

By the Committees on General Government Appropriations; and
Environmental Preservation and Conservation; and Senator
Constantine

601-03983-09

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1 A bill to be entitled
2 An act relating to state lands; amending s. 253.01,
3 F.S.; authorizing the use of moneys in the Internal
4 Improvement Trust Fund for the protection and
5 restoration of water resources; amending s. 253.03,
6 F.S.; providing rulemaking authority to the Board of
7 Trustees of the Internal Improvement Trust Fund with
8 respect to the uses of sovereignty submerged lands;
9 defining lease types; providing for fees and lease
10 rates; allowing for special events; detailing minimum
11 compliance standards; amending s. 253.04, F.S.;
12 providing for the assessment of fines; amending s.
13 895.09, F.S.; conforming a cross-reference; providing
14 an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsection (2) of section 253.01, Florida
19 Statutes, is amended to read:

20 253.01 Internal Improvement Trust Fund established.—

21 (2) All revenues accruing from sources designated by law
22 for deposit in the Internal Improvement Trust Fund shall be used
23 for the acquisition, management, administration, protection, and
24 conservation of state-owned lands, as well as the protection and
25 restoration of water resources.

26 Section 2. Subsection (7) of section 253.03, Florida
27 Statutes, is amended, present subsections (8) through (17) of
28 that section are renumbered as subsections (10) through (19),
29 respectively, and new subsections (8) and (9) are added to that

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30 section, to read:

31 253.03 Board of trustees to administer state lands; lands
32 enumerated.-

33 (7)~~(a)~~ The Board of Trustees of the Internal Improvement
34 Trust Fund is hereby authorized and directed to administer all
35 state-owned lands and shall be responsible for the creation of
36 an overall and comprehensive plan of development concerning the
37 acquisition, management, and disposition of state-owned lands so
38 as to ensure maximum benefit and use. The Board of Trustees of
39 the Internal Improvement Trust Fund has authority to adopt rules
40 pursuant to ss. 120.536(1) and 120.54 to implement the
41 provisions of this act.

42 (8)~~(b)~~ With respect to administering, controlling, and
43 managing sovereignty submerged lands, the Board of Trustees of
44 the Internal Improvement Trust Fund also may adopt rules
45 governing all uses of sovereignty submerged lands by vessels,
46 floating homes, or any other watercraft, which shall be limited
47 to regulations for anchoring, mooring, or otherwise attaching to
48 the bottom; the establishment of anchorages; and the discharge
49 of sewage, pumpout requirements, and facilities associated with
50 anchorages. The regulations must not interfere with commerce or
51 the transitory operation of vessels through navigable water, but
52 shall control the use of sovereignty submerged lands as a place
53 of business or residence.

54 (9) Rules adopted for the uses of sovereignty submerged
55 lands, except those uses provided in s. 253.51 and ss. 253.67-
56 253.75, shall provide at a minimum, for the following:

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

58 (b) An extended-term lease not to exceed 25 years, where

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59 the use of the sovereignty submerged lands and the associated
60 existing or proposed structures on sovereignty submerged lands
61 have or will have an expected life, or amortization period,
62 equal to or greater than the requested lease term. Such
63 extended-term leases shall be limited to those facilities that
64 provide exclusive access to public waters by the general public
65 on a first-come, first-served basis; that are constructed,
66 operated, or maintained by a governmental entity or funded by
67 government-secured bonds having a term greater than or equal to
68 the requested lease term; or for which the applicant
69 demonstrates the existence of an extreme hardship that is unique
70 to the applicant if such hardship is not self-imposed or the
71 result of any law, ordinance, rule, or regulation.

72 (c) For purposes of this section, the term "first-come,
73 first-served" means any water-dependent facility operated on
74 state-owned submerged land, the services of which are open to
75 the general public by at least 90 percent of all slips over the
76 state-owned submerged land, with no qualifying requirements such
77 as club membership, stock ownership, or equity interest, with no
78 longer than 1-year rental terms, and with no automatic renewal
79 rights or conditions. For purposes of this section, all other
80 leases are considered private.

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

85 (e) New private leases, expansions of private leases, lease
86 conversions from a first-come, first-served basis to private
87 use, and lease conversions for changes of use shall be assessed

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88 a one-time premium or qualify for a waiver of payment in
89 accordance with rule 18-21, Florida Administrative Code. The
90 one-time premium shall be 10 percent of the applicant's
91 projected retail price or the current market price, whichever is
92 greater, to an end user for the use of the slips within the
93 leased area. For applicants proposing to rent or lease the
94 slips, or proposing to provide the slips to members at a below-
95 market rate, the one-time premium shall be based on the current
96 market price. The projected pricing shall be provided by the
97 applicant and must be itemized by slip. All prices provided
98 shall be reviewed by the department and verified with market
99 data as reflective of the market prior to approval.

