



The Florida Senate

Interim Report 2009-112

October 2008

Committee on Environmental Preservation and Conservation

SUBMERGED LAND LEASING

Issue Description

Pursuant to s. 253.03 (7), F.S., the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund (board) have the responsibility to administer, manage, and dispose of sovereignty lands. As part of this duty, in association with the Department of Environmental Protection (department), the board executes leases for the use of state-owned lands, including submerged lands.

In addition to the authority granted for the execution of leases, the statute also provides the board the authority to adopt rules necessary for the “assessment and collection of reasonable fees, commensurate with the actual cost to the board, for...leases...”.

The objective of this report is to examine the administration and implementation of the state’s sovereignty submerged lands leasing program. Specifically, the report will include:

- The historic evolution of the statutes and rule;
- The types of uses permitted by the board;
- A review of the revenue generated from the lease fees and the use of those revenues; and,
- A review of the administrative and fiscal practices used to track leases and fees.

Background

Florida’s sovereignty submerged lands are those public trust lands below navigable waters that the United States Congress transferred to the State of Florida in 1845 as Florida was granted statehood. Lands below navigable water means all lands within the boundaries of the state, which are covered by non-tidal waters, that are navigable under the laws of the United States. Submerged lands are held in trust for the use and benefit of the citizens of the state, as set forth in Article X, Section 11 of the State Constitution. This section of the State Constitution was amended in 1970 under H.J.R. 792 authorizing the sale of sovereignty submerged lands provided such sales were in the public interest. The constitutional amendment was adopted by referendum with a vote of 680,223 (61 percent) for, and 429,917 (39 percent) against.

Section 253.03, F.S., authorizes the board to adopt rules to aid in the administration, control, and management of sovereignty submerged lands. Such rules shall govern all uses of sovereignty submerged lands by vessels, floating homes, or any other watercraft and shall be limited to regulations for anchoring, mooring or otherwise attaching to the bottom; the establishment of anchorages; and the discharge of sewage, pumpout requirements, and facilities associated with anchorages. The rules must not interfere with commerce or the transitory operation of vessels through navigable water.

In 1982, Rule 18-21, F.A.C., was promulgated by the department, acting to aid in fulfilling the trust and fiduciary responsibilities of the board, establishing the intent for the administrative, control and management procedures for sovereignty submerged lands. The rule also provides application procedures for leases, and public and private easements, as well as the payment and fee schedule for such leases and easements. Additionally, in 1982, rules governing the development of spoil islands were included that prohibited the human habitation of such islands. Additional criteria and amendments added to the rule since 1982 include:

- In 1985, rules governing applications for the Florida Keys marina and dock siting were established for leases, easements or consent to use sovereignty submerged lands in Monroe County for multi-slip docking facilities.

- In 1987, rules for the procedures for the review of applications to conduct geophysical testing as well as applications for use agreements criteria were established detailing how such testing may occur on sovereignty submerged lands.
- In 1990, amendments to implement the administrative and management responsibilities of the board and department regarding sovereignty submerged lands were adopted. The board wanted to be clear on which permitted activities on sovereignty submerged lands were vested in the department.
- In 1995, rules for the applications for disclaimers, quitclaim deeds or certificates to clear title to filled formerly sovereignty lands, and for disclaimers for lands lost due to avulsion¹ or to reclaim lands lost due to artificial erosion or artificial erosion and avulsion were established.
- In 1998, rules for the application for special event authorizations were added that included applications for Class II consent of use for special events, Class III single event lease, and Class IV special events lease².
- In 2001, amendments to the application for a Letter of Consent were adopted providing additional information requirements for the application.
- In 2005, amendments to the applications for leases, grandfathered structures, public and private easements were adopted as well as changes in the delegation of authority to issue certain leases by water management districts.
- In 2007, the board discussed and approved an application to modify a 5-year sovereignty submerged lands lease which increased the preempted area from 30 to 90 slips in conjunction with a 284-unit upland condominium development. During the discussion, board members expressed concerns about the existing fee structure as it relates to private use of sovereignty submerged land and the compensation received by the state. The department and the board agreed that the department should initiate rulemaking to address how the state could be more equitably compensated for the private use of the sovereignty submerged land relative to a developers' profit from the use of the land.

Findings and Conclusions

Methodology

Professional staff conducted statutory and rule research, reviewed actions concerning the issuance of leases and lease types, collected expenditure data concerning lease fees, interviewed agency staff and lessees, and requested information from board and department personnel to gather the data necessary to achieve the objective.

Leases and Uses

Specific management policies, standards and criteria are used in determining whether to approve, approve with conditions, or to deny requests for activities on sovereignty submerged lands. Rule 18-21.004, F.A.C., identifies such criteria under the following categories:

- General proprietary;
- Resource management;
- Riparian rights;
- Private residential docks;
- Special events;
- Sovereign and state owned springs and spring runs; and
- General conditions for authorization.

When determining whether to approve or deny uses for sovereignty submerged land leases, the board shall consider whether such uses pass a “public interest” test. Public interest is defined as the demonstrable environmental, social, and economic benefit which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public

¹ “Avulsion” means the sudden or perceptible loss of or addition to land by the action of water or the sudden or perceptible change in the bed of a lake or the course of a stream. 18-21.003, F.A.C.

