

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 929 Little Gasparilla Island, Charlotte County

**SPONSOR(S):** Roberson

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N, As CS	Miller	Rojas
2) State Affairs Committee	16 Y, 0 N	Renner	Camechis

### SUMMARY ANALYSIS

Sovereignty submerged lands are reserved exclusively to the state and administered by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board). The Department of Environmental Protection (DEP) administers and enforces the state's interests in these submerged lands on behalf of the Board. A dock or other structure may be built on sovereignty submerged lands and preempt the use of those lands to the dock's owner only with prior authorization, usually in a letter of consent or lease issued under rules adopted by the Board. Leases of submerged lands require annual payments to the state in amounts calculated according to Board rules. The terms under which docks and other structures may be built, maintained, repaired, and replaced are also controlled by Board rules, particularly where the structure exists or is proposed for construction in an aquatic preserve.

Lemon Bay Aquatic Preserve was created by statute in 1986 and encompasses areas in Sarasota and Charlotte Counties. Little Gasparilla Island lies between the Gulf of Mexico and Placida Harbor, which is part of the Preserve. Platted into 642 lots, almost the entire Island is occupied by single family residences with two developed condominiums. Because the Island is accessible virtually only by water, many of the interior lots depend upon easements or other interests allowing access to private docks located in Placida Harbor in order to moor their boats. Although some of the docks apparently are covered by submerged land leases, most are not. In order to apply for a conventional submerged lands lease, most of the nonconforming docks would require substantial rebuilding or removal to comply with current law.

The bill creates a process to resolve the issues arising from certain nonconforming private residential docks on sovereignty submerged lands adjacent to Little Gasparilla Island in Placida Harbor. Within two years from the bill becoming law, those owners of property adjacent to or having an established interest in a dock may apply to DEP for a letter of consent (private residential single-family docks) or submerged lands lease (private residential multifamily or multi-slip docks). Submission of an application under the requirements of the bill will be in full and final settlement of all Board claims for the prior nonconforming use.

Those owners complying with the terms for timely application and settlement will be exempted from the statutory permit requirements and certain rule requirements for repair, rebuilding, modification, or expansion of docks under conditions stated in the bill.

The bill provides the act goes into effect upon becoming law.

**Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Introduction<sup>1</sup>

Upon statehood, Florida gained title to all sovereignty submerged lands<sup>2</sup> within its boundaries, to be held in trust for the public.<sup>3</sup> The Board of Trustees of the Internal Improvement Trust Fund (Board) is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of such lands.<sup>4</sup> 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.<sup>5</sup> When disposing of sovereignty submerged lands, the Board must “ensure maximum benefit and use.”<sup>6</sup> The Board is authorized to adopt rules pertaining to anchoring, mooring, or otherwise attaching to the bottom and the establishment of anchorages on sovereignty submerged lands.<sup>7</sup>

Florida recognizes “riparian rights” for landowners with waterfront property bordering on navigable waters.<sup>8</sup> These rights include ingress, egress, boating, bathing, fishing, and others as defined by law.<sup>9</sup> Riparian landowners must obtain the Board’s authorization for installation and maintenance of docks, piers, and boat ramps on sovereignty submerged land.<sup>10</sup> As defined by the Board, “dock” generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.<sup>11</sup> Board authorization may be in the form of consent by rule,<sup>12</sup> letter of consent,<sup>13</sup> or lease.<sup>14</sup> All leases authorizing activities on sovereignty submerged lands must include provisions for lease fee adjustments and annual payments.<sup>15</sup>

#### Present Situation

##### Lease of Sovereignty Submerged Lands for Residential Docks

Sovereignty submerged lands may be leased for private residential or non-commercial uses under specified terms.<sup>16</sup> These uses include a private residential single-family dock or pier,<sup>17</sup> private residential multifamily dock or pier,<sup>18</sup> or private residential multi-slip dock.<sup>19</sup>

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<sup>1</sup> Portions of this analysis are drawn from staff analysis h0013e.SAC (2012) prepared by staff of the House State Affairs Committee (February 22, 2012).

