

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1474

SPONSOR: Senator Kirkpatrick

SUBJECT: Environmental control

DATE: April 18, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Unfavorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides an exemption from the permitting requirements in ch. 403, F.S., for the removal by a property owner of unconsolidated organic detrital material from water bodies adjacent to the owner's property under certain specified circumstances.

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 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;
- **The removal of aquatic plants, tussocks and associated removal of organic matter when such activities are authorized through either an aquatic plant 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:

In the whereas clauses of the bill, the Legislature finds that accumulation of dead organic material at the bottom of the waters of the state, whether from natural occurrences or from programs designed to manage and control the biota of water bodies, is deleterious to the overall health of the water resource. Further, the bill reaffirms, as a right of riparian ownership, the right of property owners to remove unconsolidated organic detrital material from water bodies adjacent to their properties, subject to certain conditions.

Subsection (2) of s. 403.813, F.S., is amended to provide that a property owner may remove unconsolidated organic detrital material from water bodies adjacent to his or her property under the following conditions:

- The unconsolidated detrital material may be removed from the water body out to a distance of 150 feet, measured perpendicularly from the fractal mean shoreline of the property;
- The removed material shall be disposed of or contained in an upland site and shall not be allowed to reenter the water body;
- During the course of the removal of unconsolidated organic material, the removal of nonindigenous, nuisance, or invasive plants is a right; and
- The incidental removal of indigenous, noninvasive, nonnuisance biota during the course of the removal of organic detritus is anticipated and shall require the replanting of 25 percent of such removed biota, by mass.

The removal of inorganic bottom material is prohibited, regardless of the existence of interstitial organic material.

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:

Riparian owners would be able to remove unconsolidated organic detrital material from water bodies adjacent to their property without having to obtain a state permit. In those cases where a permit was required, these owners would experience a savings by not having to pay a permit fee. However, currently, permits for aquatic plant management may be obtained from the DEP at no cost and are usually issued within 12 days from the date of the permit application.

C. Government Sector Impact:

There would be a minimal fiscal impact on the DEP. The loss of permit fee revenue is expected to be insignificant.

Since removal of the material would be conducted in the water column, the potential for adverse environmental impacts would be increased. As a result, local governments may elect to regulate such activities through local ordinances to protect the water bodies within their area of jurisdiction. The time and staff costs associated with such ordinances could be significant.

VI. Technical Deficiencies:

On page 2, line 15, the bill refers to the “fractal mean shoreline”; however, this term is not defined. It does not appear to be a term commonly used in the survey community. It appears that it is an attempt to smooth out non-linear shorelines. However, as it is used, it appears to conflict with the legal riparian lines between adjacent property owners, which are defined beginning in the water body or on the opposite shore and drawn back to the riparian owner’s property.

VII. Related Issues:

The Department of Environmental Protection has indicated that the bill, as drafted, conflicts with the existing statutory exemptions for removal of material from water bodies. The bill amends s. 403.813(2), F.S., to add a new paragraph (s) to exempt from permitting requirements for property owners to remove unconsolidated organic detrital material. Paragraph (r) just above it already addresses the removal of organic material and provides a list of criteria that must be met to remove organic material, including obtaining an exemption or permit under ch. 369, F.S. Paragraph (s) proposes different criteria, making it unclear as to what criteria the DEP is to enforce.

Aquatic vegetation is a critical component in protecting the health of freshwater, marine, and estuarine ecosystems. It reduces erosion by stabilizing shorelines, and provides nesting, breeding

and feeding habitat for fish and wildlife. The bill would allow the total removal of all aquatic vegetation within 150 feet of the shoreline in all waterbodies in Florida, including waters that have previously been provided special protection such as aquatic preserves and Outstanding Florida Waters. Although the bill requires that 25 percent, by mass, of any native, noninvasive, nonnuisance biota that are removed must be replanted, the term “biota” is not defined in the bill. “Biota” as defined in the dictionary, means “the animal and plant life of a particular region considered as a total ecological entity.” Using this definition, owners would have to replace 25 percent of all of the plants and animals that would be incidentally removed. The DEP has indicated that experience has shown that unless revegetation sites are actively managed after planting, invasive, non-beneficial plant species will invade these disturbed areas.

Ultimately, this bill could result in the removal of 75 percent of the aquatic plant communities in Florida waters. The DEP and the Fish and Wildlife Conservation Commission (FWCC) have indicated that leaving only 25 percent of a water body’s vegetation is insufficient to protect water quality and fish and wildlife communities. The FWCC has indicated that at least 40 percent must be left for fish and wildlife communities.

The DEP has also indicated that unless removal and disposal of the non-beneficial plant species are handled properly, increased dissemination of seeds and the resulting spread of such undesirable species could result.

The bill provides no dredging depth limitation. Currently, that depth is 3 feet. This could allow the unregulated conversion of existing marshes and other wetlands to open water, thereby destroying an ecosystem.

VIII. Amendments:

None.