

By Senator Brown-Waite

10-246-02

1                                   A bill to be entitled  
2           An act relating to environmental control;  
3           amending s. 403.813, F.S.; providing an  
4           exemption from permitting requirements for the  
5           removal of organic detrital material from  
6           certain freshwater rivers or lakes; providing  
7           an effective date.

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

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11           Section 1. Subsection (2) of section 403.813, Florida  
12   Statutes, is amended to read:

13           403.813 Permits issued at district centers;  
14   exceptions.--

15           (2) A ~~No~~ permit is not required under this chapter,  
16   chapter 373, chapter 61-691, Laws of Florida, or chapter 25214  
17   or chapter 25270, 1949, Laws of Florida, ~~shall be required~~ for  
18   activities associated with the following types of projects;  
19   however, except as otherwise provided in this subsection,  
20   nothing in this subsection relieves an applicant from any  
21   requirement to obtain permission to use or occupy lands owned  
22   by the Board of Trustees of the Internal Improvement Trust  
23   Fund or any water management district in its governmental or  
24   proprietary capacity or from complying with applicable local  
25   pollution control programs authorized under this chapter or  
26   other requirements of county and municipal governments:

27           (a) The installation of overhead transmission lines,  
28   with support structures which are not constructed in waters of  
29   the state and which do not create a navigational hazard.

30           (b) The installation and repair of mooring pilings and  
31   dolphins associated with private docking facilities or piers

1 and the installation of private docks, piers and recreational  
2 docking facilities, or piers and recreational docking  
3 facilities of local governmental entities when the local  
4 governmental entity's activities will not take place in any  
5 manatee habitat, any of which docks:

6       1. Has 500 square feet or less of over-water surface  
7 area for a dock which is located in an area designated as  
8 Outstanding Florida Waters or 1,000 square feet or less of  
9 over-water surface area for a dock which is located in an area  
10 which is not designated as Outstanding Florida Waters;

11       2. Is constructed on or held in place by pilings or is  
12 a floating dock which is constructed so as not to involve  
13 filling or dredging other than that necessary to install the  
14 pilings;

15       3. Shall not substantially impede the flow of water or  
16 create a navigational hazard;

17       4. Is used for recreational, noncommercial activities  
18 associated with the mooring or storage of boats and boat  
19 paraphernalia; and

20       5. Is the sole dock constructed pursuant to this  
21 exemption as measured along the shoreline for a distance of 65  
22 feet, unless the parcel of land or individual lot as platted  
23 is less than 65 feet in length along the shoreline, in which  
24 case there may be one exempt dock allowed per parcel or lot.

25  
26 Nothing in this paragraph shall prohibit the department from  
27 taking appropriate enforcement action pursuant to this chapter  
28 to abate or prohibit any activity otherwise exempt from  
29 permitting pursuant to this paragraph if the department can  
30 demonstrate that the exempted activity has caused water  
31 pollution in violation of this chapter.

1           (c) The installation and maintenance to design  
2 specifications of boat ramps on artificial bodies of water  
3 where navigational access to the proposed ramp exists or the  
4 installation of boat ramps open to the public in any waters of  
5 the state where navigational access to the proposed ramp  
6 exists and where the construction of the proposed ramp will be  
7 less than 30 feet wide and will involve the removal of less  
8 than 25 cubic yards of material from the waters of the state,  
9 and the maintenance to design specifications of such ramps;  
10 however, the material to be removed shall be placed upon a  
11 self-contained upland site so as to prevent the escape of the  
12 spoil material into the waters of the state.

13           (d) The replacement or repair of existing docks and  
14 piers, except that no fill material is to be used and provided  
15 that the replacement or repaired dock or pier is in the same  
16 location and of the same configuration and dimensions as the  
17 dock or pier being replaced or repaired.

18           (e) The restoration of seawalls at their previous  
19 locations or upland of, or within 1 foot waterward of, their  
20 previous locations. However, this shall not affect the  
21 permitting requirements of chapter 161, and department rules  
22 shall clearly indicate that this exception does not constitute  
23 an exception from the permitting requirements of chapter 161.

