

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: SB 2230
 INTRODUCER: Senator Aronberg
 SUBJECT: Mangrove Protection
 DATE: March 25, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Kiger	EP	Favorable
2.			CA	
3.			GA	
4.				
5.				
6.				

I. Summary:

This bill provides that the Department of Environmental Protection (DEP) shall assess a penalty against any person who violates the provisions of the Mangrove Trimming and Protection Act. Provides that the trimming of mangroves to obtain a “right of view” must be conducted in conformance with the provisions of the Mangrove Trimming and Protection Act. Allows the DEP to provide for exemptions and general permits for activities that have minimal adverse impacts on the water resources of the state. Allows the DEP to revoke the Professional Mangrove Trimmer status for persons who become repeat violators. Clarifies the applicability of the Mangrove Trimming and Protection Act to certain public lands and allows the act to be enforceable on such lands.

This bill substantially amends ss. 403.121, 403.9323, 403.9324, and 403.9331, F.S.

II. Present Situation:

In 1995, the Legislature created the Mangrove Trimming and Preservation Act. The 1995 act substantially revised the regulation of mangroves by providing for:

- Delegation of mangrove regulation to local governments;
- Exemptions from permitting requirements for certain trimming activities;
- General permits for trimming in extended mangrove fringe areas;
- Mitigation and restoration policies; and
- Regulation of professional mangrove trimmers.

In 1996, the act was amended to strengthen the requirements for trimming mangroves and to correct some weaknesses in the 1995 law. No mangroves may be cut lower than 6 feet under an

exemption or general permit. Mangroves over 16 feet must be cut in stages, removing no more than 25 percent annually. The statutory exemption for mangrove trimming without a permit applies to property with a shoreline of 150 feet or less. Property owners with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent along the shoreline.

The list of those who qualify as professional mangrove trimmers was expanded, but landscape architects could not trim mangroves until standards were set by the Board of Landscape Architecture.

The mitigation and enforcement provisions were revised. Mitigation efforts for violations have 5 years to achieve a canopy equivalent to the area destroyed. Violations can be resolved by purchasing credits from a mitigation bank at a 2-to-1 ratio.

For trimming on property developed for multi-family residential use, the 65 percent shoreline trimming limit is equitably distributed so that each owner's riparian view is similarly impacted.

Section 403.121, F.S., provides for judicial and administrative remedies for violations of ch. 403, F.S. Paragraph (d) of s. 403.121(3), F.S., provides that for mangrove trimming or alteration violations, the DEP shall assess a penalty of \$5,000 per violation against the contractor or agent of the owner or tenant that conducts mangrove trimming or alteration without a permit. The preparation or signing of a permit application by a person currently licensed under ch. 471, F.S., to practice as a professional engineer does not make that person an agent of the owner or tenant.

Currently, there appear to be some inconsistencies within the Mangrove Trimming and Preservation Act regarding where and how trimming is allowed. The only trimming method in the act is "top trimming", which is the least desirable for mangrove productivity.

Certain persons are authorized by the act to automatically be considered as Professional Mangrove Trimmers. Those persons are:

- Certified arborists, certified by the International Society of Arboriculture;
- Professional wetland scientists, certified by the Society of Wetland Scientists;
- Certified environmental professionals, certified by the Academy of Board Certified Environmental Professionals;
- Certified ecologists certified by the Ecological Society of America; and
- Landscape Architects currently licensed in Florida under part II of ch. 481, F.S.

These automatic Professional Mangrove Trimmers are not required to have prior mangrove trimming expertise and the DEP has no ability to rescind the Professional Mangrove Trimmer status from those professionals who repeatedly violate the Mangrove Trimming and Preservation Act.

III. Effect of Proposed Changes:

Section 1 amends s. 403.121, F.S., to provide that the DEP shall assess a penalty of \$5,000 per violation against any person who violates the provisions of the Mangrove Trimming and Protection Act. This will allow the DEP to assess penalties against anyone, including homeowners, responsible for mangrove trimming violations.

Section 2 amends s. 403.9323, F.S., to clarify the legislative intent regarding mangrove trimming to achieve a waterfront property owners' riparian right of view. The trimming to obtain a "right of view" must be conducted in conformance with the provisions of the Mangrove Trimming and Protection Act.

Section 3 amends s. 403.9324, F.S., to allow the DEP to adopt rules providing for exemptions and general permits authorizing activities that have, singularly or cumulative, a minimal adverse effect on the water resources of the state.

Section 4 amends s. 403.9329, F.S., to allow the DEP to revoke the Professional Mangrove Trimmer status for persons who statutorily claim the automatic Professional Mangrove Trimmer status under the Mangrove Trimming and Protection Act but who become repeat violators.

Section 5 amends s. 403.9331, to provide that the provisions of the Mangrove Trimming and Protection Act do not allow the trimming of mangroves on uninhabited islands that are publicly owned, or on lands that are set aside for conservation and preservation or mitigation, except where necessary to protect the public health, safety, and welfare or to enhance public use of, or access to, conservation areas in accordance with approved management plans. This language is identical to that found in s. 403.9323(2), F.S., relating to legislative intent for the trimming of mangroves. This clarifies the applicability of the Mangrove Trimming and Protection Act and provides that this provision is enforceable.

Section 6 provides that the act shall take effect July 1, 2008.

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:

This bill will allow certain persons to obtain either an exemption or a general permit for certain activities relating to the trimming of mangroves that have no or minimal impact on the environment; therefore, providing for less regulation in some instances.

C. Government Sector Impact:

This bill will allow the DEP to revoke the status of automatic Profession Mangrove Trimmers who repeatedly violate the statutory provisions relating to mangrove trimming. Currently, no action may be taken against such persons and this bill will level the playing field for professional mangrove trimmers who operate in conformance with the Mangrove Trimming and Protection Act.

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.)

None.

B. Amendments:

None.