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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; providing for exemptions; detailing minimum
11 compliance standards; providing for a report; amending
12 s. 253.04, F.S.; providing for the assessment of
13 fines; amending s. 895.09, F.S.; conforming a cross-
14 reference; providing 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 and s. 311.09(1), shall provide at a minimum, for the
57 following:

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

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59 (b) An extended-term lease not to exceed 25 years, where
60 the use of the sovereignty submerged lands and the associated
61 existing or proposed structures on sovereignty submerged lands
62 have or will have an expected life, or amortization period,
63 equal to or greater than the requested lease term. Such
64 extended-term leases shall be limited to those facilities that
65 provide exclusive access to public waters by the general public
66 on a first-come, first-served basis; that are constructed,
67 operated, or maintained by a governmental entity or funded by
68 government-secured bonds having a term greater than or equal to
69 the requested lease term; or for which the applicant
70 demonstrates the existence of an extreme hardship that is unique
71 to the applicant if such hardship is not self-imposed or the
72 result of any law, ordinance, rule, or regulation.

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

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

86 (e) New private leases, expansions of private leases, and
87 lease conversions from a first-come, first-served basis to

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

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

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

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

113 b. For leases located within an aquatic preserve and open
114 on a first-come, first-served basis, 30 cents per square foot or
115 a minimum of \$500. All other leases located within an aquatic
116 preserve shall be 60 cents per square foot or a minimum of

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117 \$1,000.

118 c. For leases of facilities that require a location
119 adjacent to the water to provide services, such as boat repair
120 and manufacturing, seafood purchasing, and public utility
121 service, 15 cents per square foot. If these facilities are
122 located in an aquatic preserve, the rate shall be 30 cents per
123 square foot.

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

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

138 4. For the purposes of this paragraph, the additional
139 charges provided in subparagraph b. shall not apply to existing
140 facilities in aquatic preserves that were excluded from the
141 additional rate in accordance with rule 18-21.011, Florida
142 Administrative Code.

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

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

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

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175 (j) Rules adopted by the board of trustees must also
176 provide for:

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

180 2. An exemption from the annual fees for:

181 a. Events that may require the installation and use of
182 temporary structures, including docks, moorings, pilings, and
183 access walkways on sovereign submerged lands solely for the
184 purposes of facilitating boat shows or boat displays in, or
185 adjacent to, established marinas or government-owned upland
186 property.

187 b. First-come first-served facilities that have a
188 contractual arrangement with a county or municipality and can
189 demonstrate financial hardship to the Board of Trustees.

190 c. Those facilities that qualify for Consent by Rule or
191 Letter of Consent pursuant to rule 18-21, Florida Administrative
192 Code and shall also be exempt from paying application fees.

193 3. Compliance methods to be used by the department and
194 applicants. At a minimum, the applicant must supply an aerial
195 photograph of the lease area which is date-stamped and shows the
196 structures. The first aerial photograph shall be given to the
197 department within the first year of the lease term and an
198 additional aerial photograph shall be provided to the department
199 within 60 days after the 5th year of the lease.

200 (k) The Department of Environmental Protection in its
201 capacity as staff to the Board of Trustees shall review and
202 provide a report with recommendations, by February 1, 2010, to
203 the Board of Trustees and the Legislature concerning the

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204 following:

205 1. The development of a method which allows for fees to be
206 modified based on geographical price differentials.

207 2. Optional methods for determining the square footage for
208 facilities that reflect those sovereignty lands that are
209 occupied by structures or slips but have additional areas under
210 lease that are needed for safe navigation or to protect the
211 structure.

212 3. Potential modifications to the definition of "first-
213 come, first-served" in order to account for those options that
214 seek to fulfill the intent of increasing public access.

215

216 The recommendations shall be developed in conjunction with the
217 rulemaking efforts needed to implement changes to this
218 subsection.

219 (1)~~(e)~~ Structures which are listed in or are eligible for
220 the National Register of Historic Places or the State Inventory
221 of Historic Places which are over the waters of the State of
222 Florida and which have a submerged land lease, or have been
223 grandfathered-in to use sovereignty submerged lands until
224 January 1, 1998, pursuant to rule 18-21.00405, Florida
225 Administrative Code, shall have the right to continue such
226 submerged land leases, regardless of the fact that the present
227 landholder is not an adjacent riparian landowner, so long as the
228 lessee maintains the structure in a good state of repair
229 consistent with the guidelines for listing. If the structure is
230 damaged or destroyed, the lessee shall be allowed to
231 reconstruct, so long as the reconstruction is consistent with
232 the integrity of the listed structure and does not increase the

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233 footprint of the structure. If a structure so listed falls into
234 disrepair and the lessee is not willing to repair and maintain
235 it consistent with its listing, the state may cancel the
236 submerged lease and either repair and maintain the property or
237 require that the structure be removed from sovereignty submerged
238 lands.