<sup>2</sup> 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. For purposes of managing sovereignty submerged lands, the term also includes all submerged lands title to which is held by the Board. Rule 18-21.004, F.A.C.

<sup>3</sup> Art. X, s. 11, Fla. Const.; *Broward v. Marbry*, 50 So. 826, 829-30 (Fla. 1909).

<sup>4</sup> Sections 253.001, 253.03(1), F.S.

<sup>5</sup> Art. X, s. 11, Fla. Const.

<sup>6</sup> Section 253.03(7)(a), F.S.

<sup>7</sup> Section 253.03(7)(b), F.S.

<sup>8</sup> 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.*

<sup>9</sup> Section 253.141(1), F.S.

<sup>10</sup> Rule 18-21.005(1)(d), F.A.C.

<sup>11</sup> Rules 18-20.003(19), 18-21.003(20), F.A.C.

<sup>12</sup> Rule 18-21.005(1)(b), F.A.C.

<sup>13</sup> 18-21.005(1)(c), F.A.C.

<sup>14</sup> 18-21.005(1)(d), F.A.C.

<sup>15</sup> 18-21.008(1)(b)2., F.A.C.

<sup>16</sup> Section 253.0347, F.S.; Chapter 18-21 & Rule 18-20.004, F.A.C.

<sup>17</sup> A “dock or pier used for private recreational or leisure purposes that is located on a single-family riparian parcel or that is shared by two adjacent single-family riparian owners if located on their common riparian rights line.” Rule 18-21.003(48), F.A.C. A pier is defined as a structure primarily used for fishing or swimming and not for mooring watercraft. Rule 18-21.003(44), F.A.C.

Unless otherwise exempt,<sup>20</sup> the use of sovereignty submerged lands for residential docks requires an environmental use permit<sup>21</sup> and authorization from the Board.<sup>22</sup> A lease of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multi-slip dock is for a maximum initial period of 10 years and may be renewed for periods not exceeding 10 years providing the lessee continues to comply with all applicable laws and rules.<sup>23</sup> The lease contract must specify the fees as established by the Board for the use of submerged lands preempted<sup>24</sup> by the dock or pier, as guided by the statute.<sup>25</sup>

The annual fee for a lease of sovereignty submerged lands is based on the greater of 6 percent of the annual income received from the lessee's operation of the property, the base fee of approximately \$0.16 per square foot<sup>26</sup> (of preempted submerged lands), or the minimum fee of approximately \$500.<sup>27</sup> The base fee and minimum fee amounts were set in 2007 and are adjusted annually based on the past five-year average U.S. Bureau of Labor Services' Consumer Price Index. Certain leases of submerged lands located in an aquatic preserve may be subject to a doubling of the applicable base fee.<sup>28</sup> If the applicant seeks to bring a prior unauthorized use of submerged lands into present compliance, an additional amount is required for unpaid annual lease fees for the period of the unauthorized use together with an additional fee based on two percentage points above the Federal Reserve Bank's discount rate charged to member banks.<sup>29</sup>

The applicant must provide "satisfactory evidence" of having a legal interest in the upland parcel to obtain a lease of sovereignty submerged lands. If that interest is less than fee simple the applicant's interest must cover the entire shoreline of the upland parcel or 65 feet, whichever is less.<sup>30</sup> This requirement does not apply:

- To existing docks or piers previously constructed in compliance with then-applicable Board rules if the proposed activity is repair complying with current Board rules;
- To minor modifications not affecting the preemption boundaries previously authorized by the Board; or
- To proposed activities resulting in a reduced preemption area.<sup>31</sup>

Depending on the applicable facts, the Board's authorization may be by existing rule requiring no further action, by letter of consent, or by lease contract.<sup>32</sup> Authorization may be by letter of consent if the proposed use is:

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<sup>18</sup> A "dock or pier on a common riparian parcel or area that is intended to be used for private recreational or leisure purposes by persons or groups of persons with real property interest in a multifamily residential dwelling such as a duplex, a condominium, or attached single-family residences or a residential development such as a residential or mobile home subdivision." Rule 18-21.003(47), F.A.C.

