

By the Committees on Community Affairs; and Environmental Preservation and Conservation; and Senator Aronberg

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1 A bill to be entitled
2 An act relating to mangrove protection; amending s.
3 403.121, F.S.; expanding the penalty previously
4 applicable to violations involving mangrove trimming
5 or alteration to apply to any violation under the
6 Mangrove Trimming and Preservation Act; amending s.
7 403.9323, F.S.; clarifying legislative intent with
8 respect to the protection of mangroves; amending s.
9 403.9324, F.S.; authorizing the Department of
10 Environmental Protection to adopt by rule certain
11 exemptions and general permits under the Mangrove
12 Trimming and Preservation Act; amending s. 403.9325,
13 F.S.; revising the definition of "riparian mangrove
14 fringe"; amending s. 403.9329, F.S.; clarifying the
15 department's authority to revoke a person's status as
16 a professional mangrove trimmer; amending s. 403.9331,
17 F.S.; providing that the Mangrove Trimming and
18 Preservation Act does not authorize trimming on
19 uninhabited natural islands or lands that are publicly
20 owned or set aside for conservation or mitigation
21 except under specified circumstances; providing an
22 effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraph (d) of subsection (3) of section
27 403.121, Florida Statutes, is amended to read:

28 403.121 Enforcement; procedure; remedies.—The department
29 shall have the following judicial and administrative remedies

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30 available to it for violations of this chapter, as specified in
31 s. 403.161(1).

32 (3) Except for violations involving hazardous wastes,
33 asbestos, or underground injection, administrative penalties
34 must be calculated according to the following schedule:

35 (d) For mangrove trimming or alteration violations, the
36 department shall assess:

37 1. A penalty of up to \$5,000 per violation against any
38 person who violates any provision of ss. 403.9321-403.9333 ~~the~~
39 ~~contractor or agent of the owner or tenant that conducts~~
40 ~~mangrove trimming or alteration without a permit as required by~~
41 ~~s. 403.9328. However, for minor unauthorized trimming that~~
42 otherwise would have qualified for a general permit under s.
43 403.9327 or that has only minimal or insignificant individual or
44 cumulative adverse impacts on mangrove resources, the department
45 shall assess a penalty of up to \$1,000 for the first offense.
46 For purposes of this paragraph, the preparation or signing of a
47 permit application by a person currently licensed under chapter
48 471 to practice as a professional engineer does ~~shall~~ not
49 constitute a violation ~~make that person an agent of the owner or~~
50 ~~tenant.~~

51 2. For major unauthorized trimming or a second or
52 subsequent violation of subparagraph 1., an additional penalty
53 of up to \$100 for each mangrove illegally trimmed and up to \$250
54 for each mangrove illegally altered, not to exceed a total of
55 \$10,000.

56 3. For major unauthorized trimming or a second or
57 subsequent violation of subparagraph 1. by a professional
58 mangrove trimmer, owner, or tenant, an additional penalty of up

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59 to \$250 for each mangrove illegally trimmed or altered, not to
60 exceed a total of \$10,000.

61 Section 2. Subsection (3) of section 403.9323, Florida
62 Statutes, is amended to read:

63 403.9323 Legislative intent.—

64 (3) It is the intent of the Legislature to provide
65 waterfront property owners their riparian right of view, and
66 other rights of riparian property ownership as recognized by s.
67 253.141 and any other provision of law, by allowing mangrove
68 trimming in riparian mangrove fringes without prior government
69 approval when conducted in conformance with the provisions of
70 ss. 403.9321-403.9333 and the trimming activities will not
71 result in the removal, defoliation, or destruction of the
72 mangroves.

73 Section 3. Present subsections (1) through (6) of section
74 403.9324, Florida Statutes, are redesignated as subsections (2)
75 through (7), respectively, a new subsection (1) is added to that
76 section, and present subsections (1) and (4) of that section are
77 amended, to read:

78 403.9324 Mangrove protection rule; delegation of mangrove
79 protection to local governments.—

80 (1) The department may adopt rules providing for exemptions
81 and general permits authorizing activities that have, singularly
82 or cumulatively, a minimal adverse effect on the water resources
83 of the state. This subsection does not grant the department the
84 authority to adopt rules for the exemptions and general permits
85 provided in ss. 403.9326 and 403.9327.

86 (2) ~~(1)~~ Sections 403.9321-403.9333 and any lawful
87 regulations adopted in accordance with this section by a local

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88 government that receives a delegation of the department's
89 authority to administer and enforce the regulation of mangroves
90 as provided by this section shall be the sole regulations in
91 this state for the trimming and alteration of mangroves on
92 privately or publicly owned lands. All other state and local
93 regulation of mangrove is as provided in subsection (4) ~~(3)~~.

94 (5)~~(4)~~ Within 45 days after receipt of a written request
95 for delegation from a local government, the department shall
96 grant or deny the request in writing. The request is deemed
97 approved if the department fails to respond within the 45-day
98 ~~time~~ period. In reviewing requests for delegation, the
99 department shall limit its review to whether the request
100 complies with the requirements of subsection (3) ~~(2)~~. The
101 department shall set forth in writing with specificity the
102 reasons for denial of a request for delegation. The department's
103 determination regarding delegation constitutes final agency
104 action and is subject to review under chapter 120.

105 Section 4. Subsection (7) of section 403.9325, Florida
106 Statutes, is amended to read:

107 403.9325 Definitions.—For the purposes of ss. 403.9321-
108 403.9333, the term:

109 (7) "Riparian mangrove fringe" means mangroves growing
110 along the shoreline on private property, property owned by a
111 governmental entity, or sovereign submerged land, the depth of
112 which does not exceed 50 feet as measured waterward from the
113 trunk of the most landward mangrove tree in a direction
114 perpendicular to the shoreline to the trunk of the most
115 waterward mangrove tree. Riparian mangrove fringe does not
116 include mangroves on uninhabited natural islands, ~~or~~ public

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117 lands that have been set aside for conservation or preservation,
118 or mangroves on lands that have been set aside as mitigation, if
119 the permit, enforcement instrument, or conservation easement
120 establishing the mitigation area did not include provisions for
121 the trimming of mangroves.

122 Section 5. Subsection (5) of section 403.9329, Florida
123 Statutes, is amended to read:

124 403.9329 Professional mangrove trimmers.—

125 (5) A professional mangrove trimmer status granted under
126 ss. 403.9321-403.9333 or by the department may be revoked by the
127 department for any person who is responsible for any violations
128 of ss. 403.9321-403.9333 or any adopted mangrove rules.

129 Section 6. Subsection (3) is added to section 403.9331,
130 Florida Statutes, to read:

131 403.9331 Applicability; rules and policies.—

132 (3) Pursuant to s. 403.9323(2), the provisions of ss.
133 403.9321-403.9333 do not allow the trimming of mangroves on
134 uninhabited natural islands that are publicly owned or on lands
135 that are set aside for conservation and preservation or
136 mitigation, except where necessary to protect the public health,
137 safety, and welfare or to enhance public use of, or access to,
138 conservation areas in accordance with approved management plans.

139 Section 7. This act shall take effect July 1, 2009.