² Class II, Class III and Class IV special events are water-dependant activities that may or may not require a sovereignty submerged lands lease.

interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials³. Using such policies, standards and criteria established for each category, approved uses for sovereignty submerged lands are determined. Such approved uses include⁴:

- Commercial marinas;
- Public/local government uses;
- Yacht clubs/country clubs;
- Multi-family housing units;
- Condominiums;
- Fishing piers;
- Restaurant docks;
- Hotel and motel docks;
- Commercial upland enterprises that include:
 - Charter boats;
 - Tour boats;
 - Ship building and boat repair facilities; and
 - Commercial fishing enterprises such as seafood offloading and processing.
- Private single family residential docking facilities; and
- Managed mooring fields.

There are currently 2,641 leases covering approximately 2,054 acres of sovereignty submerged land. This represents approximately 0.00023 percent of the 9,000,000 acres of submerged lands in inland lakes, rivers and coastal rivers as well as territorial waters. The leases are distributed as follows:

³ Rule 18-21.003, F.A.C.

⁴ Information provided by the Department of Environmental Protection.

| Exhibit 1 | | | |
|---|-----------------------------|------------------------|------------------------------------|
| Activity Type Description | Number of Facilities | Leased Acreage* | Percentage by Activity Type |
| Public | | | |
| Commercial Marinas | 414 | 717 | 15.68% |
| Public/Local Governments | 26 | 136 | 0.98% |
| Public/Local Governments Mooring Fields | 6 | 225 | 0.23% |
| Public/Local Governments Multi-Family Housing Units i.e. trailer parks, apartments | 3 | 0.3 | 0.11% |
| Commercial Upland Activity i.e. temporary docking and/or fishing piers associated with restaurant, hotel or motel docking at no charge | 508 | 253 | 19.24% |
| Miscellaneous Commercial Upland Enterprises i.e. charter boats, tour boats, fishing pier | 63 | 27 | 2.39% |
| Ship Building/Boat Repair service facilities | 101 | 83 | 3.82% |
| Commercial Fishing Related i.e. seafood processing, offloading | 85 | 26 | 3.22% |
| Fee Waived** | 65 | 85 | 2.46% |
| Special Events | 4 | 16 | 0.15% |
| Public/Local Governments Commercial Upland Activity i.e. temporary docking and/or fishing piers associated with restaurant, hotel or motel docking at no charge | 7 | 7 | 0.27% |
| Public/Local Governments Miscellaneous Commercial Upland Enterprises i.e. charter boats, tour boats, fishing pier | 8 | 4 | 0.30% |
| Public/Local Governments Commercial Fishing Related i.e. seafood processing, offloading | 2 | 2 | 0.08% |
| Public/Local Governments Private Single-family Residential docking facilities i.e. townhomes, subdivisions | 2 | 0.5 | 0.08% |
| Private | | | |
| Yacht Clubs/Country Clubs | 80 | 122 | 3.03% |
| Multi-Family Housing Units i.e. trailer parks, apartments | 219 | 61 | 8.29% |
| Condominiums | 545 | 210 | 20.64% |
| Lease-In-Lieu Multi-family instead of individual SF docks | 1 | 0.2 | 0.04% |
| Private Single-family Residential docking facilities i.e. townhomes, subdivisions | 481 | 81 | 18.21% |
| Stilt Houses | 21 | 2 | 0.80% |

* Leased acreage is calculated using the actual square-footage in each lease agreement and dividing by 43,650 then rounded to the nearest definable value.

** A waiver from payment of annual lease fees for government, research, education or charitable entities that are either not-for-profit or non-profit shall be granted under certain conditions.

*** The department has indicated they do not track aquaculture leases.

Two other uses were identified by the department as compatible with the management policies, standards and criteria established under 18-21.004, F.A.C., but are currently not put into practice. Those include:

- Seagrass replenishment farms; and
- Commercial concession operations.

Lease Fees⁵

Department Rule 18-21.008, F.A.C., outlines the application process, categories, and terms for leases of sovereignty submerged land. There are currently four categories for leases identified in this section of rule. They are:

- Standard lease – Standard lease terms are for 5 years with the exception of leases for marinas, where at least 90 percent of the slips are maintained for rent to the public on a first-come, first-served basis, are for 10 years.
- Extended term leases – Extended term leases are those with terms in excess of standard leases available for up to 25 years. Such leases are for activities that will have an expected life equal to or greater than the requested lease term. Those leases include:
 - Facilities or activities that provide public access;
 - Facilities constructed, operated or maintained by government or funded by government secured bonds; or,
 - Facilities that have other unique operational characteristics as determined by the board.
- Aquaculture lease – Aquaculture lease terms are for 10 years and are limited to those activities as defined in s. 253.67, F.S., as the cultivation of aquatic organisms and associated activities, including, but not limited to, grading, sorting, transporting, harvesting, holding, storing, growing, and planting. Such leases include both experimental and commercial aquaculture activities. Experimental aquaculture leases are limited to research institutions for noncommercial activities.
- Oil and gas lease – Oil and gas leases are issued on a competitive bid basis for terms as determined by the board. However, no such leases have been issued as s. 377.242, F.S., prohibits the drilling for oil, gas, or other petroleum products on any sovereignty submerged land.

Each lease application has its own unique set of requirements and application fees associated with the submission to the department as determined by the rule. Each application shall be submitted to the department for review to ensure it meets the eligibility requirement outlined in the rule.

