

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 Environmental Preservation and Conservation Committee

BILL: CS/SB 1242

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Jones

SUBJECT: Environmental Permitting

DATE: March 27, 2008 REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute requires the Department of Environmental Protection (DEP) to conduct a study to develop a plan to implement parity in salaries for environmental permitting staff. Requires the DEP to develop a project management plan that implements the remaining phases of a an e-permitting program. Provides that 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. Allows the DEP to maintain a list of projects or activities that applicants may consider for certain mitigation purposes. Provides that a local government may not require further verification from the DEP for certain activities that are exempt from permitting. Provides that the repair or replacement of docks and piers are 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 committee substitute substantially amends ss. 403.061 and 403.813, F.S.

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 DEP parity compensation plan and completion of an e-permitting system.

III. Effect of Proposed Changes:

The committee substitute 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 certain mitigation requirements. 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 shall 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 are 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. Current law requires the replaced or repaired dock or pier to be in the same location and of the same configuration and dimensions as the dock or pier being replaced.

Section 6 provides that the committee substitute 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 committee substitute will allow those persons repairing or replacing an existing dock or pier to make such repairs or replacements if the it is no larger in size and insubstantially the same configuration and dimensions as the dock or pier being replaced.

Persons conducting exempt activities would no longer have to obtain further verification from the local government that an activity is exempt. This could help streamline the process to conduct the exempted activity.

C. Government Sector Impact:

The DEP is required to conduct a study to bring the salaries of the department's environmental permitting staff up to par with private industry. There would be a cost associated with the study, but that cost is not known at this time. Also, any actual salary adjustments would have to be approved by the Legislature through approval of the department's annual budget.

The DEP 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.

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

The committee substitute 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
