

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 841 Residential Property Riparian Rights  
**SPONSOR(S):** Environment, Agriculture & Flooding Subcommittee, DiCeglie  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 840

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	18 Y, 0 N	Mawn	Jones
2) Environment, Agriculture & Flooding Subcommittee	15 Y, 0 N, As CS	Gawin	Moore
3) Judiciary Committee	18 Y, 0 N	Mawn	Kramer

### SUMMARY ANALYSIS

Riparian rights are rights incident to land bordering navigable waters such as rivers, channels, and streams ("riparian land") and include rights of ingress, egress, boating, bathing, and fishing and to an unobstructed view. Riparian rights also include the right to erect upon the bed and shores adjacent to the riparian land docks and other structures for the riparian land owner's personal use, subject to the right of the public to use the navigable waters. In other words, structures built on riparian land may not impede navigation or other lawful public uses and generally may not extend beyond the line of navigation. Riparian rights inure to the riparian land owner and are appurtenant to and inseparable from the riparian land. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running with the land whether or not such rights are mentioned in the deed or lease.

In order for riparian rights to attach, the riparian land must extend to the ordinary high water mark of the navigable water. However, courts have acknowledged that there is no one proper method for establishing riparian rights boundaries, and such rights do not necessarily extend into the waters according to riparian land boundaries. Instead, boundaries must be apportioned and riparian rights determined in accordance with equitable principles, with consideration given to the lay of the shore line, the direction of the waterbody, and the co-relative rights of adjoining riparian land owners. Despite these guidelines, it is possible to have two land surveyors draw riparian boundaries for adjoining properties in two different locations if they use different methods for establishing such boundaries. A riparian land owner who believes that the boundaries of his or her riparian rights have not been properly drawn or his or her riparian rights have been otherwise violated may bring an action for relief in the circuit court where the riparian land is located.

CS/HB 841 establishes a preferred method for establishing the boundaries of a residential property owner's riparian rights along a channel for purposes of the construction of docks, piers, marinas, moorings, pilings, and other private improvements. Specifically, the bill requires that, when establishing such boundaries after July 1, 2022, a land surveyor must give preference to the "prolongation-of-property-line" method unless doing so would result in inequitable apportionment of riparian rights among other land owners along the channel. Further, the bill provides that:

- In a civil action relating to a residential dock owner's riparian rights, when such rights are exercised with all appropriate environmental and regulatory approvals and permits, the court must award the prevailing party his or her reasonable attorney fees and costs.
- The bill does not apply to littoral waters, such as a lake, ocean, or gulf.

The bill may have a positive indeterminate fiscal impact on state government but does not appear to have a fiscal impact on local governments.

The bill provides an effective date of upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Riparian Rights

Upon attaining statehood in 1845, Florida “assumed title to and sovereignty over the navigable waters in the state and the lands thereunder” from the submerged bed up to the “ordinary high water mark.”<sup>1</sup> Under the common law Public Trust Doctrine, which recognizes the public’s right to natural resources, navigable rivers, lakes, and tidelands are held in the public trust, and the state has a legal duty to preserve and control such waters for public navigation and other lawful uses.<sup>2</sup>

Riparian rights are rights incident to land bordering navigable waters<sup>3</sup> such as rivers, channels, and streams<sup>4</sup> (“riparian land”) and include rights of ingress, egress, boating, bathing, and fishing and to an unobstructed view.<sup>5</sup> Riparian rights also include the right to erect upon the bed and shores adjacent to the riparian land docks and other structures for the riparian land owner’s private use, subject to the right of the public to use the navigable waters and applicable regulatory and environmental approval schemes.<sup>6</sup> Riparian rights, which inure to the riparian land owner, are appurtenant to and inseparable from the riparian land.<sup>7</sup> Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running with the land whether or not such rights are mentioned in the deed or lease.<sup>8</sup>

In order for riparian rights to attach, the riparian land must extend to the ordinary high water mark of the navigable water.<sup>9</sup> However, courts have acknowledged that there is no one proper method for establishing riparian rights boundaries, and such rights do not necessarily extend into the waters according to riparian land boundaries.<sup>10</sup> Instead, such boundaries must be apportioned and riparian rights determined in accordance with equitable principles, with consideration given to the lay of the shore line, the direction of the water body, and the co-relative rights of adjoining riparian land owners.<sup>11</sup> Despite these guidelines, it is possible to have two land surveyors draw riparian boundaries for adjoining properties in two different locations if they use different methods for establishing such boundaries. A riparian land owner who believes that the boundaries of his or her riparian rights have been improperly drawn or his or her riparian rights have been violated may sue for relief in the circuit court where the riparian land is located.<sup>12</sup> A court may strike down the use of a particular delineation method if it finds that, in that instance, the use of the method unfairly impacts a party’s riparian rights.<sup>13</sup>

