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DATE: February 7, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER & RESOURCE MANAGEMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 57

RELATING TO: Environmental Protection

SPONSOR(S): Committee on Water & Resource Management, Rep(s). Ball, Laurent and Feeney

STATUTE(S) AFFECTED: Sections 253.03, 369.20, and 403.813, Florida Statutes (F.S.)

COMPANION BILL(S): SB 26 (c)

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

- (1) WATER & RESOURCE MANAGEMENT YEAS 11 NAYS 0
- (2) GENERAL GOVERNMENT (Fiscal)
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 57 would create permit exemptions, under specific conditions, for maintenance dredging of previously dredged waterbodies, repairs to piers, and aquatic plant removal. In addition, the bill would create a general permit for the removal of detritus, tussocks and vegetation associated with aquatic plant management activities.

The bill's fiscal impact is undetermined, but it is likely to be minimal.

CS/HB 57 would take effect October 1, 1997.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Fees associated with dredging submerged lands

Title to the majority of state-owned lands is vested in the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees). Among the duties and responsibilities of the Board of Trustees are the administration and management of state-owned lands, pursuant to s. 253.03, F.S. The Board of Trustees is prohibited from levying fees for the removal of dredged material from sovereign submerged lands, when such work is performed by or on behalf of the federal government or a local sponsor participating in a federally approved navigation project, or when the dredging is in connection with a public port facility. However, there are provisions in s. 253.03(10), F.S., and in s. 403.813(2)(f), F.S., allowing the Board of Trustees to recover fees, based on per-cubic yard of materials removed, from other dredging activities.

The Department of Environmental Protection (DEP), which serves as staff to the Board of Trustees, typically assesses the per-cubic yard fee only on large dredging projects, where more than 25 cubic yards of materials will be removed. For example, the fee schedule for maintenance dredging of inlets is \$2,000 for the first 10,000 cubic yards of dredged material plus \$250 for each additional 10,000 cubic yards of dredged material, if the spoil is placed in an upland or offshore disposal site.

In fiscal year 1996-97, DEP collected \$86,600 in revenues from the per-cubic yard fee.

Aquatic plant control permitting

Pursuant to s. 369.20(7), F.S., DEP's Bureau of Aquatic Plant Management is authorized to issue permits for the chemical, biological and mechanical removal of aquatic weeds or plants in state waters. Chapter 62C-20, Florida Administrative Code, more specifically addresses the conditions and procedures of obtaining an aquatic plant control permit, which is available without charge and has a duration of one year. Prior to the passage of chapter 96-238, Laws of Florida, (CS/SB 1986), anyone who wanted to remove decaying stalks of dead aquatic plants and other organic detritus from a waterbody typically had to first obtain an environmental resource permit (ERP). An ERP allows a person to dredge and fill wetlands or surface waters, when certain conditions are met.

The 1996 legislation created an ERP exemption in s. 413.813(2)(r), F.S., for the "removal of noxious aquatic plants, the removal of tussocks, the associated replanting of indigenous aquatic plants, or the associated removal from lakes of unconsolidated, flocculent organic material if these activities have a valid permit issued by the department under s. 369.20 or s. 369.25." Staff of DEP's Bureau of Aquatic Plant Management and the Office of General Counsel concluded after the new law's passage that a rule was necessary to fully implement the exemption.

DEP staff has drafted a rule which they say implements the exemption created under s. 403.813(2)(r), F.S.; the draft rule has not been officially noticed in the Florida Administrative Weekly. Meanwhile, the exemption has not been used in the context of aquatic plant control.

Maintenance and other dredging exemptions

Section 403.813, F.S., lists a number of activities that are exempt from ERP requirements. Among these exempted activities is maintenance dredging of existing manmade canals, channels, and intake and discharge structures, as long as the dredged material is deposited on a self-contained, upland site to prevent its runoff into adjacent waters. The exemption applies to all canals constructed prior to April 3, 1970, and to those canals constructed after that date pursuant to state permits.

The current exemption language does not mention natural waterbodies, even those which have been dredged. The rationale for not including natural waterbodies was that some extensively dredged rivers and streams have retained their original meanders and adjacent flood plains, and thus still operate as natural systems.

Over the years, confusion has arisen over whether natural waterbodies that had been dredged for decades and had lost many of their natural attributes qualify for the exemption. This confusion has led to delays in local governments obtaining the necessary permits, or finding out after such delays that no permit was needed in order to dredge. All the while, these delays exacerbated flooding conditions in neighborhoods, in business districts and along roadways. In addition, some local governments have dredged waterways which they thought were covered under the exemption, only to learn they were subject to an enforcement action for illegal dredging.

Yet another ERP exemption exists for the installation and repair of mooring pilings of private docking facilities and installation of private docks, provided that any such dock:

- o Is within a certain size;
- o Does not impede navigation;
- o Is constructed of pilings or are floating structures so as not to involve dredging or filling any more than is necessary;
- o Is used for recreational, non-commercial activities; and
- o Is not within a certain distance from other docks.

A separate ERP exemption exists for the replacement or repair of existing docks, either publicly or privately owned, as long as no fill material is used and the improved dock is in the same location, has the same configuration, and is the same size as the original dock.

