

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/CS/SB 1242

INTRODUCER: Community Affairs Committee; Environmental Preservation and Conservation Committee; and Senators Jones and Bennett

SUBJECT: Environmental Permitting

DATE: April 22, 2008                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Kiger	EP	<b>Fav/CS</b>
2.	Molloy	Yeatman	CA	<b>Fav/CS</b>
3.			GO	
4.			GA	
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The committee substitute (bill) requires the Department of Environmental Protection (department) to conduct a study to develop a plan to implement parity in salaries for environmental permitting staff, and directs the department to develop a project management plan that implements the remaining phases of an e-permitting program. Local governments are prohibited from requiring the department or a water management district to produce written documentation as proof that a project does not require a permit pursuant to s. 403.813(2), F.S. The department is authorized to maintain a list of projects or activities to be considered by applicants when developing proposals to meet the mitigation or public interest requirements of chapters 253, 373, and 403. County governments are encouraged to develop an inventory of projects for inclusion on the department's list.

The bill provides that a local government may not require further verification from the department for certain activities that are exempt from permitting. The repair or replacement of docks and piers is exempt from permitting if the replacement or repaired dock or pier is in approximately the same location, and is no larger in size and in substantially the same configuration and dimensions as the existing dock or pier.

The bill substantially amends ss. 403.061 and 403.813, F.S., and creates three undesignated sections of law.

## II. Present Situation:

The Florida Legislative Committee on Intergovernmental Relations (LCIR) in March, 2007, issued an interim project report titled *Improving Consistency and Predictability in Dock and Marina Permitting*. This report concluded a 2-year project to review current permitting practices and identify opportunities to improve the consistency and predictability in the permitting of water-related facilities in Florida. The principle recommendations contained in the report support taking steps to:

- Increase staffing and technology resources for the DEP;
- Direct the Department of Business and Professional Regulation to establish certification and licensure standards for marine contractors;
- Authorize local governments, with the assistance of local advisory councils, to identify public interest projects that serve as mitigation for dock and marina permitting;
- Require local governments to accept self-certification to exempt permitting of single-family docks meeting certain standards;
- Require the DEP to continue to request participation of appropriate professional associations when developing guidance documents regarding standards relating to marine building materials and construction methods;
- Authorize the DEP to accept electronically transmitted materials in the Request for Additional Information (RAI) process; and
- Consider abolishing the current land lease fee exemptions, and levy an annual flat or single fee that would apply to all docks.

### DEP Staffing Issues

The LCIR report found that the most frequently cited problem in the permitting process involves interactions between the marine construction industry and DEP staff engaged in the review of dock and marina permit applications. The main reason cited was the high turnover rate of staff at the DEP. Wages and workload were cited as the main causes of the high turnover rates. Wages paid to DEP staff are considerably lower than the private sector for similar work. Given the limited number of employees at the DEP, workloads are much greater per employee.

### Communications and Technology

Most permit applications are submitted to the DEP via the mail service or hand delivered to district offices. Applicants are often required to submit additional information and the review may be delayed if an application is reassigned to another DEP staff due to staff turnovers. The LCIR found that increased use of computer and electronic filing of permit applications and online payment of permit application fees can improve the efficiency and effectiveness of permitting programs and overall service to all users.

### Single-Family Dock Self-Certification

The LCIR found that a frequently cited problem was the local governments' non-acceptance of self-certification for certain types of projects and activities that are exempt from DEP permitting. Such projects include private docks with 500 square feet or less of over-water surface area for a

dock which is located in an area designated as an Outstanding Florida Water or 1,000 square feet or less of over-water surface area for a dock which is located in an area not designated as an Outstanding Florida Water. In addition to using the self-certification process, a project may require additional authorization before a dock is permitted. Certain projects require federal authorization obtained through the U.S. Army Corps of Engineers. Docks built on state sovereign submerged lands require a letter of consent to use the submerged lands from the Board of Trustees of the Internal Improvement Trust Fund. The LCIR recommendation was to clarify that certain single-family docks and other projects meeting the exemption criteria for self-certification do not require further verification by DEP in order to be accepted by local government permitting authorities.

### **Marine Contractor Certification and Licensure**

Currently, marine contractors are unregulated by the state. The LCIR recommended that the Department of Business and Professional Regulation develop certification and licensure standards for marine contractors as a specialty license.

### **Regulatory Mitigation**

Section 373.414(18), F.S., requires the DEP and each water management district responsible for implementation of the environmental resource permitting program to develop a uniform mitigation assessment method for wetlands and other surface waters. This method is binding on DEP, the water management districts and local governments; however, a concern the LCIR found was that identifying appropriate projects to serve as mitigation is often based on guesswork.

### **Development of DEP Guidance Documents**

The LCIR recommended that the DEP continue to request participation of appropriate professional associations when developing guidance documents regarding the standards for building materials and construction methods.