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<sup>1</sup> Art. X, s. 11, Fla. Const.; *Merrill-Stevens Co. v. Durkee*, 57 So. 428 (Fla. 1912).

<sup>2</sup> Art. X, s. 11, Fla. Const.; *Coastal Petroleum Co. v. Am. Cyanamid Co.*, 492 So. 2d 339, 342 (Fla 1986); *State ex rel. Ellis v. Gerbing*, 56 Fla 603 (1908).

<sup>3</sup> The test to determine whether water is “navigable water” is whether, at the time Florida joined the United States in 1845, the waterbody was, in its ordinary and natural state, used or capable of being used by any watercraft for a sufficient part of the year as a public highway for commerce. “Navigable waters” in the state do not extend to any permanent or transient waters in the form of so-called lakes, ponds, swamps, or overflowed lands lying over and upon areas which have heretofore been conveyed to private individuals by the United States or by the state without reservation of public rights in and to said waters. *Odom v. Deltona Corp.*, 341 So. 2d 977 (Fla. 1976); S. 253.141(2), F.S.

<sup>4</sup> Riparian rights should not be confused with littoral rights, which are rights incident to land bordering non-flowing waterbodies, such as lakes, ponds, seas, oceans, and gulfs.

<sup>5</sup> S. 253.141, F.S.; *Hayes v. Bowman*, 91 So. 2d 795 (Fla. 1957).

<sup>6</sup> The right to build such a structure does not include the right to use the structure for commercial purposes. Further, the Florida Department of Environmental Protection has established a regulatory approval scheme and setback requirements for structures built over submerged sovereign lands, including docks. *Ferry Pass Inspectors’ & Shippers’ Ass’n v. White’s River Inspectors’ & Shippers’ Ass’n*, 48 So. 643 (1909); *Belvedere Dev. Corp. v. Dep’t of Transp.*, 476 So. 2d 649 (Fla. 1985); Fla. Admin. Code R. 18-21.

<sup>7</sup> S. 253.141, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; *Thiesen v. Gulf, Fla. & Alabama Railway Co.*, 78 So. 491 (1917).

<sup>10</sup> *Hayes*, 91 So. 2d at 801, 802 (Fla. 1957); *Lake Conway Shores HOA, Inc. v. Driscoll*, 476 So. 2d 1306 (Fla. 5th DCA 1985).

<sup>11</sup> *Id.*

<sup>12</sup> *See, e.g. Id.*

<sup>13</sup> *Lake Conway Shores*, 476 So. 2d at 1309-10.