Additional uses and easements for sovereignty submerged lands are authorized in 18-21, F.A.C., as follows:

- Special events – Special event authorizations are the installation and use of temporary structures, including docks, moorings, pilings, and access walkways on sovereignty submerged lands solely for the purposes of facilitating boat shows or boat displays in, or adjacent to, established marinas or government owned upland property. These events are broken into three categories; Class II, Class III and Class IV.
 - Class II special event – This is an event of not more than 30 days involving the construction of structures that are not revenue-generating and either preempt 1,000 square feet or less of sovereignty submerged lands or preempt no more than 10 square feet of sovereignty submerged land for each linear foot of the applicant's contiguous shoreline, along the affected sovereignty submerged land. This activity requires a letter of consent from the department. No lease is required.
 - Class III special event – This is a single event involving the construction of no more than 50 new slips or a preempted area of no more than 50,000 square feet. A lease is required for this activity and the term of the lease is limited to no more than 30 days.
 - Class IV special event – This is a single event that does not qualify as a Class III single special event or an authorization to conduct more than one event during the lease term. A lease is required for this activity and the term of the lease may be up to 5 years.
- Public and private easements – Easements may be granted for such uses as utility corridors, bridges, and roads. In each case, whether public or private, sufficient upland interest shall be demonstrated and in the case of telecommunication lines, a detailed statement of proposed use and a satisfactory evidence of need shall be submitted for approval. For private easements, an additional statement evidencing that the easement sought is in the public interest is required.
- Severed dredge materials – This activity involves the removal of sovereignty materials to upland property by dredging or any other means. Exceptions from authorization are granted for the removal of materials adjacent to an intake or discharge and the removal of organic detrital materials, in accordance with s. 403.813, F.S. Letters of consent or easements may be granted for activities associated with beach restoration and nourishment projects and other habitat restoration. Leases are required for all activities associated with mining.

⁵ A history of the evolution of lease fees is included in Appendix A.

Authorizations for activities granted by exception, consent by rule, or by a letter of consent are exempt from annual lease fees. Such activities include:

- Construction or maintenance of a county water or sewer system;
- Construction of floating vessel platforms or floating boat lifts⁶;
- A private, residential, single family dock or pier with certain conditions;
- Public artificial reefs;
- Construction or replacement of seawalls, bulkheads or other such shoreline stabilization under certain conditions;
- Class II special events;
- Restoration of beaches or habitat; and
- Management activities associated with the protection of threatened or endangered species.

These activities, however, may be charged appropriate application or severance fees as provided in Rule 18-21, F.A.C.

Payments for the use of and lease fees collected for, sovereignty submerged lands are calculated based on formulas established in department Rule 18-21.011, F.A.C. Fees for leases are calculated as follows:

- Standard lease – Lease fees shall be 6 percent of the annual income⁷, the base fee, or the minimum annual fee whichever is greater, and shall include discounts, surcharges and other payments. In December 1978, the base fee rate of \$0.02 per square foot, or \$873 per acre, was established for sovereignty submerged lands leases⁸. As of March 1, 2007, the base fee was computed at a rate of \$0.1413 per square foot or \$6,168 per acre, and shall be revised March 1 of each year based on the consumer price index. There is a 10 percent cap on any annual increase. As of March 1, 2007, the minimum annual fee was \$423.89 and shall be revised March 1 of each year based on the consumer price index⁹.
- Extended term leases – Lease fees shall be calculated using the annual lease fee for standard leases multiplied by (1+.01x) where (x) equals the term of the lease in years.
- One-time premiums – Private residential multi-family docks with 10 or more wet slips shall be charged one-time fee for the use of such lands. The fee shall be calculated using the standard lease fee or base fee multiplied by a factor of 3.
- Class III and Class IV special events – Class III single events and Class IV special events shall be assessed a special event fee of 5 percent of the gross rental income generated from the event, the base fee prorated for the time period of the event, or the minimum annual fee whichever is greater. These special events are also subject to a 25 percent first annual fee surcharge and are not eligible for any discounts granted in the rule.
- Private easements – The fees for granting, renewing, or modifying a private easement are calculated as follows:
 - For easements containing 3,000 square feet or less, for a single-family riparian parcel, or for two adjacent single-family riparian parcels sharing a common easement, the fee is one-half the minimum annual fee multiplied by the term of the easement;
 - For other private easements, excluding telecommunications, the fee shall be determined using standard appraisal methods;
 - For private telecommunication easements, fees shall be assessed at a rate of \$5.5913 per linear foot of telecommunication line or conduit within areas of special consideration, or \$0.0663 per linear foot of telecommunication line or conduit outside areas of special consideration. Such fees are assessed for easements of up to 10 feet in width and shall be increased proportionally for easements of greater width¹⁰.

⁶ Such activities shall be in accordance with s. 403.813, F.S.

⁷ As defined in 18-21.011, F.A.C., annual income is the gross receipts derived from the rental, lease, sublease, license or other transaction involving tenancy of wet slips over sovereignty submerged land whether the holder of the lease is primarily involved in every subsequent transaction or not.

⁸ The department is unable to provide information regarding how the initial rate was established.

⁹ Information provided by the Division of State Lands. The reference to the base rate in 2007 is for adjustments made based on changes in the CPI from that date forward.

