

By the Committee on Environmental Preservation and Conservation;
and Senator Constantine

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1 A bill to be entitled
2 An act relating to state lands; amending s. 253.03,
3 F.S.; providing rulemaking authority to the Board of
4 Trustees of the Internal Improvement Trust Fund with
5 respect to the uses of sovereignty submerged lands;
6 defining lease types; providing for fees and lease
7 rates; allowing for special events; detailing minimum
8 compliance standards; amending s. 253.04, F.S.;
9 providing for the assessment of fines; amending s.
10 895.09, F.S.; conforming a cross-reference; providing
11 an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (7) of section 253.03, Florida
16 Statutes, is amended, present subsections (8) through (17) of
17 that section are renumbered as subsections (10) through (19),
18 respectively, and new subsections (8) and (9) are added to that
19 section, to read:

20 253.03 Board of trustees to administer state lands; lands
21 enumerated.-

22 (7)~~(a)~~ The Board of Trustees of the Internal Improvement
23 Trust Fund is hereby authorized and directed to administer all
24 state-owned lands and shall be responsible for the creation of
25 an overall and comprehensive plan of development concerning the
26 acquisition, management, and disposition of state-owned lands so
27 as to ensure maximum benefit and use. The Board of Trustees of
28 the Internal Improvement Trust Fund has authority to adopt rules
29 pursuant to ss. 120.536(1) and 120.54 to implement the

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30 provisions of this act.

31 ~~(8)(b)~~ With respect to administering, controlling, and
32 managing sovereignty submerged lands, the Board of Trustees of
33 the Internal Improvement Trust Fund also may adopt rules
34 governing all uses of sovereignty submerged lands by vessels,
35 floating homes, or any other watercraft, which shall be limited
36 to regulations for anchoring, mooring, or otherwise attaching to
37 the bottom; the establishment of anchorages; and the discharge
38 of sewage, pumpout requirements, and facilities associated with
39 anchorages. The regulations must not interfere with commerce or
40 the transitory operation of vessels through navigable water, but
41 shall control the use of sovereignty submerged lands as a place
42 of business or residence.

43 (9) Rules adopted for the uses of sovereignty submerged
44 lands shall provide, at a minimum, for the following:

45 (a) A standard lease term of at least 10 years.

46 (b) An extended-term lease not to exceed 25 years, where
47 the use of the sovereignty submerged lands and the associated
48 existing or proposed structures on sovereignty submerged lands
49 have or will have an expected life, or amortization period,
50 equal to or greater than the requested lease term. Such
51 extended-term leases shall be limited to those facilities that
52 provide exclusive access to public waters by the general public
53 on a first-come, first-served basis; that are constructed,
54 operated, or maintained by a governmental entity or funded by
55 government-secured bonds having a term greater than or equal to
56 the requested lease term; or for which the applicant
57 demonstrates the existence of an extreme hardship that is unique
58 to the applicant if such hardship is not self-imposed or the

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59 result of any law, ordinance, rule, or regulation.

60 (c) For purposes of this section, the term "first-come,
61 first-served" means any water-dependent facility operated on
62 state-owned submerged land, the services of which are open to
63 the general public by at least 90 percent of all slips over the
64 state-owned submerged land, with no qualifying requirements such
65 as club membership, stock ownership, or equity interest, with no
66 longer than 1-year rental terms, and with no automatic renewal
67 rights or conditions. For purposes of this section, all other
68 leases are considered private.

69 (d) A nonrefundable application fee of \$250 for a private
70 residential single-family dock or pier. All other facilities
71 shall remit an application fee of \$500 unless a different fee is
72 specifically provided for in general law.

73 (e) New private leases, expansions of private leases, lease
74 conversions from a first-come, first-served basis to private
75 use, and lease conversions for changes of use shall be assessed
76 a one-time premium or qualify for a waiver of payment in
77 accordance with rule 18-21, Florida Administrative Code. The
78 one-time premium shall be 10 percent of the applicant's
79 projected retail price or the current market price, whichever is
80 greater, to an end user for the use of the slips within the
81 leased area. For applicants proposing to rent or lease the
82 slips, or proposing to provide the slips to members at a below-
83 market rate, the one-time premium shall be based on the current
84 market price. The projected pricing shall be provided by the
85 applicant and must be itemized by slip. All prices provided
86 shall be reviewed by the department and verified with market
87 data as reflective of the market prior to approval.

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88 1. An appraisal report is required if the department is
89 unable to verify with market data and accept the applicant's
90 pricing documentation. The appraisal report conditions shall
91 assume that the income to the lease area is at market rates and
92 not encumbered by the lease of the board of trustees. If an
93 appraisal report is required, it shall be obtained by the
94 department and paid for by the applicant.

