

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1249 CS
SPONSOR(S): Kendrick
TIED BILLS:

Funding for the Management and Restoration of Apalachicola Bay
IDEN./SIM. BILLS: CS/SB 1208

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Environmental Regulation Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>Kliner</u>	<u>Kliner</u>
2) <u>Agriculture & Environment Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>State Resources Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill repeals the 50-cents per bag surcharge on oysters harvested from the waters of the Apalachicola Bay which is paid by the wholesale dealer first receiving, using, or selling the oysters, and which is distributed for oyster management and restoration programs in the bay. The surcharge is replaced with a \$300,000 annual documentary stamp tax distribution to the General Inspection Trust Fund within the Department of Agriculture & Consumer Services (DACS) to be used to fund oyster management and restoration programs in the Bay and other areas of the state.

On the effective date of the act, the Department of Revenue is directed to cease all efforts to collect uncollected surcharge revenues. The committee substitute substantially amends ss. 201.15 and 370.07, F.S.; and amends ss. 161.091 and 213.05, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: On the effective date of the act, the Department of Revenue is directed to cease all efforts to collect uncollected surcharge revenues.

Ensure lower taxes. The bill repeals the 50-cents per bag surcharge on oysters harvested from the waters of the Apalachicola Bay which is paid by the wholesale dealer first receiving, using, or selling the oysters, and which is distributed for oyster management and restoration programs in the bay and other areas in the state.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Apalachicola Bay Oysters

The oyster fishery in Apalachicola Bay is the most productive of the oyster harvesting areas in Florida, and typically provides 80-90 percent of the statewide oyster harvest. The fishery is managed by the Fish and Wildlife Conservation Commission (FWC) through gear restrictions, daily bag limits, and seasonal closures.¹

The oyster management and restoration program is managed by the DACS and includes:

- Oyster relaying to move live oysters from polluted areas closed for harvest to cleaner, approved areas where the oysters cleanse themselves and become suitable for harvesting.
- Oyster transplanting to move seed oysters from areas of low growth to more favorable areas.
- Shell planting to deposit oyster shells on the bay bottom to rehabilitate oyster bars or create new ones. The shells provide a hard surface for oyster larvae to settle on and begin to grow.

The waters for harvesting of shellfish are classified as:

- Approved - normally open to harvesting. Red tides, sewage spills, and weather conditions such as hurricanes, may cause the Bay to be closed temporarily.
- Conditionally Approved - closed to harvest periodically because of pollution events such as excessive rain or increased river flow.
- Restricted Area - Open to relaying or controlled purification allowed only by special permit and with supervision. Red tides, sewage spills and weather events may cause the harvest area to be closed.
- Conditionally Restricted Area - Periodic suspension of relay and controlled purification activities based on pollution events.
- Prohibited Area - No harvesting due to actual or potential pollution.

Per Bag Surcharge:

The 1989 Legislature enacted ch. 89-175, Laws of Florida, to establish a 50-cents per bag surcharge on oysters harvested from the waters of the Apalachicola Bay. The surcharge was to be paid by the wholesale dealer first receiving, using or selling the oysters after harvest from the Bay. The Department of Revenue was designated as the collection agent and the surcharge was to be transferred quarterly into the Apalachicola Bay Conservation Trust Fund of the Department of Natural Resources (now the

¹ Information relating to the oyster management and restoration program provided by the Department of Agriculture & Consumer Services at http://www.floridaaquaculture.com/SEAS/SEAS_intro.htm

Department of Environmental Protection). The funds were to be used by the department to fund oyster management and restoration programs in Apalachicola Bay.

Prior to the transfer of the oyster management and restoration program to the DACS in the 2000 Regular Session, several laws were enacted which affected the oyster management and restoration program:

- Chapter 94-356, Laws of Florida, transferred the program to the newly created Department of Environmental Protection (DEP).
- Chapter 96-321, Laws of Florida, provided that surcharge revenues be deposited into the Marine Resources Conservation Trust Fund at DEP.
- Chapter 99-245, Laws of Florida, transferred the Marine Resources Conservation Trust Fund to the FWC.