¹⁰ The board recommended these fee changes to reduce the potential of environmental damage to fragile coastal environments from the impending installation of numerous telecommunication lines in southeast Florida. Changes to 18-21, F.A.C., were approved by the board as Agenda Item #11 on August 23, 2003.

- Severed dredge materials – Activities that involve the removal of sovereignty materials shall be assessed a severance fee per cubic yard of material as follows¹¹:
 - In Monroe County the severance fee is \$3.25 per cubic yard.
 - In Bay, Brevard, Broward, Charlotte, Collier, Dade, Duval, Escambia, Lee, Manatee, Palm Beach, Pasco, Pinellas and Sarasota Counties, the severance fee is \$2.25 per cubic yard.
 - All other counties the severance fee is \$1.25 per cubic yard.
 - The minimum severance fee for all severed dredge materials is \$50.00.

Such fees may be waived when the materials are placed on public property and used for public purposes, it is demonstrated that the severed materials have no economic value, or a project is conducted by a government entity with the sole purpose of conducting environmental restoration.

- Aquaculture leases – Aquaculture leases shall be determined by negotiation between the department and the riparian upland owner when such owner is the applicant, the department and the nonriparian applicant when the applicant nominates the site, or by competitive bid. Annual lease fees shall not be less than a fixed rate of \$15 per acre for a bottom lease or \$30 per acre when a lease includes the water column and shall be adjusted annually to ensure the fixed rate is not reduced by inflation¹².
- Geophysical testing – Use agreements for geophysical testing on private or federal uplands that involve incidental crossing of sovereign submerged lands are assessed a \$40 per mile fee. For geophysical testing conducted in the water column above sovereign submerged lands in bays, estuaries and offshore Florida territorial waters, a fee of \$200 per mile of testing is assessed for testing from the mean high water line to the 35-foot water depth contour, and a fee of \$50 per mile of testing conducted in State waters from the 35-foot water depth contour and greater.

During the 2007 – 2008 fiscal year, \$14,806,809 in revenue, easement fees, and application fees was generated from the use of sovereignty submerged lands. The current average rate is \$0.145554 per square foot or \$6,353 per acre for leased submerged lands per Rule 18-21.011, F.A.C., and allows for the calculation of lease fees as either a base fee per square foot, a minimum fee, or a fee of 6 percent of the annual income whichever is greater. However, currently, only 11 percent of all lessees are purporting that the 6 percent annual revenue fee is higher than the calculated base fee. This breakdown is illustrated as follows¹³:

| <i>Lease Fee Type</i> | <i>Number of Leases</i> | <i>Acres</i> |
|--|-------------------------|---------------------|
| Minimum Fee | 484 | 21.4 |
| Other Rate/Fee Types ¹⁴ | 280 | 566.3 |
| Base Fee ¹⁵ | 1877 | 1466.3 |
| 6 Percent Annual Revenue ¹⁶ | 246 ¹⁷ | 331.1 ¹⁸ |
| Total | 2641 | 2054 |

Revenues from the lease fees for the use of sovereignty submerged lands are deposited into the Internal Improvement Trust Fund (IITF), and are categorized as follows¹⁹:

¹¹ Differences in fees per cubic yard were based on the value of construction grade fill in those locations at the time of rule development in 1982.

¹² The department indicated that aquaculture lease rates were established at a minimum value to encourage commercial harvesting of shellfish. Lease rates have not changed since established in 1982.

¹³ Information provided by the department.

¹⁴ Includes those uses which do not require leases such as Consent by Rule and Letters of Consent.

¹⁵ Includes rates with and without applied discounts.

¹⁶ Indicates the number of facilities, reporting revenues greater than the base fee, that were charged in addition to the base fee rate for the 2007 – 2008 fiscal year.

¹⁷ Included in the number of Base Fee leases.

¹⁸ Acreage included within the Base Fee acreage.

¹⁹ Provided by the Senate Committee on General Government Appropriations from actual revenues as of June 30, 2008.

| <i>Sovereignty Submerged Lands Revenue Category</i> | <i>Fiscal Year 2007 – 2008</i> |
|---|--------------------------------|
| Submerged Lands Application Fees | \$289,158 |
| Submerged Lands Easement Fees | \$882,872 |
| Submerged Lands Leases | \$13,625,779 |
| Total | \$14,806,809 |

In accordance with s. 253.01, F.S., all funds deposited into the IITF shall be used for the acquisition, management, administration, protection, and conservation of state-owned lands. During interviews with lessees, it was suggested that revenues from activities or leases on sovereignty submerged lands should be used solely for the enhancement of public access to such lands. A report from the Legislative Committee on Intergovernmental Relations (LCIR) indicated that the number of available boat slips “open to the public” decreased by 25 percent between 2001 and 2005. Between 1987 and 2003, the number of registered boats in Florida increased by more than 50 percent²⁰. The report recommended that the department should consider the use of state lands, such as state parks, to increase public access to waterways. In an effort to increase public access to sovereign submerged lands, the Legislature amended s. 253.034, F.S., adding a definition for public access that included access to waterways from state owned lands. Additionally, the legislation provided a mechanism for the funding of public access to waterways acquisition projects through the Florida Forever Act²¹.

