

**STORAGE NAME:** h2023.ca

**DATE:** April 16, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
COMMUNITY AFFAIRS  
ANALYSIS**

**BILL #:** HB 2023

**RELATING TO:** Brevard County/Clams

**SPONSOR(S):** Representative Goode

**COMPANION BILL(S):** SB 2576 (i)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) WATER & RESOURCE MANAGEMENT YEAS 11 NAYS 0
  - (2) COMMUNITY AFFAIRS
  - (3) GENERAL GOVERNMENT APPROPRIATIONS
  - (4)
  - (5)
- 

**I. SUMMARY:**

This bill establishes a priority process by which DEP issues new Brevard County clamming licenses once the total number currently issued falls below 500. The bill also extends the clamming license program's existence another two years, until July 1, 2003.

The bill has no impact on the state general revenue fund.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**General Fisheries Regulation**

Chapter 370, F.S., regulates saltwater fisheries in Florida, including commercial harvest of a number of marine species. Among the regulations is the requirement that all people who harvest commercial quantities of finfish, shellfish or other marine life, or who sell or barter commercially caught seafood, or who use certain fishing gear, must purchase a saltwater products license. The license costs \$50 for Florida residents and \$100 if issued to a boat registration number. The cost is higher for non-residents.

In addition, DEP manages the taking of marine life through the "restricted species" (RS) designation. The designation allows DEP or the Marine Fisheries Commission to control when and where these species are harvested. Saltwater products license-holders must obtain a "restricted species endorsement" for each one of these marine species in order to sell them. These endorsements are issued based on whether a license-holder can attribute a certain percentage of his or her income to commercial fishing. To qualify for an RS endorsement, an applicant must demonstrate \$5,000 in income from the sale of saltwater products to a licensed wholesale dealer in 12 consecutive months or a 36-month period.

**Background on Clam Harvesting in Brevard County**

Approximately 65 miles of the Indian River Lagoon, a 170-mile brackish, subtropical lagoon stretching from Daytona Beach to Stuart, flows through coastal Brevard County. Since 1985, a viable commercial fishery for the hard clam, Merceneria sp., has flourished in this stretch of Lagoon waters traversing Brevard and Indian River Counties. In particular, large populations of harvestable-sized hard clams (seven-eighths inch thickness) have dominated stretches of the Indian River near Titusville, possibly due to thermal pollution and an abundant planktonic food source. The clam harvest season extends 365 days per year, except for closure when contamination is evident due to high bacteria counts.

Due to pollution, high juvenile clam mortality, and over harvesting, the hard clam fishery in the Northeastern United States has dwindled during the past 20 years, leaving major hard clam markets more dependent on Florida shellfish. The abundance of hard clams available for harvest in the Indian River since 1985 has attracted commercial clam harvesters from as far as New York, Rhode Island, and New Jersey to Brevard County.

In 1985, the Legislature passed chapter 85-284, Laws of Florida, prohibiting persons from harvesting clams in Brevard County or Indian River County waters without a license issued by the Department of Natural Resources, now the DEP. Proceeds from the issuance of approximately 1,400 clam licenses over the life of the special act (1985-1990) were used to provide research funding to the Division of Marine Resources for further studies into hard clam life histories and spawning conditions in the Indian River. Chapter 85-284, Laws of Florida, contained a "sunset" provision effective July 1, 1990, and was not reenacted.

**Special Acts Relating to Clam Harvesting in Brevard County**

The 1994 Legislature enacted chapter 94-419, Laws of Florida, to address clam harvesting in Brevard County. Under this act, which expires on July 1, 1999, Florida residents wishing to take commercial quantities of hard clams from the waters of Brevard County are required to obtain a saltwater products license and a 3-year resident clamming license. The 3-year resident clamming license costs \$300 with a late fee of \$1,200. Persons, firms or corporations who have had a previous clamming license suspended, in or out of state, are not eligible. An annual 61-day license issuance period begins on June 1 of each year, after which a \$1,200 late fee is applied.

Nonresidents who wish to take commercial quantities of hard clams are required to obtain a nonresident saltwater products license (SPL) and a nonresident clamming license. The nonresident clamming license sells for \$1,200 with a late fee of \$1,200, if purchased outside the license issuance period beginning on June 1.

The act provides that any clam license issued by the DEP for any other county of Florida is valid in Brevard County as long as the total fee for the license is not less than the fee required by this act. The act exempts persons hauling or transporting clams for rehabilitation, clam culture purposes,

aquaculture, and recreational harvesting from the clam license requirements. The act also exempts persons possessing or harvesting clams in noncommercial quantities during open season designated by law or regulation.