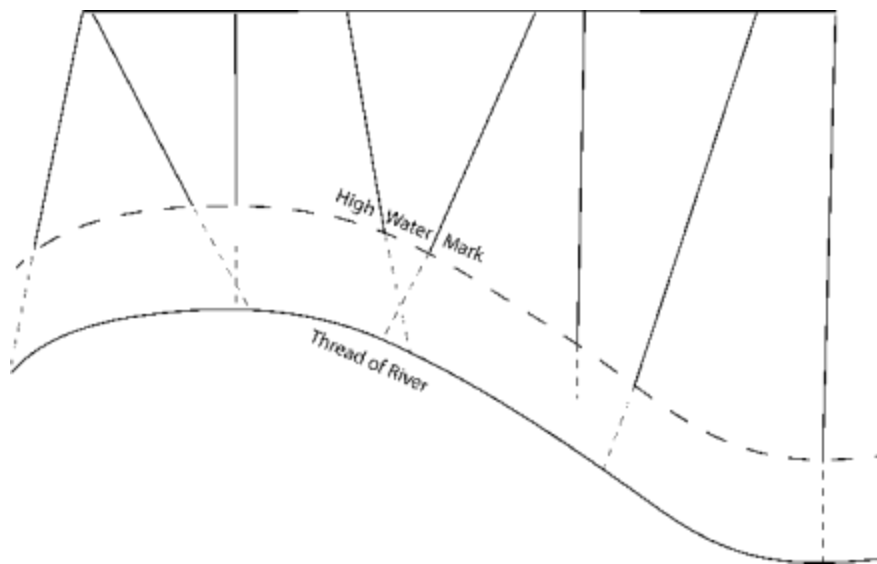
## Attorney Fees and Costs

Parties to a civil action must generally pay their own attorney fees and costs regardless of who prevails, unless the fees claim is based on a contract or statute.<sup>14</sup> Statutes authorizing the assessment of attorney fees must do so expressly and be strictly construed.<sup>15</sup> Section 253.141, F.S., which establishes riparian rights in the state, does not authorize the recovery of attorney fees and costs. Thus, attorney fees and costs may only be available in a riparian rights dispute if the offer of judgment statute applies.<sup>16</sup>

## **Effect of Proposed Changes**

CS/HB 841 establishes a preferred method for establishing the boundaries of a residential property owner's riparian rights along a channel<sup>17</sup> for purposes of the construction of docks, piers, marinas, moorings, pilings, and other private improvements. Specifically, the bill requires that, when establishing such boundaries after July 1, 2022, a land surveyor must give preference to the "prolongation-of-property-line" method, unless doing so would result in inequitable apportionment of riparian rights among other land owners along the channel.

The bill defines the "prolongation-of-property-line" method to mean establishing the boundary of a property owner's riparian rights by extending the owner's property line out into the waterbody at the same angles at which they intersect the ordinary high water mark. The figure below shows by its dotted lines how the prolongation-of-property line method requires that an owner's riparian rights boundaries are drawn.



Prolongation-of-Property Line Method

<sup>14</sup> *Campbell v. Goldman*, 959 So. 2d 223 (Fla. 2007); *Price v. Tyler*, 890 So. 2d 246 (Fla. 2004).

<sup>15</sup> *Sarkis v. Allstate Ins. Co.*, 863 So. 2d 210 (Fla. 2003); *Knealing v. Puleo*, 675 So. 2d 593 (Fla. 1996).

<sup>16</sup> The offer of judgment statute provides that, in any civil action for damages, attorney fees may be awarded following the defendant's provision of an offer of judgment or the plaintiff's provision of a demand for judgment in specified situations. S. 768.79, F.S.

<sup>17</sup> The bill defines "channel" to mean the marked, buoyed, or artificially dredged channel, if any, or if none, a space equal to 20 percent of the average width of a river stream at the point concerned which furnishes uninterruptedly, through its course, the deepest water at ordinary low water. The bill also specifies that its requirements do not apply to littoral waters, such as a lake, ocean, or gulf.

Further, the bill provides that:

- In a civil action relating to a residential dock owner's riparian rights, the court must award reasonable attorney fees and costs to the prevailing party when such rights are exercised with all appropriate environmental and regulatory approvals and permits.
- The preference created by the bill does not apply to littoral waters.

The bill reenacts ss. 403.813 and 403.9323, F.S., for the purposes of incorporating the amendment to s. 253.141, F.S., made by the bill.

The bill provides an effective date of upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 253.141, F.S., relating to riparian rights defined; certain submerged bottoms subject to private ownership.

**Section 2:** Reenacts s. 403.813, F.S., relating to permits issued at district centers, exceptions.

**Section 3:** Reenacts s. 403.9323, F.S., relating to legislative intent.

**Section 4:** Provides an effective date of upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

By providing a preferred method for determining the boundaries of a residential property owner's riparian rights in specified situations, the bill may have a positive indeterminate fiscal impact on the state by reducing litigation in the state court system.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill clarifies the process for drawing the boundaries of a residential property owner's riparian rights in certain situations by establishing a preference for the prolongation-of-property-lines method and may, therefore, reduce:

- Survey costs to residential riparian land owners, as the surveyor can simply extend an upland property boundary if such method is utilized.
- Litigation over riparian rights boundaries.

The bill also allows a prevailing party to recover his or her reasonable attorney fees and costs in certain situations.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 8, 2022, the Environment, Agriculture & Flooding Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment changed the one-way, prevailing defendant attorney fees provision to a two-way, prevailing party attorney fees provision.

This analysis is drafted to the committee substitute as approved by the Environment, Agriculture & Flooding Subcommittee.