Current Rulemaking Effort

In August 2007, an initial public meeting was conducted by department staff in Tallahassee to receive public input on how to revise and simplify the method for calculating fees in chapter 18-21, F.A.C. Additional public meetings were held October 10 and 11 in West Palm Beach and Fort Myers respectively. The comments received at each meeting consistently focused on three key points:

- Simplify the reporting;
- Use a specific flat fee rather than a fee plus 6 percent of the revenue generated; and
- Be consistent and clear on appraisals.

From the comments received at the public meetings, the department crafted draft rule language to be distributed during several public workshops throughout the state. The initial draft proposed to:

- Update rule definitions;
- Provide one automatic 5-year renewal to the 5-year standard lease term if the lease is in compliance;
- Extend the standard lease term to ten years for marina facilities that are 90 percent open to the public as long as the 90 percent requirement is a special lease condition²²;
- Change the fee formula from a minimum fee, base fee, or 6 percent revenue fee, whichever is greater, to a flat rate ranging from \$0.10 per square foot for a public lease greater than 3,000 square feet to \$0.50 per square foot for a private lease greater than 3,000 square feet within an aquatic preserve;
- Increase special event fees from 5 percent to 10 percent;
- Create a one-time premium surcharge on all new private leases, expansions, conversions, and private change of use, which will be 10 percent of market value based on an appraisal; and
- Create a fee for dredging easements providing boat access and breakwater structures calculated as an annual fee plus a one-time fee of \$2,000 for freshwater, and \$4,500 for saltwater access per boat slip, or waterfront residential lot benefited by the proposed easement.

As the public workshops were conducted, department staff revised the draft rule language from comments received from the workshop participants to:

- Have special event fees remain at 5 percent;

²⁰ LCIR Interim Project Report: *Access to Florida Waters: Marina and Dock Permitting, Public Boat Ramps and Port Expansion*, March 2006.

²¹ Chapter 2008-229, Laws of Florida.

²² Currently, the 90 percent open to the public requirement is a reporting requirement only, and not a condition of standard term leases.

- Revise the flat fee matrix to include a category for community-based social clubs; and
- Have language related to initial private easement fees remain unchanged but have renewal fees calculated using one-half the square foot lease fee.

During a July 2008 public workshop, department staff requested that any and all additional comments be submitted to the department by August 23, 2008. As of that date, the main areas of concern from the comments received are:

- Condominiums should not be charged submerged land lease fees because single-family residences are not charged lease fees. The department has indicated this concern is incorrect as fees are based on the preempted area of sovereign submerged lands;
- Fee increases are not justified;
- Proposed fee increases are a tax to make up for lost revenue in the state budget and it unfairly targets condominium owners; and
- That proposed fees are actually finalized and will now be charged.

Based on the comments received from the public workshops and the nearly 1,000 emails sent to the department regarding the proposed draft rule language, the department will further modify the proposed language and hold subsequent public workshops to address any additional comments or concerns.

Tracking Methods²³

Current sovereignty submerged land leases are tracked through the Integrated Land Management System database, and are reviewed every 5 years²⁴. Leases found to be in compliance with the terms and conditions of the lease may be renewed. Leases are also reviewed anytime modifications are made to the lease or if the lease changes ownership. Each time a lease is renewed, modified, or assigned, the department evaluates the special lease conditions to determine if those conditions are still applicable.

During the 2006 and 2007 review cycles, the department found that 79 and 75 percent, respectively, of the leases it reviewed were significantly in compliance. When the department finds a lease not in compliance, a temporary use agreement, or TUA, is issued allowing the lease holder to continue using sovereignty submerged lands while working to come into compliance with the lease agreement²⁵. Of those lessees issued TUAs, 94 percent of them are found to be in compliance within one year. The 6 percent of leases not renewed following the additional review generally have compliance issues resolved through litigation. To date, the department has not revoked a single sovereignty submerged lands lease.

The Submerged and Upland Public Revenue System (SUPRS) is an automated database, created in 2004, to track lease fees. The SUPRS database is connected to the Bureau of Finance and Accounting's Cash Receiving Application (CRA) to allow payments to be posted directly to facility accounts and reconciled. In December, 2007, the Annual Wetslip Revenue Reporting (AWRR) function came online to track self-reported revenue generated on leased sovereignty submerged lands and to calculate the 6 percent annual income for billing lessees. The AWRR is scheduled to be enhanced in September 2008 to enable the tracking of data on individual slips and to update reporting capabilities to the department's internal reporting program. The department is proposing additional enhancements to AWRR to allow for automated reconciliation capabilities and automated interest calculations on past-due amounts or delinquent accounts. Currently, monthly and quarterly reports are generated on revenue received, accounts receivable, and past due collections and reconciled against SUPRS and CRA within the Bureau of Finance and Accounting.

Conclusions

In attempting to gather information regarding types of leases, lease fee structures, and rules governing leases of sovereignty submerged lands, professional staff found very little information readily available. Neither the website for

²³ Information provided by the Department of Environmental Protection.

²⁴ Review of leases generally coincides with the renewal of 5-year leases. However, every lease is reviewed every 5 years from the date of execution of the lease.

²⁵ During such time, the department continues to collect all lease fees owed as part of the original lease agreement.

the Board of Trustees of the Internal Improvement Trust Fund²⁶ nor the Department of Environmental Protection²⁷ offer a step-by-step process of how the sovereignty submerged lands leasing program is administered. Similar concerns were echoed by representatives of sovereignty submerged lands lessees during interviews with professional staff. Those representatives provided additional concerns over the length of the lease approval process, and although that process was not an objective of this report, part of the arduous approval process may be attributed to a general lack of the aforementioned step-by-step process.

