

STORAGE NAME: h2205.wrm

DATE: March 30, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER & RESOURCE MANAGEMENT
ANALYSIS**

BILL #: HB 2205 (PCB WRM 00-06)

RELATING TO: Private Seawalls/Construction Permit (RAB)

SPONSOR(S): Committee on Water and Resource Management, Representative Alexander and others

TIED BILL(S): None

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

- (1) WATER & RESOURCE MANAGEMENT YEAS 10 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Agencies have been directed by section 120.536, Florida Statutes, to identify rules which lack sufficient statutory authority, and to seek that authorization from the Legislature. The statutory authorization, in the form of a "rule authorization bill," or RAB, is to be narrowly drawn to the rule in question.

HB 2205 amends s. 403.813, F.S., to authorize the Department of Environmental Protection (DEP) and the governing boards of the water management districts (WMDs) to limit the exemptions to permits necessary for the construction of private seawalls and vertical seawalls. At present, these limitations are imposed by the agency and the districts in rules contained within the Florida Administrative Code (F.A.C.), and, to some degree, in s. 373.414(5)(b), F.S.

The bill has no apparent fiscal impact, nor does it raise constitutional or other legal concerns.

HB 2205 will take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|--------|-------|---------|
| 1. <u>Less Government</u> | Yes [| No [] | N/A [x] |
| 2. <u>Lower Taxes</u> | Yes [] | No [] | N/A [x] |
| 3. <u>Individual Freedom</u> | Yes [] | No [] | N/A [x] |
| 4. <u>Personal Responsibility</u> | Yes [] | No [] | N/A [x] |
| 5. <u>Family Empowerment</u> | Yes [] | No [] | N/A [x] |

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

B. PRESENT SITUATION:

Background on RAB requirements

In enacting ch. 99-379, L.O.F., the Legislature amended ch. 120, F.S., (the Administrative Procedure Act) to clarify an agency's authority to adopt rules. Subsection (1) of s. 120.536, F.S., as amended, provides that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

To ensure compliance with s. 120.536(1), F.S., s. 120.536(2)(b), F.S., requires that each agency, by October 1, 1999, provide to the Administrative Procedures Committee a list of each rule or portion of a rule adopted by that agency prior to June 18, 1999, which exceeded the rulemaking authority permitted by s. 120.536, F.S. For those rules of which only a portion exceeded the rulemaking authority permitted by the section, the agency had to identify the language of the rule which exceeded this authority. The Administrative Procedures Committee combined the lists and provided the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. The Legislature shall, at the 2000 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted.

By January 1, 2001, each agency must initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist. By February 1, 2001, the Administrative Procedures Committee must submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency previously identified as exceeding its rulemaking authority for which proceedings to repeal the rule have not been initiated. As of July 1, 2001, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section.

Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency must initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

Section 403.813, F.S.

Section 403.813, F.S. authorizes DEP to adopt rules to issue permits at the district centers of the agency, and also provides exemptions from permitting requirements as follows:

- o Paragraph (i) of subsection (2) of s. 403.813, F.S., provides that no permit is necessary for the construction of private docks and seawalls in artificially created waterways under certain conditions.
- o Paragraph (o) of subsection (2) of s. 403.813, F.S., provides that no permit is necessary for the construction of private seawalls in the waters of the state under certain conditions.

Only paragraph (o) of subsection (2) provides that the authorized permit exemption may not affect the permitting requirements of chapter 161, F.S., (related to beaches and shores), and that the rules adopted by DEP must clearly indicate that the permitting requirements of chapter 161, F.S., are not affected by the exemption.

Section 373.414, F.S.

