

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: CS/CS/SB 148

INTRODUCER: Community Affairs Committee, Environmental Preservation and Conservation Committee, and Senator Aronberg

SUBJECT: Mangrove Protection

DATE: April 16, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Murphy</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>DeLoach</u>	<u>DeLoach</u>	<u>GA</u>	<u>Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill authorizes the Department of Environmental Protection (department) to assess a penalty against any person who violates the provisions of sections 403.9321-403.9333, Florida Statutes, known as the Mangrove Trimming and Preservation Act (act). The bill expands the definition of those against whom penalties may be assessed for violations of the act. The bill provides additional penalties for major violations or second or subsequent violations. The bill provides that the trimming of mangroves to obtain a “right of view” must be conducted in conformance with the provisions of the act. The bill revises the definition of “riparian mangrove fringe.” The bill allows the department to provide for exemptions and general permits for trimming activities that have minimal adverse impacts on the water resources of the state. The bill allows the department to revoke the professional mangrove trimmer status for persons who become repeat violators. The bill clarifies the applicability of the act to certain public and private lands and allows the act to be enforceable on such lands.

The bill provides that the bill becomes effective July 1, 2009.

The bill substantially amends the following sections of the Florida Statutes: 403.121, 403.9323, 403.9324, and 403.9331.

II. Present Situation:

In 1995, the Legislature created the Mangrove Trimming and Preservation Act. The 1995 act substantially revised the regulation of mangroves by providing for:

- Delegation of mangrove regulation to local governments.
- Exemptions from permitting requirements for certain trimming activities.
- General permits for trimming in extended mangrove fringe areas.
- Mitigation and restoration policies.
- Regulation of professional mangrove trimmers.

In 1996, the act was amended to strengthen the requirements for trimming mangroves and to correct some weaknesses in the 1995 law. No mangroves may be cut lower than six feet under either an exemption or general permit. Mangroves over 16 feet must be cut in stages, removing no more than 25 percent annually.

The 1996 changes provided additional specificity regarding the lengths of shoreline that were statutorily exempted from requiring a trimming permit. The clarified exemption for mangrove trimming without a permit applies to property with a shoreline of 150 feet or less. Property owners with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent along the shoreline. Additionally, for trimming activities occurring on property developed for multi-family residential use, the 65 percent shoreline trimming limitation must be equitably distributed so that each owner's riparian view is similarly impacted.

The 1996 changes also provided for an expansion of the list of those who qualify as professional mangrove trimmers. However, landscape architects could not trim mangroves until standards were set by the Board of Landscape Architecture. Mitigation and enforcement provisions were also revised and provided that efforts for violations have five years to achieve a canopy equivalent to the area destroyed. Violations can be resolved by purchasing credits from a mitigation bank at a two-to-one ratio.

Section 403.121, F.S., provides for judicial and administrative remedies for violations of ch. 403, F.S. Section 403.121(3)(d), F.S., provides that, for mangrove trimming or alteration violations, the department shall assess a penalty of \$5,000 per violation against the contractor or agent of the owner or tenant that conducts mangrove trimming or alteration without a permit.¹ The preparation or signing of a permit application by a person currently licensed under ch. 471, F.S., to practice as a professional engineer does not make that person an agent of the owner or tenant.

¹ In practice, the DEP adopted rules that allow first-time violators to enter into consent agreements between the Department and themselves to avoid the \$5,000 per violation penalty or from having to go to circuit court. Thus, the DEP currently assesses penalties on a sliding scale based on severity of the violation and willingness of the violator to work with the DEP to make the environment whole.

Currently, there appears to be some inconsistencies within the act regarding where and how trimming is allowed. The only trimming method in the act is “top trimming,” which is the least desirable method for mangrove productivity.

Certain persons are authorized by the act to automatically be considered as professional mangrove trimmers. Those persons are:

- Certified arborists, certified by the International Society of Arboriculture.
- Professional wetland scientists, certified by the Society of Wetland Scientists.
- Certified environmental professionals, certified by the Academy of Board Certified Environmental Professionals.
- Certified ecologists, certified by the Ecological Society of America.
- Landscape Architects currently licensed in Florida under part II of ch. 481, F.S.
- Persons who have conducted mangrove trimming as part of their business and are able to demonstrate a sufficient level of competence to either the department or a delegated local government.
- Persons who have been qualified by a delegated local government through a mangrove-trimming qualification program as provided in s. 403.9329(7)(a), F.S.

Those automatically designated as professional mangrove trimmers under s. 403.9329(1)(a)-(e), F.S., are not required to have prior mangrove trimming expertise. The department has no ability to revoke the professional mangrove trimmer status from those professionals who repeatedly violate the act.

