

By Representative Futch

1 A bill to be entitled
 2 An act relating to Brevard County; amending
 3 chapter 94-419, Laws of Florida, as amended;
 4 conforming provisions relating to clam
 5 harvesting licenses to the transfer of duties
 6 from the Department of Environmental Protection
 7 to the Fish and Wildlife Conservation
 8 Commission; revising provisions relating to the
 9 use of proceeds from the collection of
 10 licensing fees; deleting authority to use a
 11 portion of such proceeds for boat launching
 12 facilities; requiring moneys to be used for
 13 clam resource restoration and enhancement
 14 projects; providing an effective date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Chapter 94-419, Laws of Florida, as amended
 19 by chapters 96-463, 98-486, and 99-416, Laws of Florida, is
 20 amended to read:

21 Section 1. A person, firm, or corporation may not
 22 harvest clams of the genus Mercenaria from the salt waters of
 23 Brevard County without a valid clam license issued by the Fish
 24 and Wildlife Conservation Commission ~~Department of~~
 25 ~~Environmental Protection~~ and a valid saltwater products
 26 license bearing an RS endorsement.

27 Section 2. (1) The Fish and Wildlife Conservation
 28 Commission ~~Department of Environmental Protection~~ shall issue
 29 a resident or nonresident clam license during a 61-day period
 30 beginning June 1 of each year, except that in 1994 the 61-day
 31 period shall begin on the effective date of this act. The

1 term of the license begins on July 1 of the purchase year and
2 ends on June 30 of the third succeeding year. The fee for a
3 resident license is \$300, and the fee for a nonresident
4 license is \$1,200. The license is valid only for the
5 individual licensee to whom it is issued. The nonresident
6 license must be readily distinguishable from the resident
7 license.

8 (2) Only persons who are bona fide permanent residents
9 of this state and firms and corporations that are organized
10 under the laws of this state are eligible for the resident
11 license. A person, firm, or corporation that has had its
12 license to harvest shellfish in this state or any other state
13 suspended or revoked is ineligible for either a resident or
14 nonresident clam license for the duration of that suspension
15 or revocation. Proof of eligibility must be by means of an
16 affidavit sworn to by the applicant and additional
17 documentation that shows, to the satisfaction of the Fish and
18 Wildlife Conservation Commission ~~Department of Environmental~~
19 ~~Protection~~, that the applicant is a natural person permanently
20 residing in this state or is a firm or corporation organized
21 under the laws of this state.

22 (3) A license may be purchased after the annual 61-day
23 license issuance period upon the payment of an additional
24 \$1,200 late fee to the commission ~~department~~.

25 (4) Beginning June 1, 1996, no new clam licenses shall
26 be issued by the Department of Environmental Protection or the
27 Fish and Wildlife Conservation Commission until the total
28 number of active and renewed clam licenses for Brevard County
29 falls below 500 for the previous license year. In any year
30 thereafter, the commission ~~department~~ may issue such
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1 additional new licenses to bring the total number of licenses
2 issued for Brevard County up to a maximum of 500.

3 (5) Any clam licenses not renewed within 6 months
4 after their expiration date are not eligible for renewal until
5 additional new licenses also become available.

6 (6) Beginning with the 1996-1997 license year, the
7 Department of Environmental Protection or the Fish and
8 Wildlife Conservation Commission shall hold, on a semiannual
9 basis, a required educational seminar of up to 4 hours, but
10 not less than 2 hours, regarding harvesting, health standards,
11 and any other issues appropriate to the health of the clam
12 resources and the clamming industry. Proof of attendance at
13 one such seminar per year is required before any clam license
14 may be renewed for the 1997-1998 license year or subsequent
15 license years.

16 (7) On July 1 of each year, the Fish and Wildlife
17 Conservation Commission ~~Department of Environmental Protection~~
18 will determine if the total number of licenses has fallen
19 below 500. If so, the commission ~~department~~ may issue new
20 licenses under the following stipulations:

21 (a) First priority will be given to current Brevard
22 County Hard Clam License holders who have missed one of the
23 required educational seminars. Applicants will have a 60-day
24 period beginning July 1 to apply for a new license and
25 complete the missed educational seminar.

26 (b) Second priority will be given to past Brevard
27 County Hard Clam License holders under this act. Applicants
28 will have a 60-day period beginning September 1 to apply for a
29 new license and complete all missed educational seminars.

30 (c) Final priority will be on a first-come
31 first-served basis. Applicants will have a 60-day period

1 beginning November 1 to apply for a new license and complete
2 all educational seminars.

3 (d) New licenses will not be issued between January 1
4 and June 30 of any year.

5 Section 3. Each person, firm, or corporation that
6 holds a resident or nonresident clam license must produce such
7 license, along with a valid saltwater products license bearing
8 an RS endorsement, upon demand of any law enforcement officer,
9 within a reasonable period of time after the demand is made.