<sup>19</sup> Section 253.0347(1), F.S.

<sup>20</sup> Section 403.813(1)(d), F.S.

<sup>21</sup> Sections 373.422, 373.427, 373.430, F.S.

<sup>22</sup> Sections 253.03, 253.0347, F.S.; Rule 18-21.005(1), F.A.C.

<sup>23</sup> Section 253.0347(1), F.S.

<sup>24</sup> "Preemption" refers to "the area of sovereignty submerged lands from which any traditional public uses have been or will be excluded by an activity, such as the area occupied by docks, piers, and other structures; the area between a dock and the shoreline where access is not allowed, between docks, or areas where mooring routinely occurs that are no longer reasonably accessible to the general public..." Rule 18-21.003(45), F.A.C.

<sup>25</sup> Section 253.0347(2), F.S. For example, no lease fee is charged for a private residential single family dock having only one wet slip and occupying an area of submerged lands not exceeding a ratio of 10 square feet for each linear foot of shoreline in which the applicant has a sufficient legal interest in the upland parcel.

<sup>26</sup> DEP 2014 Agency Analysis on file with staff.

<sup>27</sup> Rule 18-21.011(1)(a), (1)(b)1., (1)(b)4., F.A.C., and DEP 2014 Agency Analysis on file with staff.

<sup>28</sup> Rule 18-21.011(1)(b)5., F.A.C. The distinction is based on whether the leased submerged lands are adjacent to a natural, unseawalled, or otherwise unprotected area exceeding a certain size.

<sup>29</sup> Rule 18-21.011(1)(b)10., F.A.C.

<sup>30</sup> Rule 18-21.004(1)(d), F.A.C.

<sup>31</sup> Id.

<sup>32</sup> Rule 18-21.005(1)(b), (1)(c), (1)(d), F.A.C.

- A private residential single-family dock with only one wet slip;<sup>33</sup> or
- A private residential single-family or multifamily dock preempting no more than 10 square feet of submerged lands for each linear foot of the applicant's riparian shoreline within a single plan of development (10-to-1 ratio).<sup>34</sup>

### Setback, Width, and Area Requirements

For the protection of both the State's interest in sovereignty submerged lands and the riparian rights of other property owners who may be affected by the proposed activity, the Board established certain setback and dimension requirements for proposed docks and piers.<sup>35</sup> All structures, including docks, preempting submerged lands must be set back at least 25 feet from the applicant's riparian rights lines<sup>36</sup> but marginal docks<sup>37</sup> must only be a minimum of 10 feet from the rights lines.<sup>38</sup> Exceptions to this requirement include:

- Private residential single-family docks associated with a parcel that has a shoreline frontage of less than 65 feet;<sup>39</sup>
- Portions of private residential single-family docks that are located between riparian lines less than 65 feet apart;<sup>40</sup>
- Private residential single-family docks shared by two adjacent single-family parcels;<sup>41</sup> and
- Structures built or occurring prior to any requirement for Board authorization.<sup>42</sup>

As noted above, applicants for leases who do not hold ownership to the upland parcel in fee simple are limited to a maximum width of 65 feet for their riparian interest.<sup>43</sup>

Present limits on the area of sovereignty submerged lands preempted by private docks apply to all leases not approved by the Board prior to December 25, 1986.<sup>44</sup> Private residential multifamily docks with three or more wet slips, preempting an area exceeding 10 square feet of sovereignty submerged lands for every linear foot of riparian shoreline, are limited to one wet slip for each approved upland residential unit and may not preempt a total area exceeding 40 square feet for every linear foot of riparian shoreline within a single plan of development (40-to-1 ratio).<sup>45</sup> An exception may be granted for a greater preemption area only if all of the following factors apply:

- The applicant complies with all other applicable statutes and Board rules;
- There is sufficient water depth to accommodate vessels ingressing and egressing the lease area;
- The proposal will not require dredging nor cause adverse impacts on resources in sovereignty submerged lands, or will actually reduce such activities;

<sup>33</sup> Rule 18-21.005(1)(c)1., F.A.C.

