

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 Environmental Preservation and Conservation Committee

BILL: CS/SB 1012

INTRODUCER: Committee on Environmental Preservation and Conservation and Senator Constantine

SUBJECT: Internal Improvement Trust Fund

DATE: March 19, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kiger	Kiger	EP	Fav/CS
2.			GA	
3.			RC	
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:

The CS provides statutory guidance to be utilized by the Board of Trustees of the Internal Improvement Trust Fund (Board) and the Department of Environmental Protection (DEP, department) for the use of sovereignty submerged lands. Specific provisions of the CS:

- Establish lease terms;
- Provide for the assessment of fines and penalties;
- Establish minimum compliance measures; and
- Create a fee structure.

The CS also changes a current provision regarding the imposition of fines for damages to the state's natural resources to require that a minimum fine of \$100 shall be imposed.

The CS provides that the act shall take effect on July 1, 2009.

This CS substantially amends s. 253.03 and 253.04, Florida Statutes.

II. Present Situation:

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 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.

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 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 materials¹. Using such policies, standards and criteria established for each category, approved uses for sovereignty submerged lands are determined. Such approved uses include²:

- 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.

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.

¹ Rule 18-21.003, F.A.C.

² Information provided by the Department of Environmental Protection.

- 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.

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 lifts³;
- 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 income⁴, 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 leases⁵. 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 index⁶.
- 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 a 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;

³ Such activities shall be in accordance with s. 403.813, F.S.

⁴ 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.

⁵ The department is unable to provide information regarding how the initial rate was established.

⁶ 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.

- 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 width⁷.
- Severed dredge materials – Activities that involve the removal of sovereignty materials shall be assessed a severance fee per cubic yard of material as follows⁸:
 - 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 inflation⁹.
- 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 sovereignty 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.

⁷ 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.

⁸ 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.

⁹ 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.

Tracking Methods

Current sovereignty submerged land leases are tracked through the Integrated Land Management System database, and are reviewed every 5 years¹⁰. 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 agreement¹¹. 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 was 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.

III. Effect of Proposed Changes:

Section 1: amends s. 253.03, F.S., to create new provisions to be used in rule making effort by the Board and DEP. The CS provides for:

- Standard lease term of at least 10 years;
- Extended term lease not to exceed 25 years where the sovereignty submerged lands have or will have an expected life, or amortization period, equal to or greater than the requested lease term. These extended leases will be limited to exclusive public water access facilities on a first-come, first-served basis; and

¹⁰ 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.

¹¹ During such time, the department continues to collect all lease fees owed as part of the original lease agreement.

- Defines “first-come, first-served” as any water dependent facility operated on state-owned submerged land where at least 90 percent of the slip are open to the public;

New fee provisions are created that:

- Provide for a \$250 non-refundable application fee for private residential single-family docks or piers, and a \$500 application fee for all other facilities unless there is a differing specified amount;
- Establish that certain types of private leases will be subject to a one-time premium that is 10 percent of applicant’s projected retail or current market price, and on which price to base the premium;
- Direct that when the Board is unable to verify market data, an appraisal report is required;
- Direct that the one-time premium shall apply to the expansion of any private lease;
- Provide fees for first-come, first-served, located outside of an aquatic preserve shall be \$0.10 per square foot or a minimum \$250 and that all other leases shall be \$0.30 per square foot or a minimum \$500;
- Provide fees for first-come, first-served, located within a aquatic preserve, shall be \$0.30 per square foot or a minimum of \$500, and that all other leases shall be \$0.60 per square foot or a minimum \$1,000;
- Provide for a revision of the fees every 5 years beginning March 1, 2014 which shall be based on average change in the Consumer Price Index and may not exceed 10 percent;
- Provide for late fees on leases not paid within 30 days of due date and shall be computed at the rate of 12 percent per annum on a daily basis;
- Establish exemptions from annual lease fees for government, research, or education facilities;
- Establish that community based social clubs shall be treated as first-come, first-served for assessing fees provided they meet certain conditions;
- Require the department to provide a draft lease 14 days prior to a hearing by the Board;
- Direct the Board to adopt rules: which provide for the assessment of fines and penalties for lease violations; to allow for special events which require certain temporary access to or use of sovereignty submerged lands; and to establish compliance methods which shall include aerial photographs of lease area within first year of the lease term, and an additional one within 60 days of the fifth year of the lease.

