredging and filling activities require environmental resource permits (ERPs) that are issued by either the Department of Environmental Protection (DEP) 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 U.S. Army Corps of Engineers.

Currently, multiple activities are statutorily exempt from ERP requirements. These exempted activities are listed in s. 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 plan 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 eliminate state permitting requirements 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 (ch. 97-22, L.O.F.) 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 eliminate state permitting requirements 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 federal Section 404 permit from the U.S. 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 federal Section 404 permitting process.

III. Effect of Proposed Changes:

This bill amends s. 403.813, F.S., to provide that a permit is not required for the removal of aquatic plants, the removal of tussocks, the associated replanting of indigenous aquatic plants, and the associated removal from lakes of organic detrital matter when such planting or removal is performed and authorized by an exemption provided that certain conditions are met.

- Organic detrital material that exists on the surface of natural mineral substrate shall be allowed to be removed to a depth of 3 feet or to the natural mineral substrate, whichever is less;
- All material removed shall generally be deposited in an upland site in a manner that will prevent the reintroduction of the material into waters in the state;
- All activities are to be performed in a manner consistent with state water quality standards; and
- No activities under an exemption are conducted in wetland areas that are supported by a natural soil as shown in applicable U.S. Department of Agriculture county soil surveys, except when a governmental entity is permitted to conduct such activities as part of a restoration or enhancement project.

The bill further provides that, notwithstanding any provision to the contrary in subsection 403.813(2), F.S., a permit or other authorization under ch. 253, 369, 373, or 403, F.S., is not required for an individual residential property owner for the removal of organic detrital material from freshwater rivers or lakes that have a natural sand or rocky substrate and that are not aquatic preserves, or for the associated removal and replanting of aquatic vegetation for the purpose of environmental enhancement provided that:

- No activities under this exemption are conducted in wetland areas that are supported by a natural soil as shown in applicable U.S. Department of Agriculture county soil surveys.
- No filling or peat mining is allowed.

- No removal of native wetland trees, including, but not limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.
- When removing organic detrital material, no portion of the underlying natural mineral soils or rocky substrate is removed.
- Organic detrital material and plant material removed is deposited in an upland site in a manner that will not cause water-quality violations.
- All activities are conducted in such a manner and with appropriate turbidity controls to prevent any water-quality violations outside of the immediate work area.
- Replanting with a variety of aquatic plants native to Florida shall occur in a minimum of 25 percent of the preexisting vegetated areas where organic detrital material is removed, except for areas where the material is removed to bare rocky substrate. However, an area may be maintained clear of vegetation as an access corridor. The access corridor width may not exceed 50 percent of the property owner's frontage or 50 feet, whichever is less, and may be a sufficient length waterward to create a corridor to allow access for a boat or swimmer to reach open water. Replanting must be at a minimum density of 2 feet on center and be completed within 90 days after removal of existing aquatic vegetation, except that under dewatered conditions replanting must be completed within 90 days after reflooding. The area to be replanted must extend waterward from the ordinary high water line to a point where normal water depth would be 3 feet or the preexisting vegetation line, whichever is less. Individuals are required to make a reasonable effort to maintain planting density for a period of 6 months after replanting is complete and the plants, including naturally recruited native aquatic plants, must be allowed to expand and fill in the revegetation area. Native aquatic plants to be used for revegetation must be salvaged from the enhancement project site or obtained from an aquatic plant nursery regulated by the Department of Agriculture and Consumer Services. Plants that are not native to Florida may not be used for replanting.
- No activity occurs any farther than 100 feet waterward of the ordinary high water line; and all activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners.
- The person seeking this exemption notifies the applicable DEP district office in writing at least 30 days before commencing work and allows the department to conduct a preconstruction site inspection. Notice must include an organic-detrital-material removal and disposal plan and, if applicable, a vegetation-removal and revegetation plan.
- The DEP is provided written certification of compliance with the terms and conditions of these provisions within 30 days after completion of any activity occurring under this exemption.

This bill also provides a permit exemption for a floating vessel platform or floating boat lift if such structures:

- Float 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;
- Are wholly contained within a boat slip previously permitted under ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of ch. 373, F.S., or, when associated with a dock that is exempt under s. 403.812(2), F.S., or a permitted dock with no defined boat slip, do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water;
- Are not used for any commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners;
- Are constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including locating such structures in areas where no seagrasses exist if such areas are present adjacent to the dock; and
- Are not constructed in areas specifically prohibited for boat mooring under conditions of a permit issued in accordance with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of ch. 373, F.S., or other form of authorization issued by a local government.

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 floating vessel platforms which 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 a general permit, no local government may impose a more stringent regulation on floating vessel platforms covered by the general permit.

The DEP and the Fish and Wildlife Conservation Commission are required to jointly prepare a report evaluating the effects of implementing the exemption for the removal of detrital material on the overall water quality and aquatic and fishery habitat of waterbodies where the statutory exemptions have been utilized. The report is to be submitted to the Governor and the Legislature by November 1, 2004, and shall contain recommendations for improving the implementation of these provisions.

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:

Lakefront and riverfront property owners who wish to remove organic detrital material, or “muck” as it is referred to, from the freshwater lake or river would now be able to do so without having to obtain an environmental resources permit (ERP) provided certain conditions were met. The property owners, however, must notify DEP in writing 30 days prior to any such work being done and must provide a removal and disposal plan.

Such property owners will be able to maintain access to the waterway for swimming and boating activities. This will save them the cost of the permit, however, the amount of those cost savings is not known at this time.

C. Government Sector Impact:

Although no permit is required, the DEP must be notified 30 days in advance of the work to be done so that a preconstruction site inspection can be done. Since the department will not be receiving any permit fees to cover the costs of such inspections, the department will bear the costs associated with such inspections using existing staff and financial resources.

Local governments are preempted from adopting more stringent requirements for floating vessel platforms that are covered by either the exemption or the general permit.

The DEP would incur certain costs associated with the adoption of general permit rules. Also, the DEP and the Fish and Wildlife Conservation Commission are required to prepare a report on the implementation of the exemptions. These costs are likely to be borne using existing staff resources.

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.
