

STORAGE NAME: h1931z.ep
DATE: May 23, 2000

****FAILED TO PASS THE LEGISLATURE****

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

BILL #: HB 1931
RELATING TO: Navigational access channels
SPONSOR(S): Representative Melvin
TIED BILL(S):

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

- (1) ENVIRONMENTAL PROTECTION YEAS 12 NAYS 0
 - (2) GENERAL GOVERNMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill exempts the residential community of Santa Rosa Shores in Santa Rosa County from the requirement of chapters 161, 253, 403 and other Florida Statutes to construct and maintain navigational access channels connected to an existing canal system. This bill also grants the authority to the Department of Environmental Protection to use this project as a pilot project for the purpose of determining the best management practices for the reproduction of seagrass.

This bill takes effect upon becoming law.

This bill has an indeterminate fiscal impact.

On April 12, 2000, the Committee on Environmental Protection adopted a strike everything amendment that is traveling with this bill. See the "Amendments and Committee Substitute Changes" section herein.

(On May 5, 2000, this bill died in the Committee on General Governmental Appropriations. There was no senate companion.)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

Santa Rosa Shores is a residential community in Northwest Florida that is built upon six finger canals which are all connected by three larger channels. All channels are considered to be shallow (i.e. less than 3 feet) and some are very narrow. The channels are too shallow to provide adequate access by the resident's vessels (i.e. 25 ft. range) to the larger water body.

The channels also provide a valuable habitat to seagrass. Seagrasses provide food for fish, waterfowl, manatees and green sea turtle and are an essential habitat for shell fish and finfish. They also affect nutrient cycling, sediment stability and water turbidity. Seagrass is vulnerable to reduced water clarity and their distribution is a good indicator of water quality. If the sediment is released, and the sunlight cannot access the seagrass --

The residents have applied to the Department of Environmental Protection for permits and sovereign submerged land authorizations to deepen and extend the channels across the seagrass bed through the Santa Rosa Sound. All such applications were denied, primarily due to: the environmental impacts that are expected to result from the requested work, and the failure of the applicants to provide sufficient information needed to complete the applications. The environmental impacts that are expected to result include a loss of between 2.1 and 3.6 acres of seagrass habitat; an inability of the reconstructed channels to meet state water quality standards; water quality degradation during excavation of the channels; and a lack of adequate areas to contain excavated material.

Conversely, this dredging would reduce the impact that the boats make on the seagrass bed. It is estimated that the boats have already eliminated approximately .25 to .5 acres of seagrass habitat.

Chapter 161 establishes permitting requirements. More specifically, s. 161.041, F.S., provides that if any person, corporation or municipality desires to dredge inlet channels or remove beach material, or coastal construction of any kind, a permit must be obtained from the department prior to commencement of the work.

The department may require mitigation to assure performance of the permit. In addition, the department may direct that the entity maintain navigable depths, after the department considers water quality and other sediment tests.

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A refusal to comply with ch. 161 may result in fines up to \$10,000 per each offense.

Chapter 253, F.S., provides further requirements for the acquisition of state owned lands and sovereign submerged land uses. Section 253.77, F.S., provides that a person may not commence any excavation, construction or other activity involving the use of sovereign lands of the state, until the person has received the required lease, license, easement or other form of consent authorizing the use. This includes an environmental resource permit or dredge and fill permit.

Section 253.001, F.S., states that sovereign submerged lands are to be in title by the Board of Trustees of the Internal Improvement Trust Fund for the benefit of the people of this state. Currently the board of trustees is vested with the management, control and supervision of such lands.

In addition, the Fish and Wildlife Conservation Commission has authority under s. 370.12(2)(m), F.S., to adopt rules to protect manatee habitat, such as seagrass beds, from destruction by boats or other activity.

Chapter 403, F.S., is a broad statute encompassing several different issues, ranging from pollution control, hazardous waste facility regulation, water supply, ecosystem management, wastewater reuse or disposal to an expedited permitting process.

Ch. 403, F.S., grants the Department of Environmental Protection the authority to establish a permitting system under this chapter and ch. 253, F.S., which provides for the issuance of permits of maintenance dredging of permitted navigation channels, and beach restoration projects under ch. 161, F.S. Chapter 403 also establishes a permitting requirement for dredge and fill in on, or over the waters of the state.

In addition, there are federal laws that establish permitting requirements to dredge access canals. These laws may also apply to the Santa Rosa community and therefore, the Army Corps of Engineers may govern this project as well.

C. EFFECT OF PROPOSED CHANGES:

This bill would allow the residents of Santa Rosa Shore to be exempt from all permitting requirements and fees related to construction, connection and maintenance of navigational access channels. As a result, this exemption would allow the residents to dredge an access channel in the waters of the canals within the Santa Rosa community which currently provide a habitat for seagrass. The access channel would be 50 feet in width and dredged to a mean low-water depth of 6 feet.