<sup>34</sup> Rule 18-21.005(1)(c)2., F.A.C. Unless otherwise noted, the remaining uses amenable to letter of consent are not relevant to this analysis.

<sup>35</sup> Rule 18-21.004(3), F.A.C.

<sup>36</sup> "Riparian rights lines" may be understood as extensions of the riparian owner's property lines extending from the mean- or ordinary high water mark out to navigable waters. Riparian rights attach to upland parcels bordering navigable waters and include rights to the general use of the water adjacent to the property, to access navigable waters, and to build a dock for such access. *Shore Village Property Owners' Ass'n, Inc. v. Dept. of Environmental Protection*, 824 So. 2d 208, 211 (Fla. 4<sup>th</sup> DCA 2002); s. 253.141(1), F.S.

<sup>37</sup> A "dock placed immediately adjacent and parallel to the shoreline or seawall, bulkhead or revetment." Rule 18-21.003(35), F.A.C.

<sup>38</sup> Rule 18-21.004(3)(d), F.A.C.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Id. This last exception may apply only to very old structures, as the powers and duties of the Board were first articulated in Ch. 610, s. 2, Laws of Florida (1854) [now codified in s. 253.02, F.S.] and the Board's authority to administer state lands was first described in Ch. 15642, s. 1, Laws of Florida (1931) [now codified in s. 253.03, F.S.].

<sup>43</sup> Rule 18-21.004(1)(d), F.A.C.

<sup>44</sup> Rule 18-21.004(4)(h), F.A.C.

<sup>45</sup> Rule 18-21.004(4)(b), F.A.C.

- Construction will not adversely affect any endangered, threatened, or special concern species; and
- The applicant offers a net positive effect to offset the proposed use.<sup>46</sup>

### Maintenance, Repair,

Once authorized, a dock must be maintained in functional condition.<sup>47</sup> If not otherwise controlled by a current Board authorization, the repair or replacement of an existing structure within the same dimensions and use would be authorized by a letter of consent.<sup>48</sup> However, as discussed below the maintenance, repair, and replacement of structures such as docks in official Aquatic Preserve areas are subject to stricter requirements.

### State Aquatic Preserves

Sovereignty submerged lands in areas with exceptional biological, aesthetic, and scientific value may be set aside as aquatic preserves.<sup>49</sup> All sovereignty submerged lands within 25 Florida counties, with certain exceptions, are designated as aquatic preserve areas.<sup>50</sup> Lemon Bay Aquatic Preserve in Charlotte and Sarasota Counties was first designated in 1986.<sup>51</sup> Aquatic preserves are protected by stricter development and construction controls<sup>52</sup> but some structures may be approved, including:

- Private residential docks allowing reasonable ingress or egress of riparian owners; and
- Private multi-slip docks “located within a reasonable distance of a publicly maintained navigation channel, or a natural channel of adequate depth and width to allow operation of the watercraft for which the docking facility is designed without the craft having an adverse impact on marine resources.”<sup>53</sup>

Authorized private docks in aquatic preserves are held to higher standards. Board rules limit the length of allowed docks to the lesser of 500 feet or 20 percent of the width of the waterbody at the dock’s location, reserve the Board’s ability to control a dock’s design and construction to minimize environmental harm by the actual construction and the subsequent use by vessels, and limit the preemption of sovereignty submerged lands to 10 square feet for every linear foot of the applicant’s riparian shoreline, among other requirements.<sup>54</sup> The Board also is authorized to enter into management agreements with local governments for administration and enforcement of private dock standards and criteria.<sup>55</sup>

A dock constructed within an aquatic preserve in conformance with then-applicable Board rules and rules of DEP is authorized to be maintained, including routine repair, for continued use subject to the current requirements in Ch. 18-21, F.A.C. Unlike the maintenance and repair requirements for structures in other locations, if more than 50 percent of a nonconforming dock or other structure in an aquatic preserve falls into disrepair or is destroyed the entire structure must be brought into full compliance with the Board rules in effect at that time.<sup>56</sup>

### Little Gasparilla Island

<sup>46</sup> Rule 18-21.004(4)(b)2.a.-e., F.A.C.