Section 373.414, F.S., provides additional criteria for authorized activities in the surface waters and wetlands of the state as follows:

- o Paragraph (a) of subsection (5) of s. 373.414, F.S., provides legislative intent regarding the protection of estuaries and lagoons from the damage created by the construction of vertical seawalls.
- o Paragraph (b) of subsection (5) provides that neither the governing board of a WMD or DEP, may issue a permit to construct a vertical seawall except under certain conditions. Those conditions are: the proposed construction is located within a port, as defined in s. 315.02 or s. 403.021, F.S.; the proposed construction is necessary for creation of a marina, to provide access to watercraft, or necessary for public facilities; the proposed construction is located within an existing manmade canal and the shoreline already has vertical seawalls; or the proposed construction is to be conducted by a public utility in performance of its duties to provide service to the public.
- o Paragraph (c) of subsection (5) provides that both the governing boards of the WMDs and DEP must require that in the repair or replacement of existing vertical seawalls, such seawall must be faced with riprap material, or replaced entirely with riprap material, except in certain circumstances.

Rules Adopted by DEP and the Water Management Districts

Rule 62-330, F.A.C., of the DEP, adopts the following rules by reference:

- Rule 40B-400.051(2)(k), (l) and (m) of the Suwannee River WMD;
- Rule 40C-4.051(12)(k), (l) and (m) of the St. Johns River WMD;
- Rule 40D-4.051(12)(f), (i) and (o) of the Southwest Florida WMD; and
- Rule 40E-4.051(4)(a), (b) and (c) of the South Florida WMD.

The above rules relate to exemptions for permits required for the construction of seawalls in artificially created waterways, and the construction of private vertical seawalls in wetlands or surface waters other than estuaries or lagoons.

The rules for permit exemptions for the construction of seawalls in artificially created waterways do not apply to vertical seawalls in estuaries or lagoons (except under certain circumstances), also a limitation not contained in the statutory provisions of s. 403.813, F.S. but implemented by DEP and the WMDs.

Finally, the rules provide that the construction of vertical seawalls in wetlands or surface waters other than estuaries or lagoons must meet the construction criteria of s. 373.414(5), F.S. This limitation also is not authorized in s. 403.813, F.S. but implemented by DEP and the WMDs.

C. EFFECT OF PROPOSED CHANGES:

HB 2205 amends s. 403.813, F.S., to provide DEP and the governing boards of the WMDs with statutory authority to limit permit exemptions for the construction of private seawalls and vertical seawalls in certain circumstances.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends subsection (2) of s. 403.813, F.S., as follows:

- o Paragraph (i) is amended to provide that the permit exemption for the construction of private docks and seawalls in artificially created waterways does not apply to the construction of private vertical seawalls in estuaries or lagoons, unless the proposed construction is within an existing man-made canal where the shoreline is currently occupied in whole or in part by vertical seawalls.
- o Paragraph (o) is amended to provide that although a permit exemption is authorized for the construction of private seawalls in wetlands or other surface water under certain conditions, the construction of private vertical seawalls in estuaries and lagoons is limited to the circumstances and purposes stated in s. 373.414(5)(b)1-4.

Section 2. Provides that the proposed bill will take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. **Revenues:**

None

2. **Expenditures:**

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to HB 2205 because the proposed bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 2205 does not reduce the revenue-raising authority of counties or municipalities.

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

HB 2205 does not reduce the state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

HB 2205 provides DEP and the governing boards of the WMDs with the statutory authority to limit permit exemptions regarding the construction of private seawalls and vertical seawalls as is currently being implemented in rules of both the agency and the districts.

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C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

In addition to limiting permit exemptions for the construction of private seawalls and vertical seawalls, PCB WRM 00-06 (now HB 2205) originally amended s. 403.813, F.S. to provide DEP and the WMDs with the authority to require that the restoration and repair of seawalls meet the criteria specified in s. 373.414(5)(b), F.S.. On March 23, 2000, the Committee on Water & Resource Management unanimously adopted an amendment to PCB WRM 00-06, to strike language regarding the restoration and repair of seawalls. PCB WRM 00-06, as amended, relates only to the construction of private seawalls and vertical seawalls.

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Staff Director:

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