

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: SB 332

INTRODUCER: Senator Fasano

SUBJECT: Submerged Lands

DATE: April 12, 2011

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Uchino | Yeatman | EP | Pre-meeting |
| 2. | | | CA | |
| 3. | | | JU | |
| 4. | | | BC | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The bill authorizes the Board of Trustees of the Internal Improvement Trust Fund (Board) to lease sovereign submerged lands for “private residential use” and provides a definition for such. It specifies lease terms, rental fees, assignability limitations, disposition of improvements and construction or activities regarding sovereign submerged lands.

This bill creates s. 253.0346 the Florida Statutes.

II. Present Situation:

Administration of Sovereign Submerged Lands

The Board is responsible for the administration and disposition of the state’s sovereign submerged lands.¹ It has the authority to adopt rules and 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. However, the Board prohibits construction of new dwellings on sovereign 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

¹ 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.”

state.² 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, 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.

Lease Requirements for Usage of Sovereign Submerged Lands

The following currently require a lease and payment of lease fees:³

- All revenue-generating docks;
- When sovereign 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 sovereign 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;
 - 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;⁴
 - 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.

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

³ 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 (last visited Apr. 12, 2011).

⁴ Rule 18-20.004(5)(c)(1), F.A.C.

Lease Fees for Usage of Sovereign Submerged Lands⁵

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 sovereign 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 bill:

- Authorizes the Board to lease sovereign submerged lands for private residential use;
- Defines “private residential use” as a use for private, recreational or leisure purposes for a single-family residence, cottage or other single dwelling unit, or noncommercial multi-family developments, including condominiums, cooperatives, homeowners’ associations and resident-owned mobile home parks;
- Requires issuance of 10-year leases with successive 10-year renewal periods;
- Provides for a negotiated lease fee and surcharge of \$10 per acre or fraction thereof in accordance with certain aquaculture provisions.
- Prohibits the Board from collecting lease fees for private residential use as follows:
 - for single-family docks, where the preempted area is less than 10 square feet for every linear foot of shoreline; and
 - for multi-family docks, where the preempted area is less than 10 square feet for every linear foot of shoreline, multiplied by the number of multi-family dwelling units;
- Prohibits assigning the lease to:
 - an individual or entity who is not an owner of a unit in the multi-family development if there are no legally binding documents that allow for assignability;
 - an individual using the lease for commercial activity;
 - a marina having members who are not owners or occupants of the multi-family development; or
 - the public for any fee-based service other than maintenance or assessment fees;

⁵ 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.

- Requires the lease contract to address the disposition of any structures or assets upon the sovereign submerged lands and waters; and
- Prohibits construction that would harm natural resources as a result of using the sovereign submerged lands.

Section 2 provides an effective date of July 1, 2011.

Other Potential Implications:

The definition of “private residential use” may allow for construction of private residential dwellings on or over sovereign submerged lands. The practice is currently prohibited.

Currently, the Board has authority to grant leases for durations between five and 25 years, under certain circumstances. The bill limits the Board’s authority to granting 10-year leases only. While the vast majority of leases are five years in duration, some entities will be negatively affected by this provision. In addition, the bill does not distinguish between lease fees and sizes of multi-family docks inside or outside of aquatic preserves.

The DEP has expressed concerns over provisions that allow single-family docks to moor two boats of any size or a shared dock mooring four boats. For example, the owner mooring two 50 foot vessels would receive a benefit under this bill, while the owner mooring two small boats and a canoe would not. The DEP has also expressed concerns that multi-family docks serving a 100-unit development could preempt up to 100,000 square feet (2.3 acres) and still be exempt from paying lease fees; for example, a 100-unit condominium with 100 feet of shoreline.

The bill allows for slips to be rented to non-owner, non-occupant individuals or entities as long as the practice is allowed by association documents or other legally binding agreements, such as contracts. This change may allow large multi-slip docks to operate more like commercial marinas than private docks.

Finally, the Department of Agriculture and Consumer Services’ (DACS) analysis shows there may be a significant impact on shellfish harvesting areas. The bill’s proposed changes do not include regulatory criteria for placing docks on sovereign submerged lands. Construction of multi-slip docking facilities would have essentially the same environmental impacts as commercial marinas, resulting in potential adverse impacts to viable shellfish harvesting areas and aquaculture use areas.

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 savings in lease fee payments, sales tax and discretionary tax of over \$3 million, based on fiscal year 2008-09 data.

C. Government Sector Impact:

The bill will have an estimated negative impact on state revenues of \$2.85 million, a negative impact on sales tax revenue of \$164,000 and a negative impact on county discretionary tax revenue of \$17,000.

VI. Technical Deficiencies:

The bill requires a \$10 surcharge to be collected for aquaculture activities. DACS currently collects this fee and deposits proceeds into a trust fund. The bill does not specify whether this surcharge will continue to go into the DACS trust fund or the Board's trust fund.

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.)

None.

B. Amendments:

None.