100 1. An appraisal report is required if the department is
101 unable to verify with market data and accept the applicant's
102 pricing documentation. The appraisal report conditions shall
103 assume that the income to the lease area is at market rates and
104 not encumbered by the lease of the board of trustees. If an
105 appraisal report is required, it shall be obtained by the
106 department and paid for by the applicant.

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

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

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

114 b. For leases located within an aquatic preserve and open
115 on a first-come, first-served basis, 30 cents per square foot or
116 a minimum of \$500. All other leases located within an aquatic

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117 preserve shall be 60 cents per square foot or a minimum of
118 \$1,000.

119 c. For leases of facilities that require a location
120 adjacent to the water to provide services, such as boat repair
121 and manufacturing, seafood purchasing, and public utility
122 service, and have no other private exclusive use within the
123 facility, 15 cents per square foot. If these facilities are
124 located in an aquatic preserve, the rate shall be 30 cents per
125 square foot.

126 2. The annual lease fees provided for in this paragraph
127 shall be revised every 5 years beginning March 1, 2014, and
128 increased or decreased based on the average change in the
129 Consumer Price Index, calculated by averaging the Consumer Price
130 Index over the previous 5-year period. Adjustments to the fees
131 shall be to the nearest cent for the per-square-foot rates and
132 to the nearest \$25 for the minimums. Any increase or decrease
133 may not exceed 10 percent and may not have the effect of
134 lowering the fees below those established in the paragraph.

135 3. There shall be a late payment assessment for lease fees
136 or other charges due which are not paid within 30 days after the
137 due date. This assessment shall be computed at the rate of 12
138 percent per annum, calculated on a daily basis for every day the
139 payment is late.

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

143 (h) A community-based social club shall be classified as
144 "first-come, first-served" for the purposes of assessing fees
145 pursuant to this subsection if the club is designated as

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146 qualified under s. 501(c) (7) by Title 26, subtitle A, chapter 1,
147 subchapter F, part 1, s. 501 of the United States Internal
148 Revenue Code. The club must be organized for pleasure,
149 recreation, and other similar nonprofitable purposes and
150 substantially all of its activities must be for these purposes,
151 and the club may not discriminate based on race, color,
152 religion, or handicap. The club may not convey to any member the
153 exclusive use of a club wet slip and all wet slips must be
154 available on a first-come, first-served basis to all members in
155 a specific membership category. Any publications related to
156 membership and wet slip rental contracts must state that the wet
157 slips are available on a first-come, first-served basis to all
158 members in a specific membership category and that the club does
159 not discriminate based on race, color, religion, or handicap.
160 Upon the date the club is found to have conveyed, deeded, leased
161 long term, included an automatic renewal or conditions, or
162 issued in any form an exclusive right to use a wet slip, the
163 submerged land lease fee shall revert to the private rate
164 pursuant to this subsection and be subject to retroactive
165 private lease fees. The club shall provide recreational,
166 educational, or charitable activities at least once annually
167 which are open to the general public beginning within 365 days
168 after the lease anniversary date.

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

172 (j) Rules adopted by the board of trustees must also
173 provide for:

174 1. The assessment of fines and penalties for violation of

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175 lease conditions. Such fines or penalties shall be in addition
176 to those authorized pursuant to s. 253.04.

177 2. Events that may require the installation and use of
178 temporary structures, including docks, moorings, pilings, and
179 access walkways on sovereign submerged lands solely for the
180 purposes of facilitating boat shows or boat displays in, or
181 adjacent to, established marinas or government-owned upland
182 property. The board of trustees shall also establish appropriate
183 fees for these events.

184 3. Compliance methods to be used by the department and
185 applicants. At a minimum, the applicant must supply an aerial
186 photograph of the lease area which is date-stamped and shows the
187 structures. The first aerial photograph shall be given to the
188 department within the first year of the lease term and an
189 additional aerial photograph shall be provided to the department
190 within 60 days after the 5th year of the lease.

191 (k) ~~(e)~~ Structures which are listed in or are eligible for
192 the National Register of Historic Places or the State Inventory
193 of Historic Places which are over the waters of the State of
194 Florida and which have a submerged land lease, or have been
195 grandfathered-in to use sovereignty submerged lands until
196 January 1, 1998, pursuant to rule 18-21.00405, Florida
197 Administrative Code, shall have the right to continue such
198 submerged land leases, regardless of the fact that the present
199 landholder is not an adjacent riparian landowner, so long as the
200 lessee maintains the structure in a good state of repair
201 consistent with the guidelines for listing. If the structure is
202 damaged or destroyed, the lessee shall be allowed to
203 reconstruct, so long as the reconstruction is consistent with

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204 the integrity of the listed structure and does not increase the
205 footprint of the structure. If a structure so listed falls into
206 disrepair and the lessee is not willing to repair and maintain
207 it consistent with its listing, the state may cancel the
208 submerged lease and either repair and maintain the property or
209 require that the structure be removed from sovereignty submerged
210 lands.