III. Effect of Proposed Changes:

Section 1 amends s. 403.121, F.S., to expand the definition of who may be penalized for violations of the Mangrove Trimming and Preservation Act, by providing that the department shall assess a penalty against any person who violates the provisions of the act. This section provides for the following penalty schedule for mangrove trimming and alteration violations:

- A fine of up to \$5,000 for major violations of the act, and up to \$1,000 for first time violations that would have qualified for a general permit under s. 403.9327, F.S., or that have insignificant impacts on the mangrove resources of the state.
- For professional mangrove trimmers, owners, or tenants, an additional penalty of \$250 per trimmed or altered mangrove for major violations or second or subsequent violations, not to exceed a total of \$10,000 in additional penalties.
- For all others, an additional penalty of \$100 per trimmed mangrove and \$250 per altered mangrove for major violations or second or subsequent violations, not to exceed a total of \$10,000 in additional penalties.
- A clarification that the signing of a permit by a currently licensed professional engineer as defined by ch. 471, F.S., does not constitute a violation.

Section 2 amends s. 403.9323, F.S., to clarify the legislative intent regarding mangrove trimming to achieve waterfront property owners’ riparian rights of view and other rights of riparian ownership as recognized by s. 253.141, F.S. The bill provides that the trimming of mangroves

under the riparian owner's rights must be conducted in conformance with the provisions of the act.

Section 3 amends s. 403.9324, F.S., to allow the department to adopt rules providing for exemptions and general permits authorizing trimming activities that have, singularly or cumulatively, a minimal adverse effect on the water resources of the state.

Section 4 amends s. 403.9325(7), to revise the definition of "riparian mangrove fringe."

Section 5 amends s. 403.9329, F.S., to allow the department to revoke the professional mangrove trimmer status for persons who statutorily claim the automatic professional mangrove trimmer status under the act and who become repeat violators.

Section 6 amends s. 403.9331, F.S., to provide that the provisions of the act do not allow the trimming of mangroves on uninhabited natural islands that are publicly owned, or on lands that are set aside for conservation and preservation or mitigation, except where necessary to protect the public health, safety, and welfare or to enhance public use of, or access to, conservation areas in accordance with approved management plans. This language is identical to that found in s. 403.9323(2), F.S., relating to legislative intent for the trimming of mangroves, with the additional clarification that this is an enforceable provision.

Section 7 provides for an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill allows certain persons to obtain either an exemption or a general permit for certain activities relating to the trimming of mangroves and may provide for less regulation in some instances. Owners' riparian rights of view and other riparian rights of

ownership that involve the trimming of mangroves may be conducted without prior government approval, which will reduce permitting costs. It is likely that the penalties assessed to first-time offenders will be similar to those assessed under present law, given the department's current penalty structure. However, for major or repeat offenders, the penalties assessed may be up to \$15,000 per incident.

C. Government Sector Impact:

The specific fiscal impact to the department to implement the new provisions of the bill is likely to be minimal as its current penalty structure is similar to the one proposed in the bill. Because of the creation of an administrative penalty against any person who violates the act, the department may reduce its litigation costs by having the option to assess an administrative penalty rather than suing a violator in circuit court. The ability to revoke the status of automatic professional mangrove trimmers who violate the provisions of the act may result in reduced enforcement costs due to the revocation of serial violators' licenses. However, the specific fiscal impact is indeterminate at this time. The bill also increases the total assessed penalty allowed from \$5,000 to up to \$15,000 for serious violations, which includes additional penalties not to exceed \$10,000. The impact of recovering increased fines is indeterminate compared to the costs for mangrove restoration and mitigation that the department expends.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on April 6, 2009:

The committee substitute provides that an additional penalty for major unauthorized trimming or a second or subsequent violation of subparagraph one of section one, of up to \$250 for each mangrove illegally trimmed or altered, not to exceed \$10,000 applies to owners and tenants. The committee substitute also changes language from “uninhibited islands” to “uninhibited natural islands.”

CS by Environmental Preservation & Conservation on March 3, 2009:

- Provides for graduated fines of up to \$5,000 for major violations of ss. 403.9321-403.9333, F.S., and up to \$1,000 for first time violations that would have qualified for a general permit under s. 403.9327, F.S., or that have insignificant impacts on the mangrove resources of the state.

- For professional mangrove trimmers, creates additional penalties of \$250 per trimmed or altered mangrove for major violations or second or subsequent violations, not to exceed a total of \$10,000 in additional penalties.
- For all others, creates additional penalties of \$100 per trimmed mangrove and \$250 per altered mangrove for major violations or second or subsequent violations, not to exceed a total of \$10,000 in additional penalties.
- Clarifies that the signing of a permit by a currently licensed professional engineer as defined by Chapter 471, F.S., does not constitute a violation.

B. Amendments:

None.