In the 2000 Regular Session, the Legislature enacted ch. 2000-197 to transfer responsibility for the oyster management and restoration program to the Division of Aquaculture at the DACS. The Department of Revenue remained the state's collection agent and was directed to transfer surcharge revenues collected to the General Inspection Trust Fund at the DACS. The current oyster management and restoration program covers the Apalachicola Bay and oyster harvesting areas in Dixie, Levy, and Wakulla counties. Additional funding for the program is provided by the DACS.

Since the inception of the surcharge, collection revenues have fluctuated and program costs often exceed revenues collected. The fairness of the surcharge has been questioned by the harvesters who have seen a reduction in the per-bag-payments they receive from the wholesale dealers. Wholesale dealers in the Bay can sell bags of oysters harvested from other areas of the state without collecting or submitting the surcharge which is not assessed for oysters harvested outside of the Bay. In addition, the DACS runs the oyster management and restoration program in areas outside of the Bay, but only the Apalachicola Bay harvesters and dealers pay any of the program costs.

Oyster Surcharge Collection Summary

The FWC is responsible for providing the Department of Revenue with an annual list of oyster wholesale dealers who must have a Saltwater Products License issued by the FWC in order to sell saltwater products to any person, firm, or corporation except directly to the consumer. This list is used by the DOR to collect the per bag surcharge.

In the summer of 2004, the Department of Revenue (DOR) began a compliance enforcement effort to begin collecting overdue surcharge revenues. Registered and potentially unregistered wholesale dealers were notified by certified letter that the DOR was attempting to collect the unpaid surcharge. Second notices were mailed in September 2004. In February 2005, estimated bills totaling approximately \$195,000 in uncollected surcharge revenues were sent to 10 wholesale dealers who appeared to owe surcharge monies over the past three years, and in April 2005, estimated bills totaling approximately \$82,980 were sent to an additional 7 wholesale dealers who appear to owe surcharges monies over the past three years. The estimated bills also assessed penalties for late payment. The DOR has collected \$27,319.66 in the compliance effort - \$24,455 of surcharge revenues, \$133.73 in penalties, and \$2,731.21 in interest.

Active Dealer information	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05 (through 10/04)
Revenue	\$69,723	\$58,877	\$26,723	\$38,600	\$13,183
# of active dealers	19	19	19	19	25
# of active dealers paying surcharge	10	9	6	14	7

Source: Chart information relating to active dealers provided by the Department of Revenue.

The Apalachicola Bay oyster beds were closed off and on through the summer and fall of 2005 due to damage caused by hurricanes and red tide related health issues. As a result of the closures, the DOR has not been pursuing the compliance enforcement project.

Effect of Proposed Changes

The bill repeals the 50-cents per bag surcharge on oysters harvested from the waters of the Apalachicola Bay which is paid by the wholesale dealer first receiving, using, or selling the oysters, and which is distributed for oyster management and restoration programs in the bay. The surcharge is replaced with a \$300,000 annual documentary stamp tax distribution to the General Inspection Trust Fund within the Department of Agriculture & Consumer Services (DACS) to be used to fund oyster management and restoration programs in the Bay and other areas of the state.

On the effective date of the act, the Department of Revenue is directed to cease all efforts to collect uncollected surcharge revenues. The committee substitute substantially amends ss. 201.15 and 370.07, F.S.; and amends ss. 161.091 and 213.05, F.S.

C. SECTION DIRECTORY:

Section 1. Amends paragraph (e) of subsection (1), paragraph (a) of subsection 2, and subsection (11) of s. 201.15, F.S. to allow the distribution of documentary stamp tax revenues to the General Inspection Trust Fund in the DACS. This section provides that after annual distribution of documentary stamp tax revenues to the Ecosystem Management and Restoration Trust Fund or the Marine Resources Conservation Trust Fund, \$300,000 shall be paid to the credit of the General Inspection Trust Fund to fund oyster management and restoration programs in Apalachicola Bay and other areas of the state.