Based on the data received, roughly half (1347 leases or 51.01 percent²⁸) of all current sovereignty submerged lands leases are issued to private entities with no public access. Additionally, Senate interim report 2005-122 indicated that development interests are buying traditional working waterfronts, which provide public access, and are converting them into private and residential use. The report concluded that public access for the recreational boating public may be diminishing as the capacity to launch or moor boats has not kept pace with the increase in boater registrations²⁹. This could lead to the conclusion that public access to sovereignty submerged lands is decreasing at an even faster rate than is indicated by the data and that leases for sovereignty submerged lands to private interests increasingly may not be meeting public interest tests.

Many of the comments from both the board and the regulated community have indicated that the lease fee structure has not kept pace with rising land values. If this is true, the state may no longer be receiving a fair market value for leased sovereignty submerged lands. Additionally, it would appear that the fee formula may not be evenly applied to all types of leases based on differing uses and land values.

²⁶ <http://www.myflorida.com/myflorida/cabinet/cabprocess.html>

²⁷ <http://www.dep.state.fl.us/lands/publicland/submerged/default.htm>

²⁸ Exhibit 1.

²⁹ Senate Interim Report 2005-122, November 2004, *Working Waterfronts*.

Recommendations

Recommendation #1

The Legislature should consider changes to s. 253.03, F.S., that provide specific intent as to how the sovereignty submerged lands leasing program is administered. Such changes should include:

- Defining the term “public interest” when weighed against approved uses for sovereignty submerged lands;
- Defining the term “water dependent activity” to include activities that provide a demonstrable environmental, social, or economic benefit to the area;
- Establishing specific administrative procedures for the leasing, easement, or consent for use of sovereignty submerged lands;
- Identifying uses of sovereignty submerged lands that provide more public access; and,
- Creating a metric for the equitable establishment of fees for the use of sovereignty submerged lands and establishing guidelines for the use of such fees.

Recommendation #2

The Legislature should consider directing the board and the department to develop a user-friendly, step-by-step process detailing the administrative procedures for applying for, and receiving sovereignty submerged land leases. Such a process should include at a minimum:

- Easy to find information prominently displayed on the department’s website. Currently, those interested in sovereignty submerged land leases are redirected to department district office sites to obtain permit applications. The department could use a method similar to the self-certification process for single-family docks;
- Information regarding the authorized uses and availability of sovereignty submerged land leases;
- Information detailing public access granted through sovereignty submerged land leases; and,
- A tracking option for applicants so they can review where they are in the approval process.

Recommendation #3

Although the board and the department are undertaking rulemaking that adjusts lease fees, the Legislature should consider directing the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review all fees for the use of sovereignty submerged lands, to determine if the State is receiving fair market value for the use of such land and if current application and easement fees are sufficient to cover the cost of the program as provided for in s. 253.03 (2), F.S. Specifically, the report should include:

- A comparison of the current sovereignty submerged lands value and the value of adjacent uplands;
- An analysis of the cost of providing additional public access to sovereignty submerged lands;
- The development of a lease renewal schedule forecasting estimated revenues by lease type; and,
- The amount of additional revenue that may be generated should leases be executed based on fair market value.

HISTORY OF FEES

| | | |
|-----------------|------------------|--|
| 9/26/77 | 16C-12.03 | Application to Purchase |
| | (1)(k) | An appraisal of current market value of parcel made within three months after date of application. |
| | (1)(l) | Processing fee of \$150 |
| | 16C-12.08 | Disclaimers to Confirm Title Derived from Accretion |
| | (5) | Processing fee of \$100 |
| | 16C-12.14 | Leases of Sovereignty Lands |
| | (1)(a) | Processing fee of \$150 |
| 12/20/78 | 16C-12.14 | Leases of Sovereignty Lands |
| | (1)(b) | Annual lease fee at \$0.02 per sq. ft. or \$100 (minimum annual lease fee), whichever is greater. |
| | (2)(c) | Aquaculture Leases Competitive bids shall be written offers of cash consideration, which shall include the advertised fee for the first year, the amount offered above such fee being the competitive bid. |
| | (4)(b) | Oil and Gas Leases Competitive bid shall be written offers of cash consideration, including the advertised fee for the first lease year, the amount offered above said fee being the competitive bid. |
| 11/29/78 | 16C-12.10 | Easements Across Sovereignty Lands for Private Purposes |
| | (1)(f) | Processing fee of \$100 |
| | (2)(c) | For permanent easements greater than 500 sq. ft., payment of the value of the easement, if any, that the Board sees fits. If required by the Board, payment to be made within 90 days of notification that easement has been granted by the Board. |
| 3/2/80 | 16C-12.14 | Leases of Sovereignty Lands |
| | (1)(a) | All commercial/industrial docking facilities (except those in existence prior to 3/10/70) shall obtain a lease. Processing fee of \$150. |
| | (1)(b) | Lease fee increased to \$.037 per sq. ft. or \$187 (minimum annual lease fee), whichever is greater. |
| 2/27/81 | 18-20 | Aquatic Preserve Rule – no fees mentioned. |
| 3/27/82 | 16Q-21.08 | Applications for Lease |
| | | A non-refundable processing fee of \$200 established for standard leases, aquaculture leases, and oil and gas leases. |
| | 16Q-21.11 | Payments and Fees for standard leases, easements, and severed dredge materials |
| | (1)(a) | Fee of \$0.037 per sq. ft., adjusted to a rental fee upon adoption of a rule revising this rate. The adjusted rate shall be prospective for the remainder of the term of the lease. |
| | (1)(b) | Minimum annual fee of \$187 |
| | (2)(a) | Appraisal for private easements shall be determined by an appraiser on the approved list. |
| | (3)(a) | Severed Dredge Materials Monroe Co. -- \$3.25 per cubic yard Bay, Brevard, Broward, Charlotte, Collier, Dade, Duval, Escambia, Lee, Manatee, Palm Beach, Pasco, Pinellas and Sarasota Counties -- \$2.25/cy All other counties -- \$1.25/cy Minimum payment -- \$50.00 |
| | (3)(c) | Waiver of dredge fee may be requested if placed on public property and used for public purposes or has no economic value. |
| 5/18/82 | 16Q-21.11 | Payment and Fees for Standard Leases |
| | (1)(a) | Annual lease fee at \$0.045 per sq. ft. |
| | (1)(b) | Minimum annual fee of \$225 |
| | (1)(c) | Assessment for after-the-fact lease applications to include: (1) retroactive lease fee; (2) an assessment of 10 times the lease rate; and (3) interest on the lease fee plus the 10 times penalty at a rate of 2 points above the Federal Reserve Bank discount rate to |