### **Submerged Land Lease Fee Exemptions**

Most privately owned locks associated with a single-family residence or condominium are exempt from paying submerged land lease fees. The LCIR recommended that the Legislature should consider abolishing the submerged land lease fee exemptions and levy an annual flat fee or single fee that would apply to all single-family and multi-family docks and piers that are currently not assessed lease fees with a percentage of the proceeds to be used to fund the DEP pay parity compensation plan and completion of an e-permitting system.

## **III. Effect of Proposed Changes:**

The bill implements some of the recommendations of the LCIR's March, 2007, interim project report titled *Improving Consistency and Predictability in Dock and Marina Permitting*.

**Section 1** directs the DEP to conduct a study to develop a plan that will implement parity in salaries for environmental permitting staff. The department shall phase in the plan over 3 years. The plan must include salaries that are comparable to salaries for similar positions within water management districts, local governments, and the marine construction industry. The plan must enable the department to obtain and retain qualified staff who are involved with environmental

resource permitting and related wetlands permit programs at the state and district levels. The department shall submit the plan to the President of the Senate, the Speaker of the House of Representatives, and the LCIR by November 1, 2008.

**Section 2** requires the DEP to develop a project management plan that implements the remaining phases of an e-permitting program that allows for timely submittal, processing, and exchange of information relating to permit applications and compliance. The plan must include an implementation timetable, estimated costs, and transaction fees. The department shall submit the plan to the President of the Senate, the Speaker of the House of Representative, and the LCIR by November 1, 2008.

**Section 3** provides that notwithstanding any other provisions of law to the contrary, a local government may not require the production of written documentation from the DEP or a water management district showing that a project does not require a permit pursuant to s. 403.813(2), F.S.

**Section 4** amends s. 403.061, F.S., to provide that DEP may maintain a list of projects or activities that applicants may consider when developing proposals to meet the mitigation and public interest requirements of chapters 253, 373, and 403. The contents of the list are not a rule, and listing a specific project or activity does not imply approval by the department for such project or activity. Each county government is encouraged to develop an inventory of projects or activities for inclusion on the list by obtaining input from local stakeholder groups in the public, private, and nonprofit sectors, including local governments, port authorities, marine contractors, other representatives of the marine construction industry, environmental or conservation organizations, and other interested parties.

**Section 5** amends s. 403.813, F.S., to provide that:

- A local government may not require further verification from the department for certain activities that are exempt from permitting.
- The replacement or repair of existing docks and piers is exempt from permitting if the replacement or repaired dock or pier is in approximately the same location, and is no larger in size and in substantially the same configuration and dimensions as the existing dock or pier.
- Although the construction of certain private docks of 1,000 square feet or less of over-water surface area and certain seawalls in artificially created waterways are exempt from state permitting requirements, local governments may require permits or a one-time registration to ensure compliance with local building and zoning codes and ordinances.

**Section 6** provides that the bill shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill makes it easier for persons to repair or replace an existing dock or pier by providing that the repaired or replaced dock or pier may not be any larger in size than the original structure, but may be substantially the same in configuration and dimensions as the original dock and may be placed in approximately the same location.

Persons conducting activities for which a department permit is not required may benefit from a streamlined process due to the prohibition against local governments requiring the department to further verify the exemption.

C. Government Sector Impact:

The department is required to conduct a study to implement a pay parity program for its environmental permitting staff, and is directed to phase in the study over a 3-year period beginning in the 2009-2010 fiscal year. The bill does not identify a funding source for costs related to the study or for salary costs associated with pay parity.

The department is required to develop a plan to implement the remaining phases of an e-permitting program. The department's estimated cost for developing the plan is \$320,000. It is estimated that it could take 3 to 5 years to implement the final phases of an e-permitting plan. The cost and operation of such a program is not known at this time.

County governments are encouraged to develop an inventory of projects or activities for inclusion on a department list, and to do so by obtaining input from local stakeholder groups and other interested parties.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs Committee on April 22, 2008:**

The bill clarifies that the department's prioritized list of projects to be considered by applicants when developing proposals is for the purpose of meeting the mitigation or public interest requirements of chapters 253, 373, and 403. County governments are encouraged to develop a prioritized inventory of projects or activities to be included in the list, and to seek stakeholder input when developing the inventory. The bill clarifies that local governments may require permits or a one-time registration for the construction of certain private docks and seawalls when those projects are exempt from department permitting requirements.

**CS by Environmental Preservation and Conservation Committee on March 27, 2008:**

The bill provides that a local government may not require the production of written documentation from the DEP or a water management district that a project is exempt from permitting. A dock or pier may be repaired or replaced without a permit if it is no larger in size and in substantially the same configuration and dimensions as the existing dock or pier.

- B. **Amendments:**

None.