<sup>47</sup> Rule 18-21.004(7)(h), F.A.C.

<sup>48</sup> Rule 18-21.005(1)(c)7., F.A.C.

<sup>49</sup> Section 258.36, F.S.

<sup>50</sup> Section 258.39, F.S. These include Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Charlotte, Pinellas, Martin, Palm Beach, Miami-Dade, Monroe, Collier, Lee, Citrus, Franklin, Gulf, Bay, Okaloosa, Marion, Santa Rosa, Hernando, and Escambia Counties.

<sup>51</sup> Section 258.3925, F.S., adopted by Ch. 86-186, s. 74, LOF.

<sup>52</sup> Section 258.42, F.S.

<sup>53</sup> Section 258.42(3)(e)1. & (3)(e)2., F.A.C.

<sup>54</sup> Rule 18-20.004(5), (5)(c)1., F.S.

<sup>55</sup> Rule 18-20.004(6), F.S.

<sup>56</sup> Rule 18-20.004(5)(a)6., F.A.C.

Little Gasparilla Island is a bridgeless barrier island located in Charlotte County, with access to the Gulf of Mexico to the west and Placida Harbor to the east.<sup>57</sup> Placida Harbor is part of the Lemon Bay Aquatic Preserve.<sup>58</sup> Although the Island is physically connected to Don Pedro Island to the north, the Don Pedro State Park serves as a buffer that only allows for pedestrian access. Thus, Little Gasparilla Island is accessible only by watercraft and emergency vehicles (such as all-terrain vehicles utilized by the Charlotte County Sheriff's Department).<sup>59</sup>

All parcels on Little Gasparilla Island are privately owned and comprise 642 platted lots of varying size. The majority are single family residential. There are two condominium developments, one of 30 residential units and the other of 102 residential units. Docks on the island are owned by individual waterfront property owners, property owner associations, neighborhood groups, or the two condominium associations.<sup>60</sup>

As of 2007 "there (were) 117 docks on the bay side of Little Gasparilla Island. Most of these docks are used by several dwelling units; others are private. In most cases, docks are aligned with access easements or rights-of-way, which provide access to the island interior."<sup>61</sup>

Apparently, the majority of docks on Little Gasparilla Island are not authorized in some manner by the Board. The historic development of the island is represented as depending on lots with bayfront access, and riparian rights to construct and maintain docks, providing easements for interior lots and those on the Gulf to access the docks and thus transportation between the Island and the mainland.<sup>62</sup> According to the Little Gasparilla Property Owners Association:

The strict application of the 1986 rules to the LGI docks would result in the complete and permanent removal of almost all of the existing multifamily docks that together serve several hundred interior lots, and would require at least the partial reconstruction of most of the existing single-family docks attached to bayfront lots. The loss of essential boat access to virtually all of the interior lots would destroy a substantial portion of the established economic value of those residential properties. And the partial or complete reconstruction of many of the single-family docks attached to bayfront lots would impose a substantial economic burden on those bayfront property owners.<sup>63</sup>

According to the Property Owners Association website, the Dock Association was created to address and resolve the dock compliance issue after what was perceived to be the initiation of enforcement action by the Department of Environmental Protection (DEP). The proposals in the bill were developed after lengthy negotiations with DEP in order to resolve compliance issues about the docks.

The Dock Association perceives part of the resolution in the bill as the "grandfathering" into compliance with DEP of the Islanders' present docks.<sup>64</sup> However, present Board rule provides for bringing unregistered grandfathered structures into a binding lease under the procedures of an administrative rule that was repealed in 2012.<sup>65</sup> Because most of the private single-family, multifamily, and multi-slip

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<sup>57</sup> "Little Gasparilla Community Plan," pg. 1, 4 (September 2007), at [http://www.charlottecountyfl.gov/boards-committees/lgiac/Site%20Documents/Forms/AllItems.aspx?Paged=TRUE&p\\_FileLeafRef=20130111%5fLGI%5fMinutes%2epdf&p\\_ID=45&PageFirstRow=31&&View={78355091-F961-4AFA-B9BA-28404C7698AF}&InitialTabId=Ribbon%2EDocument&VisibilityContext=WSSTabPersistence](http://www.charlottecountyfl.gov/boards-committees/lgiac/Site%20Documents/Forms/AllItems.aspx?Paged=TRUE&p_FileLeafRef=20130111%5fLGI%5fMinutes%2epdf&p_ID=45&PageFirstRow=31&&View={78355091-F961-4AFA-B9BA-28404C7698AF}&InitialTabId=Ribbon%2EDocument&VisibilityContext=WSSTabPersistence) (accessed 3/22/2014) [herein "LGI Plan"].

