

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 173 Submerged Lands

SPONSOR(S): Agriculture & Natural Resources Subcommittee, Frishe

TIED BILLS: None **IDEN./SIM. BILLS:** SB 332

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Maurer	Blalock
2) Finance & Tax Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Board of Trustees of the Internal Improvement Fund (board) is responsible for the administration and disposition of the state's sovereign submerged lands, which includes the authority to adopt regulations pertaining to anchoring, mooring, or otherwise attaching to the bottom and the establishment of anchorages. Waterfront landowners must receive the board's authorization to build docks and related structures on sovereign submerged lands. The Department of Environmental Protection (DEP) is required by law to perform all staff functions on behalf of the board.

The board has promulgated detailed rules regulating the design of docks and related structures, determining whether a lease is required, and setting the amount of fees a lessee must pay to the board. The DEP determines whether a lease is required for a person to build a dock or related structure on sovereign submerged lands based on a number of factors including:

- Location within or outside of an aquatic preserve
- Area of sovereign submerged land preempted
- Number of wet slips or the number of boats the structure is designed to moor
- Whether the dock is for a single-family residence or a multi-unit dwelling
- Whether the dock generates revenue
- Whether the dock is "private residential" or "commercial, industrial and other revenue generating/income related"

A property owner who is required to obtain a lease to build a dock or related structure must follow the lease terms and pay applicable fees. Currently, the standard term lease term is five years, and sites under lease must be inspected once every five years. Annual lease fees for standard term leases are calculated through a formula based on either annual income, square footage, or a minimum annual fee. Extended term leases are available, under limited conditions, for up to 25 years. Annual lease fees for extended term leases are calculated through the same formula that applies to standard lease fees, with a multiplier for the term in years.

This bill provides statutory lease requirements for private residential docks and related structures on sovereign submerged lands. Specifically, the bill:

- Extends the maximum term for an initial standard lease and for successive renewal to 10 years from five years and requires inspection by the DEP at least once every 10 years instead of every five years
- Requires leases to disclose all applicable lease fees as established by the board
- Exempts multi-family docks and structures that require a lease from paying a fee on minimal amounts of sovereignty submerged lands that are leased to reflect the same size-based exemption currently in place for single-family docks
- Clarifies that lessees whose upland property qualifies for a homestead exemption are not required to pay a lease fee on revenue derived from the transfer of fee simple or beneficial ownership
- Specifies that the board and the DEP are not prohibited from imposing additional application fees, regulatory permitting fees, or other lease requirements as otherwise authorized by law.

According to the DEP's analysis, this bill is expected to have a negative physical impact of approximately \$1 million on state government through the reduction of lease fees paid. See *Fiscal Impacts* section.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Introduction

Upon statehood, Florida gained title to all sovereign submerged lands¹ within its boundaries, to be held in trust for the public.² The Board of Trustees of the Internal Improvement Fund (board) is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of such lands.³ The Florida Constitution requires the sale of such lands to be authorized by law, but only when in the public interest, and private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.⁴ When disposing of sovereign submerged lands, the board is required to “ensure maximum benefit and use.”⁵ The board has the authority to adopt regulations pertaining to anchoring, mooring, or otherwise attaching to the bottom and the establishment of anchorages on sovereign submerged lands.⁶

Florida recognizes “riparian rights” for landowners with waterfront property bordering on navigable waters.⁷ These rights include ingress, egress, boating, bathing, fishing, and others as defined by law.⁸ Riparian landowners must obtain the board’s authorization for installation and maintenance of docks, piers, and boat ramps on sovereign submerged land.⁹ Under the board’s rules, “dock” generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.¹⁰ Authorization may be in the form of consent by rule,¹¹ letter of consent,¹² or lease.¹³ All leases authorizing activities on sovereign submerged lands must include provisions for lease fee adjustments and annual payments.¹⁴

PCS HB 173 creates s. 253.0347, F.S., relating to leases of sovereignty submerged lands for private residential single-family docks or piers, private residential multi-family docks or piers, and private residential multi-slip docks located in and outside of an aquatic preserve. For these types of leases, the bill impacts (1) lease duration, (2) lease fee applicability and calculation, and (3) site inspection.

For ease of reading, “private residential single-family or multi-family dock” is used in this analysis to refer to private residential single-family docks or piers, private residential multi-family docks or piers, and private residential multi-slip docks.¹⁵

¹ In Florida, “submerged lands” are “publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state.” Section 253.03(8)(b), F.S.

² *Broward v. Marbry*, 50 So. 826, 829-30 (Fla. 1909).

³ Section 253.03(1), F.S. (2010).

⁴ FLA. CONST. art. X, s. 11.

