

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 Community Affairs Committee

BILL: CS/SB 1118

INTRODUCER: Community Affairs Committee and Senator Altman

SUBJECT: Docks

DATE: March 17, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Kiger	EP	Favorable
2.	Howes	Yeatman	CA	Fav/CS
3.			GA	
4.				
5.				
6.				

I. Summary:

The Committee Substitute (CS) for Senate Bill 1118 amends s. 258.42, F.S., allowing private residential single-family dock owners in aquatic preserves to build roofs over their docks, boat lifts and davits.

The CS amends s. 403.061, F.S., authorizing the Department of Environmental Protection (DEP) to conduct rulemaking for building small docking facilities in shellfish harvesting and recreation waters. The CS directs the DEP to maintain a list of projects or activities that satisfy mitigation or public interest requirements. Additionally, the DEP is directed to develop a project management plan for expanding online self-certification.

The CS amends s. 403.813, F.S., providing that minor changes and upgrades to docks and piers do not require a permit when repairing or replacing.

The CS provides for an effective date of July 1, 2010.

II. Present Situation:

Mitigation

The Legislative Committee on Intergovernmental Relations (LCIR) issued a report in March 2007. The report's focus was a review of permitting practices to identify opportunities to improve consistency and predictability in permitting water-related facilities in Florida. The report noted that a marine construction project is subject to regulatory mitigation requirements, and if involving sovereign submerged lands, is subject to proprietary or public interest mitigation requirements. Regulatory mitigation is designed to directly offset environmental impacts, but

proprietary or public mitigation involves compensation for the use of public property as well as action to offset impacts. The report noted that “environmental permitting staff and the marine construction industry would benefit from a transparent process for identifying activities to serve as public interest and regulatory mitigation projects.”¹

E-permitting

The DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on adjacent uplands if the dock is the sole dock on the parcel. An applicant can easily determine if a private single-family dock can be constructed without further notice or review by the DEP. Also, the five water management districts have designed and support a shared permitting portal. The portal is designed to direct the user to the appropriate district website for information on district permitting activities.

With respect to self-certification, the LCIR report indicated that some local governments do not accept self-certification for permit-exempt projects identified in statute, rule, or listed under the DEP’s self-certification process for single-family docks. Some local governments require a signoff from the DEP permit review staff to verify the exempt status of the project submitted under self-certification.

Docking Facilities in Shellfish Harvesting Waters

Docking facilities in class II and class III waters that contain shellfish are allowed. Facilities with two or less slips are allowed by rule provided their construction and operation do not result in closure of the waters and that they meet other protective criteria. For facilities with more than two slips, the DEP requires comment and approval of the plans by shellfish harvesting stakeholders. Typically, no response is given by the stakeholders if the facility plans contain 10 or fewer slips. Therefore, people applying for a permit for a facility between 3 and 10 slips must apply for a variance from the DEP. This adds unnecessary time and expense to the application and review process. Currently, the DEP is undertaking rulemaking to address this issue.

III. Effect of Proposed Changes:

Section 1 amends s. 258.42, F.S., allowing construction of roofs over slips at private residential single-family docks in aquatic preserves that contain boat lifts or davits. The roof cannot overhang more than one foot beyond the footprint of the boat stored at the lift. The dock cannot be enclosed by walls on any side. The roof is not considered in determining the square footage of the terminal platform. There are also technical changes.

Section 2 amends s. 403.061, F.S., providing the DEP with the power and authority to:

- Adopt rules that include special criteria for approval of docking facilities with 10 or fewer slips where construction and operation of such facilities will not result in the closure of shellfish harvesting waters. Obsolete language referring to rule 17-4.28(8)(a) is stricken.

¹Florida Legislative Committee on Intergovernmental Relations, Interim Project Report, (March, 2007), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf>, last accessed March, 1, 2010.

- Maintain a list of projects or activities, including mitigation banks, that applicants may consider when developing proposals to meet mitigation or public interest requirements. The contents of the list are not a rule under ch. 120, F.S., and listing a project or activity does not imply departmental approval. Counties are encouraged to develop an inventory of projects for inclusion on the list with input from stakeholders.
- Expands the use of online self-certification program and other forms of online authorization for appropriate exemptions, general permits, and individual permits by the department and the water management districts if the expansion is economically feasible. The plan must be submitted to the President of the Senate and the Speaker of the House of Representatives by February 15, 2011.

Section 3 amends s. 403.813, F.S., clarifying that repairs to or replacement of an existing dock or pier does not require a permit even if different construction materials or minor changes to adhere to structural or design standards are used. It also provides for technical changes.

Section 4 provides for an effective date of July 1, 2010.

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:

Dock owners in aquatic preserves will be able to erect roofs over their docks, boat lifts and davits. Additionally, owners may replace or make minor repairs and structural changes to their docks without getting permits.

Maintaining a list of eligible projects that meet the mitigation or public interest tests and increasing online self-certification will add clarity and efficiency to existing law, which will benefit the public.

Docking facilities of 10 or fewer slips may be erected in class II and class III waters if the construction and operation of the facility does not result in closure of the shellfish harvesting waters. Allowing this change will streamline the dock facility permitting process in shellfish harvesting waters.

C. **Government Sector Impact:**

The DEP is currently using monetary and staff resources to expand self-certification capabilities. Requiring the DEP to develop a project management plan for submittal to the Legislature will negatively affect funding and staff resources available to continue this expansion. All other requirements of this CS can be met by the agencies with existing staff and resources.

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 Community Affairs on March 17, 2010:

- The Committee Substitute (CS) for SB 1118 allows the Department to adopt by rule special criteria to protect Class III waters (previously they had only been allowed to adopt a rule for Class II waters). Such rules may include special criteria for approving docking facilities that have 10 or fewer slips if the construction and operation of such facilities will not result in the closure of shellfish waters.
- The CS deletes the section allowing DEP to develop an e-permitting program and replaces it by allowing DEP to expand the use of the online self-certification program and other forms of online authorization for appropriate exemptions, general permits, and individual permits by the department and the water management districts, if the expansion is economically feasible. The CS also requires DEP to report on the progress of these activities to the President of the Senate, the Speaker of the House of Representatives, and the Legislative Committee on Intergovernmental Relations by February 15, 2011.
- The CS allows owners of private residential boat docks to place roofs over their docks so long as the roof does not overhang more than 1 foot beyond the footprint of the boat stored at the lift. (Previously the roofs could not overhang more than 1 foot beyond the footprint of the boatlift.)

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
