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DATE: April 10, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS**

BILL #: CS/HB 167

RELATING TO: Environmental Control Permitting

SPONSOR(S): Committee on Environmental Protection; and Representative(s): Argenziano and Others

TIED BILL(S):

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

- (1) ENVIRONMENTAL PROTECTION YEAS 12 NAYS 1
- (2) REAL PROPERTY & PROBATE (W/D)
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

CS/HB 167 exempts from regulation the removal by riparian owners of organic detrital material from freshwater lakes and rivers. Such removal is allowed along the length of the riparian owner's shoreline, may also include the removal of all free floating vegetation and invasive plants adjacent to the riparian owner's shoreline, and may occur to the rocky substrate. All material removed must be deposited in an upland site to prevent its reintroduction into waters of the state.

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

The bill provides that the act shall take effect upon becoming a law.

On March 30, 2000, the Committee on Environmental Protection adopted a strike everything amendment and passed this bill as a committee substitute. Please see "Amendments or Committee Substitute Changes" section.

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.