ERPs can be either general permits or individual permits. Simply put, a "general permit" authorizes a person to undertake certain activities, which when performed in accordance with specific requirements and practices, do not violate applicable DEP or water management district standards, and which cause minimal adverse environmental effect. General permits generally cost about \$50 (although some are free), have a duration of five years, and are issued after an agency review period of 30 days. After receipt of a general permit, the user must notify the agency before commencing with the allowed activities. An "individual permit" authorizes more extensive dredging and filling projects.

These permits can cost in the hundreds of dollars, based on the type of project, and include a 90-day review by the agency.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 57 would:

- o Amend s. 253.03, F.S., to prohibit the Board of Trustees or state agencies from regulating, permitting or charging for any detritus or other "severed materials" that are dredged from an area adjacent to an intake or discharge structure pursuant to an ERP exemption granted under s. 403.813 (2)(f), F.S. These materials to be removed would not be high-quality, natural mineral soils.
- o Create an aquatic permit control permit exemption under s. 369.20, F.S. In certain freshwater waterbodies, a riparian property owner would be able to physically or mechanically remove 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. The permit exemption would not be available to property owners living along aquatic preserves, Outstanding Florida Waters, or saltwater bodies. Nor would it apply to property owners who wanted to use herbicides to kill the aquatic plants, or who needed an ERP for other regulated dredging activities.

The bill also would create an aquatic plant control general permit. This general permit would be available for anyone who wanted to remove detritus, tussocks, and plants necessary to accomplish the removal or replanting of aquatic plants. Among the conditions of the new general permit is that all activities must be performed in such a manner so as not to violate water quality standards. DEP is specifically prohibited from adopting rules to implement the new general permit.

In addition, CS/HB 57 clarifies that the recipient of an aquatic plant control permit to apply herbicides does not also need a water pollution operation permit, pursuant to s. 403.088, F.S. That exemption currently exists in Chapter 403, F.S.

- o Amends s. 403.813(2)(b), F.S., to add private piers to those structures where moorings and dolphins can be installed or repaired without an ERP. In addition, repairs to local government piers and recreational docking facilities can be made without an ERP.
- o Amends s. 403.813(2)(f), F.S., to specify that previously dredged portions of natural waterbodies, within recorded rights-of-way or drainage easements, are eligible for the ERP exemption. The maintenance dredging must not significantly impact previously undisturbed natural areas; utilize best management practices to reduce erosion, turbidity and discharge; and be done within existing design configurations. Also, the dredging must be conducted in accordance with s. 370.12(2)(d), F.S., which specifies protection for manatees, and notice must be provided to DEP before the work begins.

C. 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?

CS/HB 57 specifies that DEP does not have the authority to adopt implementing rules for the new aquatic plant control general permit.

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

No.

(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?

The permit exemptions in CS/HB 57 would result in fewer applications for aquatic plant control permits, and for ERP permits related to pier repairs and maintenance dredging. In addition, it is possible that DEP would receive less revenue from its per-cubic yard fee for dredged materials because of the prohibition that the state could not charge for the removal of severed materials around intake and discharge structures. However, DEP staff has concluded that the revenue loss would be minimal.

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

No.

3. Personal Responsibility:

Not applicable.

4. Individual Freedom:

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

Yes. Through the various permit exemptions, CS/HB 57 gives individuals the ability to exercise more options to control aquatic plants and repair piers or recreational docking facilities.

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

CS/HB 57 clarifies 1996 legislative intent to provide in statute permit exemptions for individuals, without agency rulemaking.

5. Family Empowerment:

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 253.03, F.S., to prohibit the Board of Trustees of the Internal Improvement Trust, or the state through its agencies, to control, regulate, permit, or charge a fee for the removal of severed materials near intake and discharge structures, where such removal is eligible for a permit exemption under s. 403.813, F.S.

Section 2: Amends s. 369.20, F.S., to create an exemption from needing an aquatic plant control permit, under certain conditions. Creates an aquatic plant control general permit, and lists the conditions for eligibility. Clarifies that the recipient of an aquatic plant control permit for herbicide application does not also need to obtain a s. 403.088, F.S., water pollution operation permit.

Section 3: Amends s. 403.813, F.S., to grant permit exemptions for installation of and repairs to private piers, and to repairs to local government piers and recreational docking facilities. Grants a permit exemption for maintenance dredging of previously dredged portions of natural water bodies, under specific conditions.

Section 4: Provides that this act shall take effect October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

DEP staff indicate that any fiscal impacts of CS/HB 57 would be minimal.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Local governments may realize a cost savings if they are not required to obtain an ERP before conducting certain maintenance dredging activities or to repair piers.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Eligible riparian property owners would benefit from not having to bear the costs associated with obtaining aquatic plant control permits. Although the permits themselves are free, property owners sometimes incur costs related to researching and completing their permit applications.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of CS/HB 57 because the bill does not require counties or municipalities to spend funds or to take actions requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 29, 1997, the Committee on Water & Resource Management adopted seven amendments and two amendments to amendments. The major amendments added new ERP exemptions for the installation and repair of private piers, and repairs to local government piers and recreational docking facilities; created an aquatic plant control general permit; created an exemption to needing an aquatic plant control permit, under certain circumstances; and specified that before a local government could maintenance dredge a previously dredged, natural waterbody, it had to adhere to existing statutory protections for manatees and to notify DEP before commencing the project.

All the amendments were adopted without objection, and the bill, as amended, pass the committee by a vote of 11-0.

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Legislative Research Director:

Joyce Pugh

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