24           (f) The performance of maintenance dredging of  
25 existing manmade canals, channels, intake and discharge  
26 structures, and previously dredged portions of natural water  
27 bodies within drainage rights-of-way or drainage easements  
28 which have been recorded in the public records of the county,  
29 where the spoil material is to be removed and deposited on a  
30 self-contained, upland spoil site which will prevent the  
31 escape of the spoil material into the waters of the state,

1 provided that no more dredging is to be performed than is  
2 necessary to restore the canals, channels, and intake and  
3 discharge structures, and previously dredged portions of  
4 natural water bodies, to original design specifications or  
5 configurations, provided that the work is conducted in  
6 compliance with s. 370.12(2)(d), provided that no significant  
7 impacts occur to previously undisturbed natural areas, and  
8 provided that control devices and best management practices  
9 for erosion and sediment control are utilized to prevent bank  
10 erosion and scouring and to prevent turbidity, dredged  
11 material, and toxic or deleterious substances from discharging  
12 into adjacent waters during maintenance dredging. Further, for  
13 maintenance dredging of previously dredged portions of natural  
14 water bodies within recorded drainage rights-of-way or  
15 drainage easements, an entity that seeks an exemption must  
16 notify the department or water management district, as  
17 applicable, at least 30 days prior to dredging and provide  
18 documentation of original design specifications or  
19 configurations where such exist. This exemption applies to all  
20 canals and previously dredged portions of natural water bodies  
21 within recorded drainage rights-of-way or drainage easements  
22 constructed prior to April 3, 1970, and to those canals and  
23 previously dredged portions of natural water bodies  
24 constructed on or after April 3, 1970, pursuant to all  
25 necessary state permits. This exemption does not apply to the  
26 removal of a natural or manmade barrier separating a canal or  
27 canal system from adjacent waters. When no previous permit  
28 has been issued by the Board of Trustees of the Internal  
29 Improvement Trust Fund or the United States Army Corps of  
30 Engineers for construction or maintenance dredging of the  
31 existing manmade canal or intake or discharge structure, such

1 maintenance dredging shall be limited to a depth of no more  
2 than 5 feet below mean low water. The Board of Trustees of the  
3 Internal Improvement Trust Fund may fix and recover from the  
4 permittee an amount equal to the difference between the fair  
5 market value and the actual cost of the maintenance dredging  
6 for material removed during such maintenance dredging.  
7 However, no charge shall be exacted by the state for material  
8 removed during such maintenance dredging by a public port  
9 authority. The removing party may subsequently sell such  
10 material; however, proceeds from such sale that exceed the  
11 costs of maintenance dredging shall be remitted to the state  
12 and deposited in the Internal Improvement Trust Fund.

13 (g) The maintenance of existing insect control  
14 structures, dikes, and irrigation and drainage ditches,  
15 provided that spoil material is deposited on a self-contained,  
16 upland spoil site which will prevent the escape of the spoil  
17 material into waters of the state. In the case of insect  
18 control structures, if the cost of using a self-contained  
19 upland spoil site is so excessive, as determined by the  
20 Department of Health, pursuant to s. 403.088(1), that it will  
21 inhibit proposed insect control, then-existing spoil sites or  
22 dikes may be used, upon notification to the department. In  
23 the case of insect control where upland spoil sites are not  
24 used pursuant to this exemption, turbidity control devices  
25 shall be used to confine the spoil material discharge to that  
26 area previously disturbed when the receiving body of water is  
27 used as a potable water supply, is designated as shellfish  
28 harvesting waters, or functions as a habitat for commercially  
29 or recreationally important shellfish or finfish. In all  
30 cases, no more dredging is to be performed than is necessary

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1 to restore the dike or irrigation or drainage ditch to its  
2 original design specifications.

3 (h) The repair or replacement of existing functional  
4 pipes or culverts the purpose of which is the discharge or  
5 conveyance of stormwater. In all cases, the invert elevation,  
6 the diameter, and the length of the culvert shall not be  
7 changed. However, the material used for the culvert may be  
8 different from the original.

9 (i) The construction of private docks and seawalls in  
10 artificially created waterways where such construction will  
11 not violate existing water quality standards, impede  
12 navigation, or affect flood control. This exemption does not  
13 apply to the construction of vertical seawalls in estuaries or  
14 lagoons unless the proposed construction is within an existing  
15 manmade canal where the shoreline is currently occupied in  
16 whole or part by vertical seawalls.