95 2. For all private lease expansions, the surcharge shall be
96 charged only on the expansion area.

97 (f)1. Annual lease fees shall be as follows:

98 a. For leases located outside an aquatic preserve and open
99 on a first-come, first-served basis, 10 cents per square foot or
100 a minimum of \$250. All other leases located outside an aquatic
101 preserve shall be 30 cents per square foot or a minimum of \$500.

102 b. For leases located within an aquatic preserve and open
103 on a first-come, first-served basis, 30 cents per square foot or
104 a minimum of \$500. All other leases located within an aquatic
105 preserve shall be 60 cents per square foot or a minimum of
106 \$1,000.

107 2. The annual lease fees provided for in this paragraph
108 shall be revised every 5 years beginning March 1, 2014, and
109 increased or decreased based on the average change in the
110 Consumer Price Index, calculated by averaging the Consumer Price
111 Index over the previous 5-year period. Adjustments to the fees
112 shall be to the nearest cent for the per-square-foot rates and
113 to the nearest \$25 for the minimums. Any increase or decrease
114 may not exceed 10 percent and may not have the effect of
115 lowering the fees below those established in the paragraph.

116 3. There shall be a late payment assessment for lease fees

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117 or other charges due which are not paid within 30 days after the
118 due date. This assessment shall be computed at the rate of 12
119 percent per annum, calculated on a daily basis for every day the
120 payment is late.

121 (g) Government, research, or education facilities are
122 exempt from the annual lease fees in paragraph (f) except as
123 otherwise defined by rule.

124 (h) A community-based social club shall be classified as
125 "first-come, first-served" for the purposes of assessing fees
126 pursuant to this subsection if the club is designated as
127 qualified under s. 501(c)(7) by Title 26, subtitle A, chapter 1,
128 subchapter F, part 1, s. 501 of the United States Internal
129 Revenue Code. The club must be organized for pleasure,
130 recreation, and other similar nonprofitable purposes and
131 substantially all of its activities must be for these purposes,
132 and the club may not discriminate based on race, color,
133 religion, or handicap. The club may not convey to any member the
134 exclusive use of a club wet slip and all wet slips must be
135 available on a first-come, first-served basis to all members in
136 a specific membership category. Any publications related to
137 membership and wet slip rental contracts must state that the wet
138 slips are available on a first-come, first-served basis to all
139 members in a specific membership category and that the club does
140 not discriminate based on race, color, religion, or handicap.
141 Upon the date the club is found to have conveyed, deeded, leased
142 long term, included an automatic renewal or conditions, or
143 issued in any form an exclusive right to use a wet slip, the
144 submerged land lease fee shall revert to the private rate
145 pursuant to this subsection and be subject to retroactive

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146 private lease fees. The club shall provide recreational,
147 educational, or charitable activities at least once annually
148 which are open to the general public beginning within 365 days
149 after the lease anniversary date.

150 (i) The department shall provide a draft lease to the
151 applicant 14 days prior to the scheduled hearing before the
152 board of trustees. The applicant may waive this requirement.

153 (j) Rules adopted by the board of trustees must also
154 provide for:

155 1. The assessment of fines and penalties for violation of
156 lease conditions. Such fines or penalties shall be in addition
157 to those authorized pursuant to s. 253.04.

158 2. Events that may require the installation and use of
159 temporary structures, including docks, moorings, pilings, and
160 access walkways on sovereign submerged lands solely for the
161 purposes of facilitating boat shows or boat displays in, or
162 adjacent to, established marinas or government-owned upland
163 property. The board of trustees shall also establish appropriate
164 fees for these events.

165 3. Compliance methods to be used by the department and
166 applicants. At a minimum, the applicant must supply an aerial
167 photograph of the lease area which is date-stamped and shows the
168 structures. The first aerial photograph shall be given to the
169 department within the first year of the lease term and an
170 additional aerial photograph shall be provided to the department
171 within 60 days after the 5th year of the lease.

172 (k) ~~(e)~~ Structures which are listed in or are eligible for
173 the National Register of Historic Places or the State Inventory
174 of Historic Places which are over the waters of the State of

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175 Florida and which have a submerged land lease, or have been
176 grandfathered-in to use sovereignty submerged lands until
177 January 1, 1998, pursuant to rule 18-21.00405, Florida
178 Administrative Code, shall have the right to continue such
179 submerged land leases, regardless of the fact that the present
180 landholder is not an adjacent riparian landowner, so long as the
181 lessee maintains the structure in a good state of repair
182 consistent with the guidelines for listing. If the structure is
183 damaged or destroyed, the lessee shall be allowed to
184 reconstruct, so long as the reconstruction is consistent with
185 the integrity of the listed structure and does not increase the
186 footprint of the structure. If a structure so listed falls into
187 disrepair and the lessee is not willing to repair and maintain
188 it consistent with its listing, the state may cancel the
189 submerged lease and either repair and maintain the property or
190 require that the structure be removed from sovereignty submerged
191 lands.