239 (m)~~(d)~~ By January 1, 2001, the owners of habitable
240 structures built on or before May 1, 1999, located in
241 conservation areas 2 or 3, on district or state-owned lands, the
242 existence or use which will not impede the restoration of the
243 Everglades, whether pursuant to a submerged lease or not, must
244 provide written notification to the South Florida Water
245 Management District of their existence and location, including
246 an identification of the footprint of the structures. This
247 notification will grant the leaseholders an automatic 20-year
248 lease at a reasonable fee established by the district, or the
249 Department of Environmental Protection, as appropriate, to
250 expire on January 1, 2020. The district or Department of
251 Environmental Protection, as appropriate, may impose reasonable
252 conditions consistent with existing laws and rules. If the
253 structures are located on privately owned lands, the landowners
254 must provide the same notification required for a 20-year
255 permit. If the structures are located on state-owned lands, the
256 South Florida Water Management District shall submit this
257 notification to the Department of Environmental Protection on
258 the owner's behalf. At the expiration of this 20-year lease or
259 permit, the South Florida Water Management District or the
260 Department of Environmental Protection, as appropriate, shall
261 have the right to require that the leaseholder remove the

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262 structures if the district determines that the structures or
263 their use are causing harm to the water or land resources of the
264 district, or to renew the lease agreement. The structure of any
265 owner who does not provide notification to the South Florida
266 Water Management District as required under this subsection,
267 shall be considered illegal and subject to immediate removal.
268 Any structure built in any water conservation area after May 1,
269 1999, without necessary permits and leases from the South
270 Florida Water Management District, the Department of
271 Environmental Protection, or other local government, as
272 appropriate, shall be considered illegal and subject to removal.

273 (n) ~~(e)~~ Failure to comply with the conditions contained in
274 any permit or lease agreement as described in paragraph (1) ~~(d)~~
275 makes the structure illegal and subject to removal. Any
276 structure built in any water conservation area on or after July
277 1, 2000, is also illegal and subject to immediate removal.

278 Section 3. Subsection (2) of section 253.04, Florida
279 Statutes, is amended to read:

280 253.04 Duty of board to protect, etc., state lands; state
281 may join in any action brought.—

282 (2) Upon election by the board to not assess ~~In lieu of~~
283 ~~seeking~~ monetary damages pursuant to subsection (1) against any
284 person or the agent of any person who has been found to have
285 willfully damaged lands of the state, the ownership or
286 boundaries of which have been established by the state, to have
287 willfully damaged or removed products thereof in violation of
288 state or federal law, to have knowingly refused to comply with
289 or willfully violated the provisions of this chapter, or to have
290 failed to comply with an order of the board to remove or alter

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291 any structure or vessel that is not in compliance with
292 applicable rules or with conditions of authorization to locate
293 such a structure or vessel on state-owned land, the board ~~may~~
294 must impose a fine for each offense in an amount of at least
295 \$100 and up to \$10,000 to be fixed by rule and imposed and
296 collected by the board in accordance with the provisions of
297 chapter 120. Each day during any portion of which such violation
298 occurs constitutes a separate offense. This subsection does not
299 apply to any act or omission which is currently subject to
300 litigation wherein the state or any agency of the state is a
301 party as of October 1, 1984, or to any person who holds such
302 lands under color of title. Nothing contained herein impairs the
303 rights of any person to obtain a judicial determination in a
304 court of competent jurisdiction of such person's interest in
305 lands that are the subject of a claim or proceeding by the
306 department under this subsection.

307 Section 4. Paragraph (c) of subsection (1) of section
308 895.09, Florida Statutes, is amended to read:

309 895.09 Disposition of funds obtained through forfeiture
310 proceedings.—

311 (1) A court entering a judgment of forfeiture in a
312 proceeding brought pursuant to s. 895.05 shall retain
313 jurisdiction to direct the distribution of any cash or of any
314 cash proceeds realized from the forfeiture and disposition of
315 the property. The court shall direct the distribution of the
316 funds in the following order of priority:

317 (c) Any claim by the Board of Trustees of the Internal
318 Improvement Trust Fund on behalf of the Internal Improvement
319 Trust Fund or the Land Acquisition Trust Fund pursuant to s.

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320 253.03(14) ~~s. 253.03(12)~~, not including administrative costs of
321 the Department of Environmental Protection previously paid
322 directly from the Internal Improvement Trust Fund in accordance
323 with legislative appropriation.

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