⁵ Section 253.03(7)(a), F.S.

⁶ Section 253.03(7)(b), F.S.

⁷ Section 253.141(1), F.S. These rights are appurtenant to and inseparable from the riparian land; the rights inure to the property owner, but the rights are not proprietary in nature. *Id.*

⁸ Section 253.141(1), F.S.

⁹ 18-21.005(1)(d), F.A.C. (2010).

¹⁰ See 18-20.003(19), F.A.C.; 18-21.003(20), F.A.C.

¹¹ 18-21.005(1)(b), F.A.C.

¹² 18-21.005(1)(c), F.A.C.

¹³ 18-21.005(1)(d), F.A.C.

¹⁴ 18-21.008(1)(b)(2), F.A.C.

¹⁵ For definitions of these terms as used in the board’s rules, see 18-20.003(44), F.A.C. (“private residential single-family dock”); 18-20.003(45) (“private residential multi-slip dock”), 18-21.003(47), F.A.C. (“private residential multi-family dock or pier”); 18-21.003(48), F.A.C. (“private residential single-family dock or pier”).

Duration of Leases

Present Situation

Currently, the duration of a standard lease is five years.¹⁶ Extended term leases with durations up to 25 years are also available under limited circumstances if approved by the board.¹⁷ According to the DEP, the vast majority of residential leases are standard leases with a duration of five years.

Effects of Proposed Bill

The bill establishes a 10-year maximum duration for initial sovereignty submerged land standard leases for private residential single-family or multi-family docks. Upon agreement of the parties and compliance with all applicable laws and rules, such leases may be renewed for successive terms of up to 10 years. In effect, this 10-year maximum allows for leases of both shorter and longer duration than currently provided for by rule; however, the DEP does not anticipate granting leases for fewer than 10 years.

Lease Fees and Calculation

Present Situation

The board has promulgated extensive and detailed rules regulating the design of docks and related structures. Multiple factors jointly determine which docks on sovereign submerged land require a lease, and subsequently when lease fees apply, including:

- Location within or outside of an aquatic preserve¹⁸
- Area of sovereign submerged land preempted¹⁹
- Number of wet slips or the number of boats the structure is designed to moor
- Whether the dock is for a single-family residence or a multi-unit dwelling
- Whether the dock generates revenue
- Whether the dock is “private residential”²⁰ or “commercial, industrial and other revenue generating/income related”²¹

The following currently require a lease and lease fees:

- All revenue-generating docks²²
- Outside of an aquatic preserve:
 - Single-family docks that preempt an area of more than 10 square feet for each foot of shoreline
 - Multi-family docks that preempt an area of more than 10 square feet for each foot of shoreline and include more than two wet slips

¹⁶ 18-21.008(1), F.A.C.

¹⁷ 18-21.008(2)(a), F.A.C. Extended term leases are available where the use of sovereignty submerged lands has an expected life or amortization period equal to or greater than the requested lease term and where the applicant demonstrates the following: that the facility or activity provides access to public waters and sovereignty submerged lands for the general public on a first-come, first-served basis; that the facility is constructed, operated, or maintained by the government, or funded by government secured bonds with a term greater than or equal to the requested lease term; or that an extended term is necessary to satisfy unique operational constraints. *Id.*

¹⁸ Aquatic preserves are areas specifically designated by the legislature as having exceptional biological, aesthetic, or scientific value. See s. 258.37, F.S. (2010).

¹⁹ Relevant area is determined by a ratio of the area of sovereign submerged land preempted by the dock to the total linear feet of shoreline a riparian landowner holds on the affected water body (i.e., sovereign submerged land area in square feet : feet of shoreline owned). See 18-21.008(4)(a), (b), F.A.C. However, the board may allow exceptions to regulation based on this ratio in certain circumstances when the dock is consistent with the public interest. See 18-21.008(4)(b), F.A.C.

²⁰ These generally include docks used for private, recreational or leisure purposes. See 18-20.003(44), (45), F.A.C.

²¹ “Commercial, industrial and other revenue generating/income related docks” means docking facilities for any activity which produces income, through rental or any other means, or which serves as an accessory facility to other rental, commercial or industrial operations. It includes, but is not limited to, docking for: marinas, restaurants, hotels, motels, commercial fishing, shipping, boat or ship construction, repair, and sales. 18-20.003(16), F.A.C.

²² 18-21.005(1)(d)(5), F.A.C.

