

STORAGE NAME: h0519.ca

DATE: March 4, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 519

RELATING TO: Indian River County Shellfish Harvesting

SPONSOR(S): Representative Posey

COMPANION BILL(S): SB 338 (i)

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

- (1) COMMUNITY AFFAIRS
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill expands the current requirement to obtain the permission of property owners to harvest oysters from any public or private land which is within 75 feet of the shoreline of Indian River or from any canal in Indian River County. Currently, permission of the owner of the submerged land or the owner of the land which directly borders the canal is required. The bill applies this restriction to all shellfish and requires the permission of the owners of the adjoining land, not the owners of the land on which the harvesting occurs. The bill also requires anyone harvesting shellfish from any submerged land that is within 75 feet of any privately owned submerged land or any dock to obtain permission from the owner of the adjacent property or dock.

The attached Economic Impact Statement states the bill will have no fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 79-480, Laws of Florida, requires persons harvesting oysters from any public or private land within 75 feet of the shoreline of the Indian River or from any canal in Indian River County to obtain written permission from the owner of the public or private property which is within 75 feet of the shoreline of the river or which directly borders any canal. The act provides that the owner of property abutting a canal has jurisdiction to the midpoint of the canal for the purposes of granting permission for such harvesting.

Article X, Section 11, of the State Constitution provides the following:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

Currently, the Board of Trustees of the Internal Improvement Trust Fund, is authorized by section 253.68, F.S., to lease sovereignty submerged lands for the purposes of aquaculture. The Board of Trustees of the Internal Improvement Trust Fund has leased such lands to individuals for such purposes on the Indian River.

B. EFFECT OF PROPOSED CHANGES:

The bill broadens the law to include shellfish other than oysters. The bill requires written permission from the owner of the "adjacent" property or dock to harvest shellfish within 75 feet of the shoreline of the property. With the additions and changes in terminology, the act will offer more protection for property owners along the Indian River or any canal in Indian River County from harvesters of shellfish.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapter 79-480, Laws of Florida.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. An additional obligation will be placed on shellfish harvesters to obtain the permission of adjacent property owners, as well as the property owners of the area being harvested.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. An additional obligation will be placed on shellfish harvesters to obtain the permission of adjacent property owners, as well as the property owners of the area being harvested.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Not applicable.

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not applicable.

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Paragraphs (a) and (b) of section 1 of chapter 79-480, Laws of Florida, are amended.

Paragraph (a) is amended to replace the reference to "oysters" with "shellfish," which expands the current restrictions on harvesting to include additional saltwater animals. The paragraph is also amended to replace the expression "public or private land" with "submerged land" and to require the permission of the owner of the adjacent property rather than the owner of the submerged land. The paragraph also requires anyone harvesting shellfish from any submerged land that is within 75 feet of any privately owned submerged land or any dock to obtain permission from the owner of the adjacent property or dock.

Paragraph (b), which defines jurisdiction of submerged lands within canals, is amended to replace the reference to "oysters" with "shellfish."

Section 2. An effective date upon becoming law is provided.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 10, 1996

WHERE? Vero Beach Press-Journal, Indian River County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

Department of Environmental Protection

The Department of Environmental Protection (DEP) submitted an analysis of this bill. The analysis states that the bill will continue enforcement difficulties in existing law. These include how to determine the 75 feet distance on water; verifying the authenticity of the written permission of an adjacent property owner; and the de facto control of the riparian owner over sovereignty submerged (public) lands, wherein a private party can exercise discretion over who has access to common property resources.

The analysis also notes that the term "shellfish" is not defined in the bill, and suggests that the term could include a variety of marine life, including clams and oysters, as well as shrimp and crabs, horseshoe crabs and sand dollars. The analysis states that the DEP cannot estimate how much shellfish harvesting area this bill will take out of production. Finally, the analysis states that there are also potential conflicts with aquaculture on shellfish lease areas that may be within 75 feet of docks or shorelines.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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