

STORAGE NAME: h0167.ep
DATE: March 29, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
ANALYSIS**

BILL #: HB 167

RELATING TO: Environmental Control Permitting

SPONSOR(S): Representative Argenziano

TIED BILL(S):

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

- (1) ENVIRONMENTAL PROTECTION
 - (2) REAL PROPERTY & PROBATE
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

HB 167 amends s. 403.813, F.S. to add a new exemption from needing an environmental resource permit, or ERP. The bill lists conditions under which a waterfront property owner could remove unconsolidated organic detrital matter; outlines the disposal of removed material; provides for the removal of nonindigenous, nuisance, or invasive plants; and requires replanting of indigenous, noninvasive, nonnuisance biota incidentally removed during the exempted dredging process.

General concerns with HB 167 center around the clarity of the language and resulting impacts to the rights of adjacent property owners as well as to the environment.

HB 167 has an indeterminate, but likely insignificant, fiscal impact.

HB 167 would take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A
2. Lower Taxes Yes No N/A
Persons who currently need an environmental resource permit to remove organic material from water bodies adjacent to their property would no longer be required to obtain a permit or pay the associated permit fees.
3. Individual Freedom Yes No N/A
Persons would have an additional exemption from environmental resource permit requirements for dredging activities. However, an unintended consequence of the bill may be conflicts between waterfront property owners who want to exercise their right to the exemption, and their neighbors who feel their property rights have been violated (see "Effect of Proposed Changes" section).
4. Personal Responsibility Yes No N/A
5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Many wetland and surface water dredging and filling activities require environmental resource permits (ERPs) that are issued by either the Florida Department of Environmental Protection (FDEP) 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 US Army Corps of Engineers.

Currently, multiple activities are exempt from ERP requirements. These exempted activities are listed in section 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 streamline the permitting process 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 (Chapter 97-22, Laws of Florida) 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 streamline the state permitting process 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 Section 404 permit from the US 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 Section 404 permitting process.

C. EFFECT OF PROPOSED CHANGES:

HB 167 affords an additional exemption to section 403.813, F.S. from environmental resource permitting requirements. The bill provides that an ERP would not be necessary for the removal of “unconsolidated organic detrital material from water bodies adjacent” to an owner’s property and states that this material may be removed from the water body out to 150 feet from the “fractal mean shoreline.” It is unclear from the text of the bill what “unconsolidated organic detrital material” and “fractal mean shoreline” mean as no definitions are provided. In addition, the language allowing removal of material from water bodies adjacent to an owner’s property could be interpreted to allow the owner to remove material that, while adjacent to his land, is part of his neighbor’s frontage, thus violating the neighbor’s riparian rights. Similarly, the FDEP points out that the bill “makes no provision for privately owned water bodies or water bodies less than 150 feet wide.” As such, “it appears to authorize such removal to occur on another person’s property without their permission.”

HB 167 also provides for the disposal of the removed material such that it shall be “disposed of or contained in an upland site” and not be allowed to re-enter the water body. It is unclear what “disposed of” means. This could be an important issue depending on what is contained in the disposal material (see next paragraph).

Removal of “nonindigenous, nuisance, or invasive plants” is deemed a right by HB 167 during the course of removal of the unconsolidated organic material. The FDEP notes that the “improper removal and disposal of invasive nonindigenous plants (that could result from their unregulated removal) will result in further dispersion of seeds and increased problems with these plants.”

HB 167 requires the mitigation of “incidental removal of indigenous, noninvasive, nonnuisance biota” that occurs during the removal of the unconsolidated organic material such that 25% of the indigenous biota by mass shall be replanted. It is unclear how this mitigation is to occur as the activity does not require a permit under the bill. Questions also arise regarding who would determine what type of biota to replant, whether the biota was plant or animal, and what is “incidental removal” and who would make that determination.

Finally, an exemption for removing organic material with its own criteria already exists in statute in section 403.813(2)(r), F.S. The creation of an additional exemption for the removal of organic material with a different set of criteria could lead to confusion as to which exemption/criteria to use, both by the property owner for the actual activity and by any agency for any resulting enforcement actions.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 403.813, F.S. to add a new exemption from needing an environmental resource permit, or ERP. Lists conditions under which a waterfront property owner could remove unconsolidated organic detrital matter; outlines the disposal of removed material; provides for the removal of nonindigenous, nuisance, or invasive plants; and requires replanting of indigenous, noninvasive, nonnuisance biota incidentally removed during the exempted dredging process.

Section 2: Provides that this act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

HB 167 would result in an indeterminate, but likely minimal, loss of revenue from ERP fees to the FDEP and the water management districts.

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

A likely insignificant savings would result for local governments that are waterfront property owners and wanted to take advantage of the exemption as they would not have to pay ERP fees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Eligible riparian property owners would benefit from not having to bear the costs associated with obtaining ERPs to remove unconsolidated organic detrital matter from adjacent water bodies. However, it is difficult to estimate the amount of the savings as the potential number of participating property owners is uncertain.

D. FISCAL COMMENTS:

It is difficult to estimate the exact amount of the fiscal impact resulting from this exemption, since ERPs cannot currently be tracked based on the specific authority they authorize.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

STORAGE NAME: h0167.ep

DATE: March 29, 2000

PAGE 6

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

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

Wayne S. Kiger

Wayne S. Kiger