

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 625 Mangrove Protection
SPONSOR(S): Agriculture & Natural Resources Policy Committee, Kriseman
TIED BILLS: IDEN./SIM. BILLS: SB 148

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Agriculture & Natural Resources Policy Committee, Military & Local Affairs Policy Committee, and General Government Policy Council.

SUMMARY ANALYSIS

The bill expands who may be penalized for violations of the act. It provides that the DEP shall assess a penalty of \$5,000 per violation against any person who violates the provisions of the act.

- A fine of \$1,000 for first time violations that would have qualified for a general permit under s. 403.9327, F.S., or that have insignificant impacts on the mangrove resources of the state.
• For professional mangrove trimmers, an additional penalty of \$250 per trimmed or altered mangrove for major violations or second or subsequent violations, not to exceed a total of \$10,000 in additional penalties.
• For all others, an additional penalty of \$100 per trimmed mangrove and \$250 per altered mangrove for major violations or second or subsequent violations, not to exceed a total of \$10,000 in additional penalties.
• A clarification that the signing of a permit by a currently licensed professional engineer as defined by Chapter 471, F.S., does not constitute a violation.

The bill clarifies legislative intent regarding mangrove trimming to achieve waterfront property owners' riparian rights of view and other rights of riparian ownership as recognized by s. 253.141, F.S., or law.

The bill allows the DEP to adopt rules providing for exemptions and general permits authorizing trimming activities that have, singularly or cumulatively, a minimal adverse effect on the water resources of the state.

The bill also allows DEP to revoke the Professional Mangrove Trimmer status for persons who statutorily claim the automatic Professional Mangrove Trimmer status under the act but who become repeat violators.

Finally, the bill provides that the provisions of the act do not allow the trimming of mangroves on uninhabited islands that are publicly owned, or on lands that are set aside for conservation and preservation or mitigation, except where necessary to protect the public health, safety, and welfare or to enhance public use of, or access to, conservation areas in accordance with approved management plans.

The bill does not appear to have a fiscal impact.

The bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 1995, the Legislature created the Mangrove Trimming and Preservation Act. The act substantially revised the regulation of mangroves by providing for:

- Delegation of mangrove regulation to local governments;
- Exemptions from permitting requirements for certain trimming activities;
- General permits for trimming in extended mangrove fringe areas;
- Mitigation and restoration policies; and
- Regulation of professional mangrove trimmers.

The act was amended in 1996 to strengthen the requirements for trimming mangroves and to correct some weaknesses in the 1995 law. No mangroves may be cut lower than 6 feet under either an exemption or general permit. Mangroves over 16 feet must be cut in stages, removing no more than 25 percent annually. The statutory exemption for mangrove trimming without a permit applies to property with a shoreline of 150 feet or less. Property owners with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent along the shoreline.

The list of those who qualify as professional mangrove trimmers was expanded; however, landscape architects could not trim mangroves until standards were set by the Board of Landscape Architecture.

The mitigation and enforcement provisions were revised. Mitigation efforts for violations have five years to achieve a canopy equivalent to the area destroyed. Violations can be resolved by purchasing credits from a mitigation bank at a 2-to-1 ratio.

Section 403.121 (3)(d), F.S., provides that for mangrove trimming or alteration violations, DEP shall assess a penalty of \$5,000 per violation against the contractor or agent of the owner or tenant that conducts mangrove trimming or alteration without a permit. The preparation or signing of a permit application by a person currently licensed under chapter 471, F.S., to practice as a professional engineer does not make that person an agent of the owner or tenant.

For trimming on property developed for multi-family residential use, the 65 percent shoreline trimming limit is equitably distributed so that each owner's riparian view is similarly impacted.

Currently, the only trimming method in the Mangrove Trimming and Preservation Act is 'top trimming'; however, according to DEP, this is the least desirable for mangrove productivity. There are inconsistencies in the act regarding where and how trimming is allowed.

Section 403.9329, F.S., provides a list of certain persons who are authorized by the act to automatically be considered as Professional Mangrove Trimmers. Those persons include:

- Certified arborists, certified by the International Society of Arboriculture;
- Professional wetland scientists, certified by the Society of Wetland Scientists;
- Certified environmental professionals, certified by the Academy of Board Certified Environmental Professionals;
- Certified ecologists certified by the Ecological Society of America;
- Landscape architects licensed in Florida under part II of chapter 481, F.S.;
- Persons who have conducted mangrove trimming as part of their business or employment and who are able to demonstrate a sufficient level of competence to the DEP or a delegated local government;
- Persons who have been qualified by a delegated local government through a mangrove trimming qualification program as provided in s. 403.9329(7)(a), F.S.