192 (1)~~(d)~~ By January 1, 2001, the owners of habitable
193 structures built on or before May 1, 1999, located in
194 conservation areas 2 or 3, on district or state-owned lands, the
195 existence or use which will not impede the restoration of the
196 Everglades, whether pursuant to a submerged lease or not, must
197 provide written notification to the South Florida Water
198 Management District of their existence and location, including
199 an identification of the footprint of the structures. This
200 notification will grant the leaseholders an automatic 20-year
201 lease at a reasonable fee established by the district, or the
202 Department of Environmental Protection, as appropriate, to
203 expire on January 1, 2020. The district or Department of

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204 Environmental Protection, as appropriate, may impose reasonable
205 conditions consistent with existing laws and rules. If the
206 structures are located on privately owned lands, the landowners
207 must provide the same notification required for a 20-year
208 permit. If the structures are located on state-owned lands, the
209 South Florida Water Management District shall submit this
210 notification to the Department of Environmental Protection on
211 the owner's behalf. At the expiration of this 20-year lease or
212 permit, the South Florida Water Management District or the
213 Department of Environmental Protection, as appropriate, shall
214 have the right to require that the leaseholder remove the
215 structures if the district determines that the structures or
216 their use are causing harm to the water or land resources of the
217 district, or to renew the lease agreement. The structure of any
218 owner who does not provide notification to the South Florida
219 Water Management District as required under this subsection,
220 shall be considered illegal and subject to immediate removal.
221 Any structure built in any water conservation area after May 1,
222 1999, without necessary permits and leases from the South
223 Florida Water Management District, the Department of
224 Environmental Protection, or other local government, as
225 appropriate, shall be considered illegal and subject to removal.

226 (m) ~~(e)~~ Failure to comply with the conditions contained in
227 any permit or lease agreement as described in paragraph (1) ~~(d)~~
228 makes the structure illegal and subject to removal. Any
229 structure built in any water conservation area on or after July
230 1, 2000, is also illegal and subject to immediate removal.

231 Section 2. Subsection (2) of section 253.04, Florida
232 Statutes, is amended to read

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233 253.04 Duty of board to protect, etc., state lands; state
234 may join in any action brought.-

235 (2) Upon election by the board to not assess ~~In lieu of~~
236 ~~seeking~~ monetary damages pursuant to subsection (1) against any
237 person or the agent of any person who has been found to have
238 willfully damaged lands of the state, the ownership or
239 boundaries of which have been established by the state, to have
240 willfully damaged or removed products thereof in violation of
241 state or federal law, to have knowingly refused to comply with
242 or willfully violated the provisions of this chapter, or to have
243 failed to comply with an order of the board to remove or alter
244 any structure or vessel that is not in compliance with
245 applicable rules or with conditions of authorization to locate
246 such a structure or vessel on state-owned land, the board ~~may~~
247 must impose a fine for each offense in an amount of at least
248 \$100 and up to \$10,000 to be fixed by rule and imposed and
249 collected by the board in accordance with the provisions of
250 chapter 120. Each day during any portion of which such violation
251 occurs constitutes a separate offense. This subsection does not
252 apply to any act or omission which is currently subject to
253 litigation wherein the state or any agency of the state is a
254 party as of October 1, 1984, or to any person who holds such
255 lands under color of title. Nothing contained herein impairs the
256 rights of any person to obtain a judicial determination in a
257 court of competent jurisdiction of such person's interest in
258 lands that are the subject of a claim or proceeding by the
259 department under this subsection.

260 Section 3. Paragraph (c) of subsection (1) of section
261 895.09, Florida Statutes, is amended to read:

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262 895.09 Disposition of funds obtained through forfeiture
263 proceedings.-

264 (1) A court entering a judgment of forfeiture in a
265 proceeding brought pursuant to s. 895.05 shall retain
266 jurisdiction to direct the distribution of any cash or of any
267 cash proceeds realized from the forfeiture and disposition of
268 the property. The court shall direct the distribution of the
269 funds in the following order of priority:

270 (c) Any claim by the Board of Trustees of the Internal
271 Improvement Trust Fund on behalf of the Internal Improvement
272 Trust Fund or the Land Acquisition Trust Fund pursuant to s.
273 253.03(14) ~~s. 253.03(12)~~, not including administrative costs of
274 the Department of Environmental Protection previously paid
275 directly from the Internal Improvement Trust Fund in accordance
276 with legislative appropriation.

277 Section 4. This act shall take effect July 1, 2009.