10 Section 4. (1) The license required by this act may
11 be issued in the form of an endorsement on the licensee's
12 saltwater products license card. Each person, firm, or
13 corporation that obtains a license under this act must
14 prominently display the license number upon any vessel used,
15 in numbers that are at least 8 inches in height and 1 inch in
16 width and in such manner that the permit number is readily
17 identifiable from both the air and the water. Only one vessel
18 displaying a given number may be used at any time.

19 (2) Any vessel used for harvesting clams in Brevard
20 County shall have on board a portable or U.S. Coast
21 Guard-approved marine sanitation device having a holding tank
22 and any thru valve shut and fixed in a closed position.

23 (3) All license holders harvesting clams by swimming
24 at or below the surface of the water and using an underwater
25 breathing apparatus must be certified divers. A person
26 harvesting clams in such a manner may not use more than 150
27 feet of air hose and must have a diver down flag floating as
28 close by as practical.

29 Section 5. The proceeds from the collection of license
30 fees or civil penalties under this act, including any late
31 fees, are to be deposited in the Marine Biological Research

1 Trust Fund of the Fish and Wildlife Conservation Commission
2 ~~Department of Environmental Protection~~ and, less reasonable
3 administrative and educational costs, must be appropriated for
4 the initial testing and reclassification of
5 shellfish-harvesting waters in Brevard County. A portion of
6 the proceeds, not more ~~less~~ than 40 percent, must be used to
7 mark those open and closed waters of Brevard County until all
8 such waters are so marked. An additional portion of the
9 proceeds must be used for clam resource restoration and
10 enhancement projects, ~~not to exceed \$200,000, may be used as~~
11 ~~matching funds for the construction of boat-launching~~
12 ~~facilities~~ in various areas of benefit to and in coordination
13 with the Brevard County clamming industry. ~~The amount of~~
14 ~~these matching funds may not exceed 25 percent of the total~~
15 ~~projected costs of the launching facilities.~~

16 Section 6. (1) A person, firm, or corporation may not
17 ship, transport, or otherwise carry by public or private
18 carrier, vehicle, or vessel, within the limits of Brevard
19 County, whether over the land, on water, or in the air, clams
20 in numbers greater than those allowed by rules of the Fish and
21 Wildlife Conservation ~~Marine Fisheries~~ Commission.

22 (2) Subsection (1) does not prohibit a certified
23 wholesale or retail dealer, or any person who is employed by
24 such wholesale or retail dealer or is serving such wholesale
25 or retail dealer, from transporting clams, taken lawfully and
26 in lawful amounts, directly to a licensed, certified wholesale
27 or retail dealer or shucking house. This act does not
28 prohibit the removal and transportation of clams lawfully
29 taken from an authorized clam lease by the leaseholder or his
30 authorized agent.

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1 Section 7. Except for section 11, this act does not
2 apply to a natural person possessing or harvesting clams in
3 noncommercial quantities during open season designated by law
4 or regulation.

5 Section 8. This act shall not apply to any aquaculture
6 operations licensed pursuant to chapter 370, Florida Statutes.

7 Section 9. Any person, firm, or corporation that
8 violates any of the provisions of this act is guilty of a
9 misdemeanor of the second degree, punishable as provided in
10 section 775.082 or section 775.083, Florida Statutes.

11 Section 10. (1) In addition to being subject to the
12 other penalties provided in this act, a person, firm, or
13 corporation that commits a major violation is subject to the
14 following civil penalties:

15 (a) For a first major violation within a 7-year
16 period, a civil penalty equal to the wholesale value of the
17 illegal clams and suspension of the clam license for 90 days.

18 (b) For a second major violation within a 7-year
19 period, a civil penalty of \$5,000 and suspension of the clam
20 license for 12 months.

21 (c) For a third or subsequent major violation within a
22 7-year period, a civil penalty of \$5,000, lifetime revocation
23 of the clam license, and forfeiture of all gear and equipment
24 used in the violation.

25 (2) During any period of license suspension or
26 revocation under this section, the licensee may not fish from
27 any vessel that is harvesting clams.

28 (3) The Fish and Wildlife Conservation Commission
29 ~~Department of Environmental Protection~~ may bring a civil
30 action to enforce the civil penalties prescribed in this
31 section.

1 (4) As used in this section, the term "major
2 violation" includes:
3 (a) The possession of more than one bushel of
4 undersized clams;
5 (b) The harvesting of clams more than 1/4 mile
6 inside the boundaries of any closed area and at least 24 hours
7 after that area has been closed; or
8 (c) The sale of clams harvested from any waters or
9 leases that have not been tested and are not open at the time
10 of the harvest.
11 Section 11. It is unlawful for any person to harvest
12 clams in Brevard County, whether such harvesting is for
13 private use, commercial sale, or relaying, from any submerged
14 land that is within 75 feet of a shoreline of the Indian River
15 or the Banana River which abuts property that is used for
16 residential purposes or within 75 feet of any canal bank.
17 Section 12. This act shall expire July 1, 2003.
18 Section 2. This act shall take effect July 1, 2000.
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