<sup>58</sup> Section 258.3952, F.S.

<sup>59</sup> LGI Plan, 4, 17.

<sup>60</sup> LGI Plan, 4.

<sup>61</sup> LGI Plan, 18.

<sup>62</sup> Information from the Little Gasparilla Property Owners Association, at <http://lgpoa.org/island-property/island-dock-information/> (accessed 3/22/2014).

<sup>63</sup> At <http://lgpoa.org/island-property/island-dock-information/the-need-for-a-local-bill-preserving-all-existing-little-gasparilla-island-docks/> (accessed 3/22/2014).

<sup>64</sup> Id.

<sup>65</sup> Rule 18-21.002(3), F.A.C., referencing Rule 18-21.00405, F.A.C., repealed on March 12, 2012. Additionally, Rule 18-21.003(56), F.A.C., defines a "registered grandfathered structure" as "any structure that has been formally registered with the department as a grandfathered structure as evidenced by submittal of an acceptable application prior to September 30, 1984."

docks on Little Gasparilla Island appear to have predated the 1986 creation of the Lemon Bay Aquatic Preserve, thus were neither permitted under Ch. 373, Part IV, F.S., nor constructed to compliance with prior or present Board rules, the respective owners may not be able to apply and receive a lease under the statutory changes enacted in 2012.<sup>66</sup>

According to DEP, no enforcement action has been initiated to date. As of the date of this analysis DEP also has not taken a formal position on the bill.

### **Effect of Proposed Changes**

The bill provides an alternative process and two-year period for private owners or the incorporated association holding a submerged land lease for an existing private residential multifamily or private residential multi-slip dock to bring the dock into regulatory compliance with DEP. The dock must have been constructed prior to March 1, 2013. Those owners or entities meeting the compliance requirements created by the bill will be:

1. Exempt from the requirement to obtain a permit for the existing dock under Ch. 373, Part IV, F.S.
2. Permitted to maintain and repair the dock as it existed on March 1, 2013.
3. Permitted to rebuild the entire structure to the March 1, 2013 configuration in the event more than 50 percent of the dock falls into disrepair or is destroyed, as opposed to bringing the entire structure into compliance with rules and statutes existing at the time of the rebuilding.
4. Allowed to make future modifications to the dock conforming to applicable rules without having to reconstruct the existing structure to the rule requirements then in effect.
5. Allowed to make future modifications and obtain an expansion of the submerged land lease for that dock, subject to rules applicable at that time, even if:
  - a. The modification does not meet the side setback requirement of at least 25 feet, as stated in present rule, provided the modification does not encroach further into the setback requirement than the present structure.
  - b. The present dock is based on a riparian easement that does not meet the minimum width requirement of either the extent of the riparian shoreline or 65 feet.
6. Authorized to obtain a future expansion of the submerged lands lease despite the fact that the existing dock presently, or as modified, would not meet either the 10-to-1 or 40-to-1 ratios.

Under the bill, the owner of a riparian parcel or upland parcel with an interest in a private single-family residential dock will be covered by the foregoing conditions if the dock is subject to a present letter of consent with the Board or the owner applies for a letter of consent under the terms allowed in the bill, within the two year deadline. A timely filed application meeting the requirements in the bill will be in full and final settlement of all claims of the Board for the applicant's noncompliance with rules.