Proceeds from fees collected will be deposited in the Marine Biological Research Trust Fund, minus reasonable administrative costs, to be used by the DEP in the testing, reclassification, and marking of shellfish (clam) harvesting waters in Brevard County. At least 40 percent of these proceeds must be used to mark open and closed waters of Brevard County until all such waters are marked.

This act provides penalties for persons, firms, or corporations convicted of harvesting, transporting, or selling hard clams of the genus Merceneria sp., or commercially taking such clams without a clam license.

In 1996 and in 1998, the original special act was amended by the Legislature.

Chapter 96-463, L.O.F., prohibited the issuance of new clam licenses by DEP until the total number of active and renewed clam licenses for Brevard County falls below 500 for the previous license year. In subsequent years, the DEP is authorized to issue additional licenses to bring the total number of licenses issued up to a maximum of 500. The bill also makes hard clams a RS in Brevard County and requires the presentation of a valid saltwater products license bearing an RS endorsement upon demand by any law enforcement officer. Additionally, the 1996 legislation required a mandatory annual educational seminar, four to eight hours long and taught by DEP, to renew a clam license for Brevard County. Also, a U.S. Coast Guard-approved marine sanitation device has to be on board harvest vessels. Finally, it repealed the provision that a clam license issued by the DEP for any other county of the state is valid in Brevard County as long as the total fee for the license is not less than the fee required by this act, and it exempted all aquaculture operations from the provisions of this act.

Last year, the Legislature passed chapter 98-486, L.O.F., to reduce by half the amount of time harvesters had to spend in the educational seminar and to require Brevard County clam farmers to maintain a 75-foot buffer zone from private property when clam harvesting. The zone is within 75 feet of a shoreline of the Indian River or the Banana River which abuts property that is used for residential purposes or within 75 feet of any canal bank. This requirement applies to clam harvesting for private use, commercial sale, or relaying. The requirement also applies to natural persons possessing or harvesting clams in noncommercial quantities during open season which is designated by law or regulation.

#### **Current situation**

According to the DEP, there are 1,040 Brevard County Clam Licenses issued. Of these licenses, about 532 possess a valid salt water products license, which is required for commercial harvest and sale of saltwater species. Part of the discrepancy between the number of clamming licenses and in the number of SPLs could be the fact that crew members with clamming licenses use the boat owner's SPL.

Clam harvests have declined each of the past four years in the Indian River Lagoon, largely because of declining water quality, according to DEP. For example, Brevard County landings dropped by nearly half from 1996-97 to 1997-98, to 296,980 pounds. Because the harvest is down, many Brevard County clam license holders have not been attending the annual educational seminars, and thus are in danger of losing their licenses. DEP projects that it is possible within the next two years for the number of license holders will have dipped below the 500 threshold, meaning that new licenses can be acquired. DEP and the Brevard County clam industry cooperated on the development of HB 2023, which establishes a process by which the new licenses are issued.

#### **B. EFFECT OF PROPOSED CHANGES:**

This bill establishes a process by which DEP issues new clamming licenses once the total number currently issued falls below 500. First priority is given to current Brevard County clamming license holders who missed one of the required educational seminars; these people would be given 60 days, from July 1 of each year, to apply for a new license and take the seminar. Second priority goes to former license holders, who have 60 days, from September 1 of each year, to apply for a new license and to take the required educational seminar. Last are new applicants, on a first-come, first-served

basis, whose 60-day clock to apply for a license and take the educational seminar will begin November 1 of each year.

The bill extends the repeal of this program through enactment of several special acts to July 1, 2003.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?  
No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?  
No.
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?  
The license holders already are paying to implement the program, through existing fees.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?  
N/A
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?  
No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:
  - (1) Who evaluates the family's needs?  
N/A
  - (2) Who makes the decisions?  
N/A
  - (3) Are private alternatives permitted?  
N/A
  - (4) Are families required to participate in a program?  
N/A
  - (5) Are families penalized for not participating in a program?  
N/A
- b. Does the bill directly affect the legal rights and obligations between family members?  
N/A
- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

Amends chapter laws 94-419, 96-463, and 98-486, Laws of Florida.

**E. SECTION-BY-SECTION ANALYSIS:**

Section 1: Specifies the priority by which DEP issues new Brevard County clamming licenses, once the current number dips below 500. Extends repeal of the program created through several special acts from July 1, 2001 to July 1, 2003. Corrects grammar.

Section 2: Provides that this bill takes effect July 1, 1999.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority local governments have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with local governments.

V. COMMENTS:

As of July 1, 1999, the new Fish and Wildlife Conservation Commission will assume DEP's responsibilities for administering the Brevard County clam license program.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Joyce Pugh

Staff Director:

Joyce Pugh

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AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:  
Prepared by: Staff Director:

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Lisa C. Cervenka

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Joan Highsmith-Smith