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| | | member banks. |
| 8/1/83 | 16Q-21.11 | <p>(d) Board may increase or lower assessments on a case-by-case basis.</p> <p>Payment and Fees for Standard Leases</p> <p>(1)(a) Annual lease fee at \$0.065 per sq. ft.</p> <p>(b) 30% discount if open to the public on a first come, first served basis. Applies to marinas constructed in conjunction with owner occupied multi-family residential buildings if no less than 50% of berths are open to the public.</p> <p>(c) Surcharge of 20% of lease fee for first year.</p> <p>(d) Base rate to be revised March 1 of each year based on CPI.</p> <p>(e) Rate for leases will be the rate in effect when the lease is granted.</p> <p>(f) Rate for leases will be adjusted annually based on average increase in the CPI over 5 years with 10% cap.</p> <p>(g) Rate of 2 times existing rate if in aquatic preserve with 75% or more of subject shoreline and adjacent 1,000 feet on both sides in a natural, unbulkheaded, non-seawalled, or non-riprapped condition. A rate of up to 3 times the base rate may be used if in Class 1 or 2 RPA as designated in A.P. plan adopted by Board.</p> <p>(h) Assessment of fee for nonwater-dependent uses at 10 times the base rate, or a fee of sq. ft. X the appraised per sq. ft. value of the unimproved upland property X 10%, whichever is greater.</p> <p>(i) (no change to minimum fee of \$225)</p> <p>(j) Waivers, partial waivers, or exclusions from fees for government, research, educational, or charitable organizations may be granted by Board.</p> <p>(k) If facility is part grandfathered and part under lease, and grandfather status is lost, then rate for entire property shall be rate in effect at time renegotiated lease is executed.</p> <p>(l) (no change for after-the-fact), except #3: 12% interest rate to be adjusted annually to a rate of 2 points above the Federal Reserve Bank discount rate.</p> <p>(m) Any grandfathered structures not registered according to this rule shall lose any grandfathered rights.</p> <p>(n) Any grandfathered structure not registered shall be considered a prior unauthorized use as of 6/20/84, and may be treated according to the provisions of this section.</p> |
| 8/1/83 | 16Q-21.081 | Grandfather registration |
| | (f) | \$200 non-refundable processing and registration fee |
| 9/5/84 | 16Q-21.11 | Payment and Fees for Standard Leases |
| | (1)(n) | Date changed to 9/30/84 for grandfathered structures not registered to be considered a prior unauthorized use. |
| 10/20/85 | 16Q-21.11 | Payment and Fees for Standard Leases |
| | (1)(a)1. | Annual lease fee shall be 7% of potential rental value or the base fee, whichever is greater. |
| | (a)2. | If changes, then use standard formula above or the regional average under part (a)7., whichever is greater. |
| | (a)3. | Monthly rates to be certified true and correct by lessee; calculated rate to be adjusted on the anniversary date of the lease. |
| | (a)4. | For new facilities, the base rate shall be charged upon approval of the lease. The percent of rental value will be applied when the facility is complete or when any rentals occur, whichever comes first. |
| | (a)5. | Discount for open to the public per (b)2. |
| | (a)6. | Aquatic preserve surcharges per (b)8. |
| | (a)7. | For private clubs, condominiums, commercial shipping wharves, and motel and restaurant docks, the weighted average per linear foot rental rate derived from commercial marinas in the same county or other comparable geographic area to establish the rental rate for the lease fee. The department shall compile rental data from existing leases and select the appropriate comparable rental rate. |
| | (a)8. | Commercial fishing facilities, recreational piers, and other such activities which are not for recreational, wet slip purposes, the annual fee will be the greater of: (1) square footage of lease area divided by 40 X the average monthly per foot rental rate for the geographic area X 12 X appropriate percent; or (2) the total square footage of lease area |