211 (1)~~(d)~~ By January 1, 2001, the owners of habitable
212 structures built on or before May 1, 1999, located in
213 conservation areas 2 or 3, on district or state-owned lands, the
214 existence or use which will not impede the restoration of the
215 Everglades, whether pursuant to a submerged lease or not, must
216 provide written notification to the South Florida Water
217 Management District of their existence and location, including
218 an identification of the footprint of the structures. This
219 notification will grant the leaseholders an automatic 20-year
220 lease at a reasonable fee established by the district, or the
221 Department of Environmental Protection, as appropriate, to
222 expire on January 1, 2020. The district or Department of
223 Environmental Protection, as appropriate, may impose reasonable
224 conditions consistent with existing laws and rules. If the
225 structures are located on privately owned lands, the landowners
226 must provide the same notification required for a 20-year
227 permit. If the structures are located on state-owned lands, the
228 South Florida Water Management District shall submit this
229 notification to the Department of Environmental Protection on
230 the owner's behalf. At the expiration of this 20-year lease or
231 permit, the South Florida Water Management District or the
232 Department of Environmental Protection, as appropriate, shall

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233 have the right to require that the leaseholder remove the
234 structures if the district determines that the structures or
235 their use are causing harm to the water or land resources of the
236 district, or to renew the lease agreement. The structure of any
237 owner who does not provide notification to the South Florida
238 Water Management District as required under this subsection,
239 shall be considered illegal and subject to immediate removal.
240 Any structure built in any water conservation area after May 1,
241 1999, without necessary permits and leases from the South
242 Florida Water Management District, the Department of
243 Environmental Protection, or other local government, as
244 appropriate, shall be considered illegal and subject to removal.

245 (m) ~~(e)~~ Failure to comply with the conditions contained in
246 any permit or lease agreement as described in paragraph (1) ~~(d)~~
247 makes the structure illegal and subject to removal. Any
248 structure built in any water conservation area on or after July
249 1, 2000, is also illegal and subject to immediate removal.

250 Section 3. Subsection (2) of section 253.04, Florida
251 Statutes, is amended to read

252 253.04 Duty of board to protect, etc., state lands; state
253 may join in any action brought.-

254 (2) Upon election by the board to not assess ~~In lieu of~~
255 ~~seeking~~ monetary damages pursuant to subsection (1) against any
256 person or the agent of any person who has been found to have
257 willfully damaged lands of the state, the ownership or
258 boundaries of which have been established by the state, to have
259 willfully damaged or removed products thereof in violation of
260 state or federal law, to have knowingly refused to comply with
261 or willfully violated the provisions of this chapter, or to have

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262 failed to comply with an order of the board to remove or alter
263 any structure or vessel that is not in compliance with
264 applicable rules or with conditions of authorization to locate
265 such a structure or vessel on state-owned land, the board ~~may~~
266 must impose a fine for each offense in an amount of at least
267 \$100 and up to \$10,000 to be fixed by rule and imposed and
268 collected by the board in accordance with the provisions of
269 chapter 120. Each day during any portion of which such violation
270 occurs constitutes a separate offense. This subsection does not
271 apply to any act or omission which is currently subject to
272 litigation wherein the state or any agency of the state is a
273 party as of October 1, 1984, or to any person who holds such
274 lands under color of title. Nothing contained herein impairs the
275 rights of any person to obtain a judicial determination in a
276 court of competent jurisdiction of such person's interest in
277 lands that are the subject of a claim or proceeding by the
278 department under this subsection.

279 Section 4. Paragraph (c) of subsection (1) of section
280 895.09, Florida Statutes, is amended to read:

281 895.09 Disposition of funds obtained through forfeiture
282 proceedings.-

283 (1) A court entering a judgment of forfeiture in a
284 proceeding brought pursuant to s. 895.05 shall retain
285 jurisdiction to direct the distribution of any cash or of any
286 cash proceeds realized from the forfeiture and disposition of
287 the property. The court shall direct the distribution of the
288 funds in the following order of priority:

289 (c) Any claim by the Board of Trustees of the Internal
290 Improvement Trust Fund on behalf of the Internal Improvement

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291 Trust Fund or the Land Acquisition Trust Fund pursuant to s.
292 253.03(14) ~~s. 253.03(12)~~, not including administrative costs of
293 the Department of Environmental Protection previously paid
294 directly from the Internal Improvement Trust Fund in accordance
295 with legislative appropriation.

296 Section 5. This act shall take effect July 1, 2009.