

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/SB 332

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Fasano

SUBJECT: Submerged Lands

DATE: April 14, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	<b>Fav/CS</b>
2.			CA	
3.			JU	
4.			BC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The CS authorizes the Board of Trustees of the Internal Improvement Trust Fund (Board) to lease sovereignty submerged lands for multifamily residential docks and piers without requiring lease fees. It specifies lease terms, lease fees, exemptions from lease fees and inspections. The CS authorizes the Board to impose additional fees and requirements authorized by law. Finally, the CS provides for a transfer of \$1 million from the General Revenue Trust Fund to the Board's Trust to address the fiscal impact of the CS.

This CS creates s. 253.0346 the Florida Statutes.

**II. Present Situation:**

**Administration of Sovereignty Submerged Lands**

The Board is responsible for the administration and disposition of the state's sovereignty submerged lands.<sup>1</sup> It has the authority to adopt rules and regulations pertaining to anchoring,

<sup>1</sup> Section 253.03(8)(b), F.S., defines "submerged lands" as "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."

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 sovereignty submerged lands. However, the Board prohibits construction of new dwellings on sovereignty submerged lands under its purview. The Department of Environmental Protection (DEP) administers all staff functions on the Board's behalf.

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 state.<sup>2</sup> The DEP determines whether a lease is required for a person to build a dock or related structure on sovereignty submerged lands based on a number of factors including:

- location within or outside of an aquatic preserve,
- area of sovereignty 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, and
- whether the dock is for "private residential" or other uses.

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. According to the DEP, the vast majority of residential leases are standard leases with durations of five years. Site inspections are conducted at least once every five years by the DEP or a water management district to determine compliance with lease conditions.<sup>3</sup>

### **Lease Requirements for Usage of Sovereignty Submerged Lands**

The following currently require a lease and payment of lease fees:<sup>4</sup>

- All revenue-generating docks;
- When sovereignty submerged lands are 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;
- When sovereignty submerged lands are 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 shoreline;

<sup>2</sup> See Rules 18-20 and 18-21, F.A.C.; see also ss. 253.03; 253.0345 and 258.39, F.S.

<sup>3</sup> Rule 18-21.008(1)(b)4., F.A.C.

<sup>4</sup> See generally Rule 18-21.005. Also see the Florida Dep't of Environmental Protection's *Submerged Land Lease Fees White Paper*, available at [http://www.dep.state.fl.us/lands/files/SSL\\_lease\\_fee.pdf](http://www.dep.state.fl.us/lands/files/SSL_lease_fee.pdf) (last visited Apr. 12, 2011).

- Multi-slip docks that include two or fewer wet slips and preempt an area of more than 10 square feet for each foot of shoreline;<sup>5</sup>
- 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 shoreline;
- Within the Boca Ciega Bay and Pinellas County Aquatic Preserves:
  - Single-family docks that preempt an area of more than 10 square feet for each foot of shoreline; and
  - Multi-slip docks that preempt an area of more than 10 square feet for each foot of shoreline or include more than two wet slips.

### **Lease Fees for Usage of Sovereignty Submerged Lands<sup>6</sup>**

Lease fees for both standard and extended term leases are calculated through a fee formula, with adjustments for applicable discounts, surcharges, and other payments. The annual lease fee for a standard lease is based on either six percent of the annual income, the base fee, or the minimum annual fee, whichever is greatest. The base fee is approximately \$0.15 per square foot per year, or two times the base fee if the lease is within an aquatic preserve. The minimum annual fee is approximately \$460. Both the base fee and minimum annual fee are adjusted annually based on the Consumer Price Index. 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 of three times the base fee when the lease is initiated. As noted above, the extended term lease formula includes a multiplier for the number of years of the lease term.

In most cases, when upland property and the associated sovereignty submerged land leases are transferred from an initial property developer to a subsequent resident, six percent of annual income will be assessed as the lease fee. 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, six percent of the revenue derived from the wet slip would also be included in calculating the annual lease fee.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 253.0346, F.S., providing requirements for leases of submerged lands for private residential use. The CS:

- Extends the term of standard leases the Board may offer from five to 10 years with successive 10-year renewals if the lessee remains in compliance with the lease terms;
- Specifies the lease terms must specify the lease fee to be paid;
- Prohibits the Board from collecting lease fees for private multifamily docks or piers if the docks or piers have less slips than the total of upland dwellings and the preempted area is less than 10 square feet for every linear foot of shoreline;

<sup>5</sup> Rule 18-20.004(5)(c)(1), F.A.C.

<sup>6</sup> This part of the analysis is providing a general overview of lease fees for sovereign submerged lands. See Rule 18-21.011, F.A.C., for more detailed information on calculating fees.

- Prohibits the Board from collecting a lease fee when an upland dwelling with an associated dock or pier is transferred in fee simple or other beneficial ownership when the dwelling is entitled to a homestead exemption pursuant to s. 196.031, F.S.
- Requires a lessee to pay a lease fee when the lease generates income from the wet slip, dock or pier;
- Requires the DEP to inspect leases at least once every 10 years to ensure compliance with lease terms;
- Removes authorization for the water management districts to conduct inspections; and
- Authorizes the Board to impose additional application or regulatory permitting fees, or other lease requirements as allowed by law.

**Section 2** provides for a transfer of \$1 million in recurring funds from the General Revenue Trust Fund to the Internal Improvement Trust Fund beginning fiscal year 2011-2012 for administration, management and disposition of sovereignty submerged lands.

**Section 3** provides an effective date of July 1, 2011.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Residents, owners and entities who currently pay lease fees for single-family and multi-family docks may be exempt from paying lease fees in the future depending on the size of the preempted area and the types of activity that occur on it. The DEP estimates annual savings in lease fee payments of \$1 million.

C. Government Sector Impact:

The Revenue Estimating Conference determined the CS will have an estimated negative impact on state revenues of \$100,000 to general revenue and \$900,000 to the Internal

Improvement Trust Fund for a total impact of \$1 million. However, the CS also provides for a recurring transfer of funds from the General Revenue Trust Fund to the Internal Improvement Trust Fund to cover the lost revenue.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Environmental Preservation and Conservation on April 14, 2011:**

The CS conforms the senate bill to CS/CS/HB 173 to make them identical. It includes the revised requirements for leases, lease fees and exemptions. It extends the standard lease term from five to 10 years and requires site inspections on the same schedule. It requires that individuals and entities making a profit from their leases pay lease fees. Finally, it provides for a \$1 million transfer of recurring funds from General Revenue to the Board for administering sovereignty submerged lands beginning fiscal year 2011-2012.

- B. **Amendments:**

None.