17 (j) The construction and maintenance of swales.

18 (k) The installation of aids to navigation and buoys  
19 associated with such aids, provided the devices are marked  
20 pursuant to s. 327.40.

21 (l) The replacement or repair of existing open-trestle  
22 foot bridges and vehicular bridges that are 100 feet or less  
23 in length and two lanes or less in width, provided that no  
24 more dredging or filling of submerged lands is performed other  
25 than that which is necessary to replace or repair pilings and  
26 that the structure to be replaced or repaired is the same  
27 length, the same configuration, and in the same location as  
28 the original bridge. No debris from the original bridge shall  
29 be allowed to remain in the waters of the state.

30 (m) The installation of subaqueous transmission and  
31 distribution lines laid on, or embedded in, the bottoms of

1 waters in the state, except in Class I and Class II waters and  
2 aquatic preserves, provided no dredging or filling is  
3 necessary.

4 (n) The replacement or repair of subaqueous  
5 transmission and distribution lines laid on, or embedded in,  
6 the bottoms of waters of the state.

7 (o) The construction of private seawalls in wetlands  
8 or other surface waters where such construction is between and  
9 adjoins at both ends existing seawalls; follows a continuous  
10 and uniform seawall construction line with the existing  
11 seawalls; is no more than 150 feet in length; and does not  
12 violate existing water quality standards, impede navigation,  
13 or affect flood control. However, in estuaries and lagoons the  
14 construction of vertical seawalls is limited to the  
15 circumstances and purposes stated in s. 373.414(5)(b)1.-4.  
16 This paragraph does not affect the permitting requirements of  
17 chapter 161, and department rules must clearly indicate that  
18 this exception does not constitute an exception from the  
19 permitting requirements of chapter 161.

20 (p) The restoration of existing insect control  
21 impoundment dikes which are less than 100 feet in length. Such  
22 impoundments shall be connected to tidally influenced waters  
23 for 6 months each year beginning September 1 and ending  
24 February 28 if feasible or operated in accordance with an  
25 impoundment management plan approved by the department. A  
26 dike restoration may involve no more dredging than is  
27 necessary to restore the dike to its original design  
28 specifications. For the purposes of this paragraph,  
29 restoration does not include maintenance of impoundment dikes  
30 of operating insect control impoundments.

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1           (q) The construction, operation, or maintenance of  
2 stormwater management facilities which are designed to serve  
3 single-family residential projects, including duplexes,  
4 triplexes, and quadruplexes, if they are less than 10 acres  
5 total land and have less than 2 acres of impervious surface  
6 and if the facilities:

7           1. Comply with all regulations or ordinances  
8 applicable to stormwater management and adopted by a city or  
9 county;

10           2. Are not part of a larger common plan of development  
11 or sale; and

12           3. Discharge into a stormwater discharge facility  
13 exempted or permitted by the department under this chapter  
14 which has sufficient capacity and treatment capability as  
15 specified in this chapter and is owned, maintained, or  
16 operated by a city, county, special district with drainage  
17 responsibility, or water management district; however, this  
18 exemption does not authorize discharge to a facility without  
19 the facility owner's prior written consent.

20           (r) The removal of aquatic plants, the removal of  
21 tussocks, the associated replanting of indigenous aquatic  
22 plants, and ~~or~~ the associated removal from lakes of organic  
23 detrital material when such planting or removal is performed  
24 and authorized by permit or exemption granted under s. 369.20  
25 or s. 369.25, provided that if:

26           1. Organic detrital material that exists on the  
27 surface of natural mineral substrate ~~soil~~ shall be allowed to  
28 be removed to a depth of 3 feet or to the natural mineral  
29 substrate ~~soils~~, whichever is less; ~~;~~

30           2. All ~~organic~~ material removed ~~removal~~ pursuant to  
31 this paragraph ~~subsection~~ shall be deposited in an upland site



1 in a manner that will prevent the reintroduction of the  
2 material into waters in the state except when spoil material  
3 is permitted to be used to create wildlife islands in  
4 freshwater bodies of the state when a governmental entity is  
5 permitted pursuant to s. 369.20 ~~this section~~ to create such  
6 islands as a part of a restoration or enhancement project;~~-~~

7 3. All activities are performed in a manner consistent  
8 with state water quality standards; ~~and-~~

9 4. No activities under this exemption are conducted in  
10 wetland areas, as defined by s. 373.019(22), which are  
11 supported by a natural soil as shown in applicable United  
12 States Department of Agriculture county soil surveys, except  
13 when a governmental entity is permitted pursuant to s. 369.20  
14 to conduct such activities as a part of a restoration or  
15 enhancement project.