- Within an aquatic preserve, other than the Boca Ciega Bay or Pinellas County aquatic preserves:
 - Single-family docks that preempt an area of more than 10 square feet for each foot of shoreline²³
 - Multi-slip²⁴ docks that include two or fewer wet slips and preempt an area of more than 10 square feet for each foot of shoreline²⁵
 - Multi-slip docks that include three or more wet slips and exceed both the design criteria for single-family docks and preempt an area of more than 10 square feet for each foot of shoreline²⁶
- Within the Boca Ciega Bay or Pinellas County aquatic preserves:²⁷
 - Single-family docks that preempt an area of more than 10 square feet for each foot of shoreline²⁸
 - Multi-slip docks that preempt an area of more than 10 square feet for each foot of shoreline or include more than two wet slips²⁹

Lease fees for both standard and extended term leases are calculated through a fee formula, with adjustments for applicable discounts, surcharges, and other payments.³⁰ The annual lease fee for a standard lease is based on either 6% of the annual income, the base fee, or the minimum annual fee, whichever is greatest.³¹ The base fee is approximately 15¢ per square foot per year.³² The minimum annual fee is approximately \$460, adjusted annual based on the Consumer Price Index.³³ Private residential multi-family docks that include 10 or more wet slips developed in conjunction with upland property may be subject to a one-time premium when a lease is initiated, calculated at three times the base fee.³⁴ The extended term lease formula includes a multiplier for the number of years of the lease term.³⁵

In most cases, when upland property and the associated sovereign submerged land leased are transferred from an initial property developer to a subsequent resident, 6% of annual income will be the lease fee applicable.³⁶ In addition, when a resident sells (i.e., transfers fee simple or beneficial ownership) a unit in a private residential multi-family development, such as a condominium, and the unit has an associated wet slip, 6% of the revenue associate with the wet slip derived would again be the basis of the annual lease fee.

Effects of Proposed Bill

The bill requires lease contracts for sovereignty submerged lands for private residential single-family or multi-family docks to disclose the lease fees as established by the board.

²³ 18-21.005(1)(c)(2), F.A.C.

²⁴ The term “private residential multi-slip dock” refers to docks and related structures for multi-unit residential dwellings in aquatic preserves, whereas the term “private residential multi-family dock” addresses similar structures outside of aquatic preserves. 18-20.003(45), F.A.C.; 18-21.003(48), F.A.C..

²⁵ 18-20.004(5)(c)(1), F.A.C.

²⁶ *Id.*

²⁷ Boca Ciega Bay and Pinellas County aquatic preserves are in highly developed and urban areas. As such, certain regulatory differences exist for the building and maintenance of docks and other structures in these aquatic preserves.

²⁸ See 18-21.005(1)(c)(2), F.A.C.; 18-21.005(1)(d)(1.), F.A.C.

²⁹ Whereas in most aquatic preserves multi-slip docks that preempt an area more than 10 square feet for each foot of shoreline are effectively prohibited, in the Boca Ciega Bay and Pinellas County aquatic preserves multi-slip docks may preempt an area of more than 10 square feet for each foot of shoreline and less than 30 square feet for each foot of shoreline, with a lease from the board. 18-20.019(7)(a), F.A.C.

³⁰ 18-21.011(1)(a), F.A.C.

³¹ *Id.*

³² 18-21.011(1)(b)(1), F.A.C.

³³ 18-21.011(1)(b)(4), F.A.C.

³⁴ 18-21.011(1)(c), F.A.C.

³⁵ 18-21.011(1)(a), F.A.C.

³⁶ In these cases, 6% of the annual income would be the greatest among the potential formulas for calculating lease fees. See *id.*

The bill also extends the same financial benefit that currently exists for private residential single-family docks – exclusion from lease fees for a preempted area of 10 square feet or less for each linear foot of shoreline – to private residential multi-family docks. This benefit is extended only to private residential multi-family dwellings that include no more than one wet slip for each approved upland residential unit. As such, lessees of sovereign submerged land for private residential multi-family docks that include no more than one wet slip for each approved upland residential unit are not required to pay lease fees on a preempted area of 10 square feet or less for each linear foot of shoreline. However, those private residential multi-family docks that include no more than one wet slip for each approved upland residential unit but do preempt an area of more than 10 square feet for each linear foot of shoreline (exceeding the ratio under which private residential single-family docks receive the exemption from lease fees) are subject to lease fees only on the preempted area of sovereign submerged land that exceeds 10 square feet for each linear foot of shoreline.

In addition, the bill establishes that lessees whose upland property qualifies for a homestead exemption at the time of any transfer of fee simple or beneficial ownership of the property are not required to pay a lease fee on revenue derived from the wet slip, dock, or pier. Thus, the fee of 6% of revenue associated with the wet slip, dock, or pier from such a sale would be payable as a lease fee only upon the first transfer from a non-resident developer or subsequent sale by a person who is not eligible for a homestead exemption pursuant to s. 196.031, F.S.