Section 2: amends s. 253.04 (2), F.S., to direct that the Board shall assess a minimum fine of at least \$100 for damages done to the state’s natural resources. As written the current provision gave the Board and the department when acting under delegation the ability to waive fines.

Section 3: Provides that the CS shall take effect 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:

Comparing the existing fee structure to the one proposed by the CS is difficult because of the substantive differences. The current fee system is based on a series of criteria that can be impacted by various discounts or premiums while the CS proposes a significantly simplified approach.

In general current fees range from 10 cents to 29 cents per square foot with a base fee of 14.5554 cents. The CS proposes that fees range from 10 cents to 60 cents. The fee breakdown in the CS is as follows:

10 cents for a first-come, first served located outside of an aquatic preserve or a minimum of \$250.

(Estimated square footage is 247,452)

30 cents for all other leases located outside of an aquatic preserve or a minimum of \$500.

(Estimated square footage is 117,120)

30 cents for a first-come, first-served located within an aquatic preserve or a minimum of \$500.

(Estimated square footage is 438,024)

60 cents for all other leases located within an aquatic preserve or a minimum of \$1,000.

(Estimated square footage is 11,757)

For fiscal year 2007/08 submerged land revenues totaled \$14, 806,809. Of this figure lease fees were \$13, 625,779.

Staff requested that the Office of Program Policy Analysis and Government Accountability evaluate the proposed fee structure for lease revenues and provide a breakdown of the impact of the CS had it existed in previous years. Their data shows that the fees proposed in the CS would generate approximately \$16.6 million annually. In comparison the DEP estimates the fees would generate \$15.9 million.

In addition to the lease fees, the CS creates a one-time premium be charged for private leases at the time of execution or modification. Data provided by the DEP indicates that this fee is estimated to provide \$6.7 million annually. So in total it was estimated that the CS would have generated \$23.3 million in revenues for fiscal year 07/08. Reported revenues for the same fiscal year were \$14.8 million.

B. Private Sector Impact:

The impact to single-family docks is expected to be minimal. Currently many of these pay the minimum fee of \$436.78. The new minimum established by the CS is \$250 or \$500 depending on location.

Larger scale marinas and docks will see increases in their upfront costs and annual lease fees. Dependent upon location the increases will range from 16 cents to 30 cents for leases.

The one-time premium is designed to apply only to new facilities. Current practice is to charge a minimal up-front fee of one-fourth the base rate, about 3.5 cents per square foot. The premium will seek 10 percent of the value of all the slips. This would be a substantial increase for larger scale private facilities. However, the increase will be offset to some degree because current rules that would be replaced by the CS provisions have significant reporting and record keeping requirements. Additionally, because of the necessity to report various financial data the DEP has to routinely perform audits.

C. Government Sector Impact:

The CS retains the exemptions currently afforded these facilities.

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 by Environmental Preservation and Conservation on March 17, 2009:

The committee substitute removed the original provisions of the bill and replaced them with provisions concerning the state's management of submerged lands. Provisions adopted into the CS:

Provide for the establishment of various lease terms.

Create authority for the establishment of penalties and fines for violation of lease terms.

Establish minimal compliance standards for leases.

Require the DEP to make available certain documents before action is taken by the Board of Trustees.

Establish a fee structure for sovereignty submerged land leases.

Finally, the CS changed an existing provision concerning the assessment of fines for damages to the state's natural resources to ensure that a minimum fine of \$100 will now be assessed.

B. Amendments:

None.