In addition, this bill creates the authority for the Department of Environmental Protection to use this project as a pilot project. The DEP would perform any studies necessary to determine the best management practices for the growth of seagrass.

This bill becomes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill will limit the collection by the state of a permit application fee under s. 373.4145, F.S., (estimated to be around \$500), a submerged lands application fee under ch. 253, F.S., (estimated to be around \$200) and a sovereign submerged lands dredged material severance fee (indeterminate at this time as it depends upon the quantity dredged and the disposal of the material).

2. Expenditures:

There will be an indeterminate expense upon the Department of Environmental Protection which would encompass the cost studying the seagrass environment and providing employees and equipment to further this pilot project.

This bill is unclear as to who bears the cost of dredging and maintenance of the access channel. If the cost is intended to fall on the DEP, then this may be an added expenditure of the state. This amount is indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Property tax revenues have been limited due to the reduction in property values as a result of the inability of residents to have a navigational access channel. The county could potentially realize additional tax revenue by increasing its property values. The amount of which is indeterminate at this time.

2. Expenditures:

It is unclear in this bill who would bear the cost of dredging and maintenance of the access channel. If it is intended to fall upon Santa Rosa County, then this would be an added expense to the county. This expense is indeterminate at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The residents claim that their property values are not fully realized due to the limited navigational access of the channel. As a result, the private residents may be losing revenues to the extent that the homes would increase in value, and could be sold for a greater amount than the current market value. This amount is indeterminate at this time.

It is unclear in this bill who would bear the cost of dredging and maintenance of the access channel. If it is intended to fall upon Santa Rosa Shore residents, then this

would be an added expense to the private sector. This expense is indeterminate at this time.

D. FISCAL COMMENTS:

N/A

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 spend 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.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

This bill is subject to a title defect in that it does not specify which permitting requirements or fees, or which statutory provisions in ch. 161, 253 and 403, F.S., Santa Rosa Shores is to be exempt.

In addition, this bill is over broad in that it states in subsection (1) and (2)(b) that Santa Rosa Shores is to exempt from chapters 161, 253 and 403, Florida Statutes, or other sections of Florida Statutes.

Although this bill specifies the width and the depth of the channel, it does not specify the following:

- > length of the channel,
- > the number of channels,
- > where the excavated material is to be disposed,
- > whether the dredging takes into account altering the channel banks,

- > the method of dredging,
- > the method of protecting water quality in the seagrass habitat,
- > the method of maintenance of the channel, and whether future dredging would be needed.

In addition, this bill does not specify what the “best management practices for the propagation of seagrass” is to include, or not include. Furthermore, this bill does not require the replanting of seagrass.

The Department of Environmental Protection opposes this bill and claims that dredging in this channel would result in an extensive amount of environmental damage to the seagrass habitat (estimated to be approximately 1.5 to 3 acres). In addition, the DEP claims that a significant adverse impact would result to the resources, water quality, seagrass and the habitat they provide. Dredging would result in damage to sedimentation and dissolved oxygen levels.

Furthermore, the DEP claims that damage would be recurring since the channel would probably need to be dredged repeatedly in the future for maintenance.

Lastly, there are federal laws that establish permitting requirements to dredge canals. These laws may also apply to the Santa Rosa community and therefore, the Army Corps of Engineers may govern this project as well.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 12, 2000, the Committee on Environmental Protection adopted a strike everything amendment that is traveling with this bill. The strike everything amendment is different from this bill in that:

- The Department of Environmental Protection is to work in cooperation with the Santa Rosa Shores Homeowners Association to develop a proposal for dredging a single channel in Santa Rosa Sound.
- This proposal is to include a project plan containing the following information:
 - mitigation for offsetting the adverse impacts of the dredging,
 - disposing of the dredged material,
 - protecting water quality and sea grass,
 - long-term maintenance of the channel, and
 - inspection and study of the project, including annual reports.
- The homeowners are to complete all necessary permitting applications and incur the costs for this project.
- Both the DEP and the homeowners are authorized to contract with the University of West Florida to receive the university’s services for monitoring the project and reports.
- The DEP is to assist the homeowners in developing their project criteria, including, but not limited to:
 - the length, width, and depth of the access channel,

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- where and how the excavated material is to be disposed,
- the method for protecting water quality and sea grass,
- long-term maintenance of the channel,
- mitigation and design of the project,

- design of the monitoring and reporting program,
- expediting the permitting process as required by the state, and
- expediting any associated authorizations required from the U.S. Army Corps of Engineers.

- Title defects are cured.
- This act is to take effect upon becoming law.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Christine Hoke, J.D.

Staff Director:

Wayne Kiger

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Christine Hoke, J.D.

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