The bill also codifies current board rules regarding income generated through leased sovereign submerged lands. A lessee of sovereignty submerged lands for a private residential single-family or multi-family dock must pay a lease fee on any income derived from a wet slip, dock, or pier, as determined by the board. Lastly, the board and the DEP are not prohibited from imposing additional application fees, regulatory permitting fees, or other lease requirements as authorized by law.

Site Inspection

Present Situation

According to board rule, the DEP or water management district staff must inspect a leased site at least once every five years to determine compliance with the terms and conditions of the lease.³⁷

Effects of Proposed Bill

The bill requires the DEP to inspect sites under lease for private residential single-family or multi-family docks at least once every 10 years. Although the bill does not include authority for the water management districts to conduct inspections, currently the water management districts perform only regulatory reviews of lease applications and do not conduct proprietary reviews, including inspections.

B. SECTION DIRECTORY:

Section 1: Creates s. 253.0347, F.S., specifying the maximum initial terms for standard leases of sovereignty submerged lands for private residential single-family docks or piers, private residential multi-family docks or piers, and private residential multi-slip dock; requiring lease contracts to specify lease fees; adding an exemption for lease fees below a certain threshold for certain multi-family and multi-slip leases; eliminating lease fees on revenue generated through transfer of fee simple or beneficial ownership if property is entitled to a homestead exemption pursuant to s. 196.031, F.S.; requiring the payment of lease fees upon income generated from sovereign submerged land leases; requiring inspections at least every 10 years.

Section 2: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill appears to have a negative fiscal impact on state government revenues. (See *Fiscal Comments* section).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would have an undetermined positive impact on the private sector, based on reduced lease fees under exemptions created.

D. FISCAL COMMENTS:

The DEP provided fiscal comments, based on FY 2009-2010 statistics, estimating the fiscal impact of PCS for HB 173 on lease fee revenues. The fiscal comments focused on two factors that would affect lease fee revenues.

- (1) First, DEP calculated the lease fee revenue that would not be collected due to the bill's removal of lease fee requirements for the first 10 square feet of preempted area per foot of shoreline for multifamily and multi-slip docks. These revenues are calculated by applying a base fee formula (linear foot of shoreline x 10 square feet preempted area x \$0.156623/square foot). The DEP estimated that, in total, \$620,000 would not have been collected in FY 2009-2010 if the exemption in PCS for HB 173 had been in effect.
- (2) Second, DEP calculated the lease fee revenue that would not be collected due to the bill's exemption of lease fees based on sale or transfer of property by a property owner. Typically, an invoice for each lease is generated at the beginning of the year, calculated by applying the base fee formula (based on square foot of sovereign submerged land preempted). If leaseholders report revenue generated from sale or transfer of a lease for sovereign submerged land and 6% of that revenue is greater than the base fee, then the 6% is paid as the lease fee in a supplemental invoice.

Under the bill, lease fees would not be applicable to revenue based on sale or transfer of property for properties under homestead exemption, effectively reducing this amount of lease fees. The DEP estimated that \$360,000 would not have been collected in FY 2009-2010 if the exemption in PCS for HB 173 had been in effect. This amount is the sum of all lease fees collected where the lease fee was based on 6% of revenue generated from sale or transfer of a sovereign submerged land lease. This amount does not include the 6% of revenue that the DEP received as lease fees on sovereign submerged lands for commercial marinas, yacht clubs and other type uses not addressed in the bill.

The DEP commented that this number may vary considerably by year in response to fluctuations in market values and that FY 2009-2010 was a particularly low year. In addition,

the DEP noted it does not currently have data on the number of properties under homestead exemption. As such, the \$360,000 figure represents the 6% revenue collected through lease fees for sale or transfer of all sovereign submerged land leases by upland property owners, not only those with a homestead exemption. Therefore, this reduction in lease fees collected would be lower if only the revenues from properties with homestead exemption were considered. However, the DEP also notes that the \$360,000 figure is based on self-reporting of lease sale or transfer. Unreported lease sale or transfer artificially reduces this amount until the DEP conducts lease audits to verify whether sale or transfer occurred and its value.

In sum, the bill would have an indeterminate negative impact on lease fees collected annually

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The board and the DEP are not prohibited from imposing additional application fees, regulatory permitting fees, or other lease requirements as otherwise authorized by law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2011, the Agriculture and Natural Resources Subcommittee amended the bill provision regarding the ten-year maximum initial and renewal lease duration to apply only to standard term leases. Before the amendment, the bill would have effectively removed the DEP's authority, on behalf of the board, to grant extended term leases, which could be granted for up to twenty-five years. By adding the qualified "standard," the amendment preserves the DEP's authority to grant extended term leases.