

By Senator Hays

20-01356A-12

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1 A bill to be entitled
2 An act relating to the ordinary high-water mark for
3 navigable, nontidal waterbodies; creating s. 253.024,
4 F.S.; providing definitions; providing criteria for
5 determining the location of the ordinary high-water
6 mark for navigable, nontidal waterbodies; providing
7 for construction; providing an effective date.

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9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Section 253.024, Florida Statutes, is created to
12 read:

13 253.024 Determining location of ordinary high-water mark
14 for navigable, nontidal waterbodies.-

15 (1) As used in this section, the term:

16 (a) "Ordinary agricultural crop" means any terrestrial
17 plant or vegetation from a farm, nursery, grove, orchard,
18 vineyard, or garden, but does not include cypress trees.

19 (b) "Freshet" means a flood or overflowing of a river by
20 means of rain, melted snow, or an inundation of water.

21 (c) "Ordinary high-water mark" means the highest reach of a
22 navigable, nontidal waterbody as it usually exists when in its
23 ordinary condition and is not the highest reach of such
24 waterbody during the high water season or in times of freshets.
25 The term also includes the terms "ordinary high-water line" and
26 "line of ordinary high water."

27 (2) When determining the location of the ordinary high-
28 water mark for navigable, nontidal waterbodies, this subsection
29 shall be considered in its entirety and each of the following

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30 provisions shall apply:

31 (a) The ordinary high-water mark is an ambulatory boundary,
32 shifting in response to long-term changes, and is to be
33 determined by examining the bed and banks to ascertain where the
34 presence and action of the water are so common and usual, and so
35 long continued in all ordinary years, as to mark upon the soil
36 of the bed a character distinct from that of the banks, in
37 respect to vegetation and the nature of the soil itself.

38 (b) The ordinary high-water mark is coordinate with the
39 limit of the bed the water occupies sufficiently long and
40 continuously to wrest it from vegetation and destroy its value
41 for agricultural purposes. The bed does not take in swamp or
42 overflowed lands, and the ordinary high-water mark is to be
43 found between such lands and the area occupied by the water for
44 the greater portion of each average year. At this level a
45 definite escarpment in the soil is generally traceable, at the
46 top of which is the position for the boundary. Escarpments
47 resulting from the action of a storm, a flood, or rises in water
48 levels of a waterbody during the annual high water season do not
49 signify the ordinary high-water mark.

50 (c) In some places where the banks are low and flat and the
51 water does not impress on the soil any well-defined line of
52 demarcation between the bed and the banks, the effect of the
53 water upon vegetation must be the principal test in determining
54 the location of the ordinary high-water mark. In such an
55 instance, the ordinary high-water mark is the point up to which
56 the presence and action of the water is so continuous as to
57 destroy the value of the land for agricultural purposes by
58 preventing the growth of vegetation constituting what may be

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59 termed an ordinary agricultural crop.

60 (d) Marks upon the ground or upon local objects that are
61 more or less permanent may be considered, in connection with
62 competent testimony and other evidence, in determining the
63 ordinary high-water mark.

64 (3) This section does not alter the public's right to use
65 navigable waters and sovereignty submerged lands for common law
66 public trust purposes up to the ordinary high-water mark as
67 defined in this section, nor does this section affect the
68 ownership by the public of sovereignty submerged lands lying
69 below that mark.

70 Section 2. This act shall take effect July 1, 2012.