Automatic professional mangrove trimmers, provided for in s. 403.9329(1)(a)-(e), F.S., are not required to have prior mangrove trimming expertise. Currently, DEP has no ability to revoke the Professional Mangrove Trimmer status from those repeat violators of the Mangrove Trimming and Preservation Act.

Effect of Proposed Changes

The bill expands who may be penalized for violations of the act. It provides that the DEP shall assess a penalty of \$5,000 per violation against any person who violates the provisions of the act. This will allow the DEP to assess penalties against anyone, including homeowners, responsible for mangrove trimming violations. The bill also provides for additional penalties for major violations or second or subsequent violations as follows:

- A fine of \$1,000 for first time violations that would have qualified for a general permit under s. 403.9327, F.S., or that have insignificant impacts on the mangrove resources of the state.
- For professional mangrove trimmers, an additional penalty of \$250 per trimmed or altered mangrove for major violations or second or subsequent violations, not to exceed a total of \$10,000 in additional penalties.
- For all others, an additional penalty of \$100 per trimmed mangrove and \$250 per altered mangrove for major violations or second or subsequent violations, not to exceed a total of \$10,000 in additional penalties.
- A clarification that the signing of a permit by a currently licensed professional engineer as defined by Chapter 471, F.S., does not constitute a violation.

The bill clarifies legislative intent regarding mangrove trimming to achieve waterfront property owners' riparian rights of view and other rights of riparian ownership as recognized by s. 253.141, F.S., or law. The clarification provides that the trimming of mangroves by riparian owner's without prior government approval must be conducted in conformance with the provisions of the act, rather than when the trimming will not result in removal, defoliation, or destruction of the mangrove as under current law.

The bill allows the DEP to adopt rules providing for exemptions and general permits authorizing trimming activities that have, singularly or cumulatively, a minimal adverse effect on the water resources of the state.

The bill also allows DEP to revoke the Professional Mangrove Trimmer status for persons who statutorily claim the automatic Professional Mangrove Trimmer status under the act but who become repeat violators.

Finally, the bill provides that the provisions of the act do not allow the trimming of mangroves on uninhabited islands that are publicly owned, or on lands that are set aside for conservation and preservation or mitigation, except where necessary to protect the public health, safety, and welfare or to enhance public use of, or access to, conservation areas in accordance with approved management plans.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 403.121, F.S., expanding the penalty previously applicable to violations involving mangrove trimming or alteration by specified persons to apply to any violation under the Mangrove Trimming and Preservation Act by any person.
- Section 2.** Amends s. 403.9323, F.S., clarifying legislative intent with respect to the protection of mangroves.
- Section 3.** Amends s. 403.9324, F.S., authorizing DEP to adopt rules providing for exemptions and general permits under the Mangrove Trimming and Preservation Act.
- Section 4.** Amends s. 403.9329, F.S., granting DEP the authority to revoke a person's status as a professional mangrove trimmer.
- Section 5.** Amends s. 403.9331, F.S., providing that the Mangrove Trimming and Preservation Act does not authorize trimming on uninhabited islands or lands that are publicly owned or set aside for conservation or mitigation except under certain circumstances.
- Section 6.** Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides for exemptions and general permits to be adopted by rule, thereby reducing regulation with no loss of environmental protection. This would level the playing field for individuals who trim mangroves in accordance with the act.¹

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹ DEP 2009 analysis
STORAGE NAME: h0625b.GGPC.doc
DATE: 4/30/2009

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill authorizes the DEP to adopt rules providing for exemptions and general permits for mangrove trimming.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 6, 2009 the Agriculture & Natural Resources Policy Committee adopted a strike all amendment and passed HB 625 as a Committee Substitute.

The CS provides for additional penalties for major violations or second or subsequent violations as follows:

- A fine of \$1,000 for first time violations that would have qualified for a general permit under s. 403.9327, F.S., or that have insignificant impacts on the mangrove resources of the state.
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