A private residential multifamily or multi-slip dock will be entitled to the above conditions if the following requirements are met:

1. The property owners on the Island with an established right to use the existing dock incorporate a dock association or homeowners' association, with rights and membership equally available to all such property owners.
2. The dock is covered by an existing submerged lands lease or the association applies to DEP for an initial lease or an expansion of an existing lease within two years from the effective date of the law. A timely filed application meeting the requirements in the bill will be in full and final settlement of all claims of the Board for the applicant's noncompliance with rules. If such application is made:
  - a. The lease must be granted if the association provides proof of fee simple title or of a permanent upland riparian easement created for the use of the property owners who are members of the association. No other evidence may be required.

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<sup>66</sup> Section 253.0347, F.S.

- b. The lease must be granted even if the area historically preempted by the dock encroaches into the normal setback requirements. The lease also must contain language invalidating the lease if a court adjudges the lease to infringe on a neighboring parcel's riparian rights.
- c. If an application meeting the requirements in the bill is timely filed in full and final settlement of all claims of the Board for the applicant's noncompliance with rules, no lease fees in arrears may be charged.

The bill exempts the state, the Board, and DEP from any liability to an owner of an upland riparian parcel or interest holder in a dock for any loss or damage if a court adjudges that a dock authorized under this act encroaches or interferes with the riparian rights of another. This includes damages for any judgment requiring modification or removal of the dock. Finally, the bill does not preclude DEP from taking any enforcement action against any dock or owner that does not meet the applicable requirements of the bill within two years after the bill becomes law.

#### C. SECTION DIRECTORY:

Section 1: Creates specific exemptions to the requirements of Chs. 258 and 373, F.S., and the rules of the Board of Trustees of the Internal Improvement Trust Fund, for owners of riparian parcels or upland interests associated with certain existing private single-family docks on sovereignty submerged lands in the Lemon Bay Aquatic Preserve, adjacent to Little Gasparilla Island. The docks must have been constructed before March 1, 2013.

Section 2: Applies the exemptions created in Section 1 to private residential single-family docks subject to a letter of consent from DEP on behalf of the Board. If there is not an existing letter of consent, the owner of the riparian parcel or upland interest associated with the dock may apply for a letter of consent for the existing dock within two years from the effective date of the law. A timely filed application meeting the requirements of the bill will be in full and final settlement of all claims of the Board for the prior nonconforming use.

Section 3: Applies the exemptions created in Section 1 to private residential multifamily or multi-slip docks, conditioned on the affected property owners incorporating a dock association or homeowners' association with equal membership available to all owners with an established interest in the dock. Provides the dock must be subject to an existing submerged lands lease or the association must apply for a lease within two years from the effective date of the law. A timely filed application meeting the requirements of the bill will be in full and final settlement of all claims of the Board for the prior nonconforming use.

Section 4: Requires DEP to issue an initial lease of sovereignty submerged lands, or an expansion of an existing lease, on the application of a dock association or homeowners' association if the association provides documentary evidence either of fee simple title to the associated upland parcel or evidence of an associated easement. Requires the lease be issued even if the historically preempted area of submerged lands exceeds the present setback requirements of the Board. Exempts those applying for a lease under the terms of the bill from paying lease fees in arrears and treats a timely application made under the bill as full and final settlement of all claims of the Board arising from the applicant's noncompliance.

Section 5: Exempts the state, the Board of Trustees of the Internal Improvement Trust Fund, and DEP from liability to an owner of an upland riparian parcel or riparian interest holder for any loss suffered if a court adjudges that any part of a dock authorized by the act encroaches on or interferes with riparian rights of others, including any required modification or removal of a dock.

Section 6: Clarifies DEP is not precluded from taking enforcement action against any dock or the owner of a riparian parcel or any upland interest associated with the dock for failing to comply with the criteria established in the bill within two years of the act becoming law.

Section 7: Provides the act is effective upon becoming law.



## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 13, 2014

WHERE? Charlotte County

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2014, the Local & Federal Affairs Committee approved without objection an amendment removing three provisions requiring payments by owners of, or those with a legal interest in, docks affected by the bill. The amendment was requested by the Governor's Office. The payments would have been to settle all claims of the Board of Trustees of the Internal Improvement Trust Fund. This analysis is drawn to the bill as amended.