Section 2. Effective July 1, 2007, amends paragraph (e) of subsection (1) of s. 201.15, F.S., as amended by section 26 of ch. 2005-290, Laws of Florida, and paragraph (a) of subsection (2), and subsection (11) of s. 201.15, F.S., as amended by section 1 of ch. 2005-92, Laws of Florida, to allow the distribution of documentary stamp tax revenues to the General Inspection Trust Fund in the DACS. Provides that after the annual distribution of documentary stamp tax revenues to the Ecosystem Management and Restoration Trust Fund or the Marine Resources Conservation Trust Fund, \$300,000 shall be paid to the credit of the General Inspection Trust Fund to fund oyster management and restoration programs in Apalachicola Bay and other areas of the state. This section removes language from subsection (13) of s. 201.15 F.S. relating to recommendations to the Legislature by the Acquisition and Restoration Council regarding the repeal.

Section 3. Amends subsection (3) of s. 370.07, F.S. to repeal the 50-cents per bag surcharge assessed on each bag of oysters harvested from the waters of the Apalachicola Bay. This section repeals requirements that wholesale dealers certify that the surcharge has been paid or will be paid by the wholesale dealer first receiving the oysters. The section repeals provisions requiring that the Department of Revenue:

- Keep records showing the amount of collected surcharge.
- Transfer surcharge collected into the General Inspection Trust Fund of the DACS on a quarterly basis.
- Adopt emergency rules to implement the surcharge program.
- Promulgate rules to establish audit procedures for wholesale dealers, assess wholesale dealers for delinquency, and prescribe and publish forms to effectuate the collection of the surcharge.

This section further requires that the DACS use documentary stamp tax revenues paid to the credit of the General Inspection Trust Fund to fund oyster management and restoration programs in Apalachicola Bay and other areas of the state.

Section 4. Amends paragraph (a) of subsection (1) of section 72.011, F.S., eliminating a statutory cross reference to conform.

Section 5. Amends subsection (3) of s. 161.091, F.S., to conform.

Section 6. Amends s. 213.05, F.S., to delete the responsibility of the Department of Revenue for administering the 50-cents per bag surcharge established in s. 370.07(3), F.S.

Section 7. Amends paragraph (a) of subsection (1) of section 312.053, F.S., eliminating a statutory cross reference to conform.

Section 8. Directs the Department of Revenue to cease all efforts to collect any uncollected surcharge revenues due or payable on the effective date of the act.

Section 9. Provides that the act shall take effect upon becoming a law, except as otherwise provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

General Inspection Trust Fund (GITF)	FY 06-07	FY 07-08	FY 08-09
Recurring	\$300,000	\$300,000	\$300,000
Estimate collection by Department of Revenue and transferred to DACS GITF Eliminated in bill	(\$ 85,000)	(\$ 85,000)	(\$ 85,000)

2. Expenditures:

Current Recurring			
Salaries and benefits (6 FTEs)	\$258,781	\$258,781	\$258,781
OPS	11,664	11,664	11,664

<u>Expenses</u>	<u>28,479</u>	<u>28,479</u>	<u>28,479</u>
Total Recurring	\$298,924	\$298,924	\$298,924

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive private sector impact because of the reduction in costs to oyster harvesters and wholesale dealers who pay the 50-cents per bag surcharge.

D. FISCAL COMMENTS:

The bill provides that \$300,000 of documentary stamp tax revenue will be credited to the General Inspection Trust Fund at the DACS. Fiscal information provided by the department indicates that the surcharge generates \$85,000 in revenue and that the trust fund provides an additional \$214,000 for program expenses, including salaries and benefits for 6 FTEs. A recurring funding source will provide the Division of Aquaculture with the ability to spend current dollars on other division related responsibilities, such as water quality testing, for which spending authority exists but for which there are insufficient funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Committee on Environmental Regulation approved one clarifying amendment offered by the bill's sponsor that funds used to implement oyster management and restoration programs in the Bay are also used to fund similar programs in other areas of the state.