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| | | X the appropriate per square foot base rate. |
| | (b)1. | Increased annual base fee to \$0.070 per sq. ft. |
| | (b)2. | 30% discount on the standard annual lease fee. To be eligible, lessee must notify the Department of all changes in wet slip rental rates within 10 days and shall display its fee schedule. |
| | (b)3. | Surcharge increased to 25% of the base fee; clarified as a one-time payment, not be credited toward any rental value payment. |
| | (b)5. | Clarified rate as base rate. |
| | (b)9. | Lease fees for restaurants and other non-water dependent uses shall be negotiated on a case-by-case basis by the Department (instead of the 10Xs). May consider appraised market rental value of the upland property and the enhanced property value, benefits, or profit gained by the applicant if the proposed lease is approved. |
| | (b)11. | Clarified lease area as entire preempted area to calculate fees. |
| | (b)13. | Clarified adjustments could be made based on showing of good cause. |
| 9/6/87 | 18-21.011 | Payments and Fees |
| | (1) (c) | One-time premium established at 3 X the standard annual lease fee or base fee required. Premium does not apply to grandfathered structures; previous licensed facilities; renewals; multi-family facilities 50% open to the public; structures built before 9/6/87; or if the facility is under control of a homeowners association. |
| 3/15/90 | 18-21.011 | Payments and Fees |
| | (1)(b) | Paragraphs 14 and 15 were deleted as a new section, 18-21.00405, Grandfather Provisions, was established in the rule. This new section assessed retroactive lease fees on unregistered grandfathered structures which are considered unauthorized. Changed the \$200 application fee for grandfather structure registration from (f) to (k) as a processing fee only; it no longer includes registration. |
| 3/10/93 | 18-21.011 | Payments and Fees |
| | (1)(b)4.& 6. | The annual base fee is \$0.0962 per sq. ft. |
| 3/1/94 | 18-21.011 | Payments and Fees |
| | (1)(b)1. | The annual base fee is \$0.1001 per sq. ft. |
| 3/20/94 | 18-21.017 | Applications for Disclaimer for Lands Lost Due to Avulsion |
| | (3) | A non-refundable application processing fee of \$300 established. |
| | 18-21.018 | Applications to Reclaim Lands Lost Due to Artificial Erosion or Artificial Erosion and Avulsion. |
| | (6) | A non-refundable application processing fee of \$300 established. |
| 3/1/95 | 18-21.011 | Payments and Fees |
| | (1)(b)1. | The annual base fee is \$0.1038 per sq. ft. |
| 3/1/96 | 18-21.011 | Payments and Fees |
| | (1)(b)1. | The annual base fee is \$0.1070 per sq. ft. |
| 3/1/97 | 18-21.011 | Payments and Fees |
| | (1)(b)1. | The annual base fee is \$0.1101 per sq. ft. |
| 3/1/98 | 18-21.011 | Payments and Fees |
| | (1)(b)1. | The annual base fee is \$0.1130 per sq. ft. |
| 10/11/98 | 18-21.011 | Payments and Fees |
| | (1)(b)4. | Minimum annual lease fee is \$339 and shall be adjusted annually on March 1 based on the average change in the Consumer Price Index (CPI). |
| 3/1/99 | 18-21.011 | Payments and Fees |
| | (1)(b)1. & 4. | The annual base fee is \$0.1156 per sq. ft. and the minimum annual lease fee is \$347. |
| 3/1/00 | 18-21.011 | Payments and Fees |
| | (1)(b)1. & 4. | The annual base fee is \$0.1183 per sq. ft. and the minimum annual lease fee is \$355.19. |
| 3/1/01 | 18-21.011 | Payments and Fees |
| | (1)(b)1. & 4. | The annual base fee is \$0.1216 per sq. ft. and the minimum annual lease fee is \$364.96. |
| 3/1/02 | 18-21.011 | Payments and Fees |
| | (1)(b)1. & 4. | The annual base fee is \$0.1246 per sq. ft. and the minimum annual lease fee is \$373.94. |
| 10/29/03 | 18-21.009 | Applications for Public Easement |
| | (1)(g) | Added fees for telecommunications lines and conduits: \$15,000 non-refundable processing fee for each application to install telecommunication |

lines and associated conduits received after 10/29/03 that are subject to 18-21.004(2)(1); including an application to install a line in an existing conduit. The fee will be adjusted annually March 1 based on the average CPI over 5-year period with 10% cap.

- (2) Public easements renewal, assignment and transfer processing fee of \$200 (and payment of any fees under 18-21.011)

18-21.010 Applications for Private Easement

- (1)(h) Added \$15,000 application fee (same as above for public)

- (2) Private easements renewal, assignment and transfer processing fee of \$200 (and payment of any fees under 18-21.011)

18-21.011 Payments and Fees

- (2)(a) Private easement fee for telecommunication lines and associated conduits subject to 18-21.004(2)(1) do not require appraisal as is required for other private easements

- (2)(b) Private easements for telecommunication lines and associated conduits subject to 18-21.004(2)(1) (lines that extend to outside the state's territorial limits through the territorial sea) are subject to a one-time easement value and enhanced value fee of \$5.06 outside special consideration areas or \$0.06 inside special consideration areas, per linear foot for a 10-foot wide easement. These fees will be adjusted annually March 1 based on the average CPI over 5-year period with 10% cap.