16  
17 The department may not adopt implementing rules for this  
18 paragraph, notwithstanding any other provision of law.

19 (s) Notwithstanding any provision to the contrary in  
20 this subsection, a permit or other authorization under chapter  
21 253, chapter 369, chapter 373, or chapter 403 is not required  
22 for the removal of organic detrital material from freshwater  
23 rivers or lakes that have a natural sand or rocky substrate  
24 and that are not Aquatic Preserves or for the associated  
25 removal and replanting of aquatic vegetation for the purpose  
26 of environmental enhancement, providing that:

27 1. No activities under this exemption are conducted in  
28 wetland areas, as defined by s. 373.019(22), which are  
29 supported by a natural soil as shown in applicable U.S.  
30 Department of Agriculture county soil surveys.

31 2. No filling or peat mining is allowed.

1           3. No removal of native wetland trees, including but  
2 not limited to ash, bay cypress, gum, maple, or tupelo,  
3 occurs.

4           4. When removing organic detrital material, no portion  
5 of the underlying natural mineral substrate or rocky substrate  
6 is removed.

7           5. Organic detrital material and plant material  
8 removed is deposited in an upland site in a manner that will  
9 not cause water-quality violations.

10           6. All activities are conducted in such a manner, and  
11 with appropriate turbidity controls as to prevent any  
12 water-quality violations outside the immediate work area.

13           7. Replanting with a variety of aquatic plants native  
14 to the state shall occur in a minimum of 25 percent of the  
15 preexisting vegetated areas where organic detrital material is  
16 removed, except for areas where the material is removed to  
17 bare rocky substrate; however, an area may be maintained clear  
18 of vegetation as an access corridor. The access corridor width  
19 may not exceed 50 percent of the property owner's frontage or  
20 50 feet, whichever is less, and may be a sufficient length  
21 waterward to create a corridor to allow access for a boat or  
22 swimmer to reach open water. Replanting must be at a minimum  
23 density of 2 feet on center and be completed within 90 days  
24 after removal of existing aquatic vegetation, except that  
25 under dewatered conditions replanting must be completed within  
26 90 days after reflooding. The area to be replanted must extend  
27 waterward from the ordinary high water line to a point where  
28 normal water depth would be 3 feet or the preexisting  
29 vegetation line, whichever is less. Individuals are required  
30 to make a reasonable effort to maintain planting density for a  
31 period of 6 months after replanting is complete and the

1 plants, including naturally recruited native aquatic plants,  
2 must be allowed to expand and fill-in the revegetation area.  
3 Native aquatic plants to be used for revegetation must be  
4 salvaged from the enhancement project site or obtained from an  
5 aquatic plant nursery regulated by the Department of  
6 Agriculture and Consumer Services. Plants that are not native  
7 to the state may not be used for replanting.

8 8. No activity occurs any farther than 100 feet  
9 waterward of the ordinary high water line, and all activities  
10 must be designed and conducted in a manner that will not  
11 unreasonably restrict or infringe upon the riparian rights of  
12 the upland riparian owners.

13 9. The person seeking this exemption notifies the  
14 applicable department district office in writing at least 30  
15 days before commencing work and allows the department to  
16 conduct a preconstruction site inspection. Notice must  
17 include an organic-detrital-material removal and disposal plan  
18 and, if applicable, a vegetation-removal and revegetation  
19 plan.

20 10. The department is provided written certification  
21 of compliance with the terms and conditions of this paragraph  
22 within 30 days after completion of any activity occurring  
23 under this exemption.

24 Section 2. This act shall take effect July 1, 2002.

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27 SENATE SUMMARY

28 Provides an exemption from environmental permitting  
29 requirements for the removal of organic detrital material  
30 from freshwater lakes or rivers that have a natural sand  
31 or rocky substrate.