

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Environmental Preservation Committee

BILL: SB 2288

SPONSOR: Senator Bennett

SUBJECT: Public Marinas/Boat Ramps/DEP

DATE: April 1, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	Favorable
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill authorizes the Department of Environmental Protection to allow public marina facilities and public boat ramps to be constructed and maintained by local governments under a General Permit.

This bill substantially amends s. 403.814, F.S.

II. Present Situation:

Most lands owned by the State of Florida are titled in the name of the Board of Trustees of the Internal Improvement Trust Fund (Governor and the Cabinet,) and are held in trust for the use and benefit of the people of the state. State-owned uplands are used for purposes such as parks, schools and universities, prisons, and forestry management. Submerged lands can be leased to riparian landowners for docks, moorings, pilings, and marinas.

Activities conducted in, on, or over surface waters of the state require a permit from the Department of Environmental Protection (DEP) or a water management district. Certain activities also require a permit from the U.S. Army Corps of Engineers.

Any activity which is not exempt from permitting will require an Environmental Resource Permit (ERP) from the water management district or from the DEP if such activity occurs within the jurisdiction of the Northwest Florida Water Management District. Depending upon the magnitude of the proposed activity, a Standard Permit, General Permit, or a Noticed General Permit may be required. In order to obtain an ERP, an applicant will be required to demonstrate that the proposed activity will:

- Not adversely affect public health, safety and welfare of the property of others;

- Not adversely affect fish and wildlife;
- Not impair navigation or surface water flows;
- Not adversely affect nearby fishing or recreational uses; and
- Not increase the potential for flooding or discharge of pollutants.

Pursuant to s. 403.813(2)(b) and (c), F.S., local governments are exempt from obtaining a Part IV, ch. 373, F.S., permit for construction or operation of small docks and boat ramps. Pursuant to rule 18-21.005(1), F.A.C., such facilities, located on sovereignty submerged land, qualify for “consent by rule” or a Letter of Consent from the Board of Trustees unless fees are charged for the use of the facility. If fees are charged, then the Board of Trustees may authorize a lease, although lease fees may be waived if the fees charged are used to maintain the facility.

Larger local government docks and boat ramps require an individually processed Part IV, ch. 373, F.S., permit and would need either a Letter of Consent or lease from the Board of Trustees as noted above. Applications for these authorizations would be processed by the appropriate DEP district office, subject to comments by the Fish and Wildlife Conservation Commission, particularly with respect to manatee protection issues, including consistency with local government manatee protection plans, where adopted. The state permit/sovereignty submerged land review addresses such issues as manatees, seagrass beds, historic resources, navigation, protection of riparian rights, protection of water quality, and treatment of stormwater for associated upland facilities such as parking lots. Additional authorization is required from the U.S. Army Corps of Engineers, subject to comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding manatee and other resource protection issues.

To meet both the letter and the spirit of our state’s environmental laws, the DEP is in partnership with both private and public entities in the marine industry to develop a Clean Marina Program. There are nearly 2,000 marinas operating in Florida today and hundreds of thousands of boaters use Florida’s waters every day. The aim of the Clean Marina Program (CMP) is prevention. Marinas and boaters may not be aware of the environmental laws, rules and jurisdictions with which they must comply. Compound that with the reality that environmental and operational problems are usually addressed after they happen rather than anticipated.

The goal of CMP is Clean Marina Designation. Designation lets boaters that use the marina know that these businesses adhere to, or exceed, program criteria, including *Marina Environmental Measures* or MEMs. MEMs are simple, innovative solutions to day-to-day marina operations that protect the environment. These MEMs have been developed through examination of best management practices around the country and the partnership of Florida’s marinas, boatyards, boaters and government.¹

III. Effect of Proposed Changes:

This bill amends s. 403.814, F.S., to require the DEP to adopt by rule a general permit providing regulatory and proprietary authorization to local governments for the construction and maintenance of public marina facilities and public boat ramps. Such facilities may preempt no more than 50,000 square feet of sovereign submerged lands and shall be reviewed pursuant to the

¹ <http://www.dep.state.fl.us/law/grants/cmp/>

regulatory criteria in s. 373.414, F.S. A public marina facility constructed pursuant to these provisions must obtain Clean Marina Program status within a reasonable time after completion and must maintain such status for the life of the facility. A facility approved pursuant to these provisions is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. "Public" means the facility or ramp is open to the public on a first-come, first-serve basis with a rental term not to exceed 1 year. A facility or boat ramp constructed pursuant to this bill may not be sold to a private entity. The state consents to the use of all state lands lying under water which are necessary to accomplish the purposes of this bill. Fees charged to local governments for preemption of such state lands shall be as set forth in ch. 253, F.S., and shall be used to promote boating access in this state.

This bill takes effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This will give the public permanent access to submerged land. Costs to those using such public facilities or ramps would include slip and launch fees.

C. Government Sector Impact:

The permit fee for a General Permit is \$100. It is not know how many facilities would be constructed under the proposed General Permit. There is no change in the sovereign submerged land fees although the use of those fees is specified to be used to promote boating access in the state. Under the bill, only those facilities that charge use fees would be subject to the sovereign submerged land lease fees and most local government facilities under lease qualify for a fee-waived lease as they direct "use" fees to facility maintenance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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