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**H 1077 GENERAL BILL/CS/2ND ENG by Natural Resources;**  
**Saunders (Similar CS/H 1329, CS/S 501, Compare CS/H 370,**  
**CS/S 162, S 872)**  
**Aquatic Preserve System/Revision; modifies restrictions on fishing in Biscayne**  
**Bay Aquatic Preserve; provides for rules by Marine Fisheries Comm., rather than**  
**D.N.R., to govern such fishing; authorizes use of landing nets, cast nets, or bully**  
**nets within preserve; revises conditions under which TITF may sell, transfer, or**  
**lease certain lands within Boca Ciega Bay Aquatic Preserve; revises boundary de-**  
**scriptions of certain aquatic preserves, etc. Amends Ch. 258. Effective Date:**  
**10/01/89 except ss. 1 & 7 effective 05/25/89.**  
**03/20/89 HOUSE Prefiled**  
**03/24/89 HOUSE Referred to Natural Resources**  
**04/03/89 HOUSE Subreferred to Subcommittee on Coastal Preservation**  
**04/04/89 HOUSE Introduced, referred to Natural Resources -HJ 102; Subre-**  
**ferred to Subcommittee on Coastal Preservation; On sub-**  
**committee agenda—Natural Resources, 04/05/89, 3:30 pm,**  
**212-HOB**  
**04/05/89 HOUSE Subcommittee Recommendation: Favorable with 2 amend-**  
**ments; On Committee agenda—Natural Resources,**  
**04/07/89, 8:30 am, 413-C**  
**04/14/89 HOUSE Comm. Report: CS by Natural Resources, placed on Calen-**  
**dar -HJ 232; CS read first time -HJ 231**  
**04/25/89 HOUSE Placed on Special Order Calendar**  
**04/27/89 HOUSE Read second time -HJ 286; Amendments adopted -HJ 288**  
**04/28/89 HOUSE Read third time -HJ 301; CS passed as amended;**  
**YEAS 109 NAYS 2 -HJ 302**  
**05/02/89 SENATE In Messages**  
**05/09/89 SENATE Received, referred to Natural Resources and Conservation**  
**-SJ 278; Immediately withdrawn from Natural Resources**  
**and Conservation; Substituted for CS/SB 162; CS passed**  
**as amended; YEAS 37 NAYS 0 -SJ 282; Immediately certi-**  
**fied -SJ 282**  
**05/09/89 HOUSE In Messages**  
**05/16/89 HOUSE Concurred; CS passed as further amended; YEAS 110**  
**NAYS 0 -HJ 490**  
**05/16/89 Ordered engrossed, then enrolled**  
**05/18/89 Signed by Officers and presented to Governor -HJ 538**  
**05/25/89 Approved by Governor; Chapter No. 89-25 -HJ 776**

**NOTES:** Above bill history from Division of Legislative Information's **FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS**. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

**STORAGE NAME:** h1077-f.nr  
**DATE:** June 28, 1989

**HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE  
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 1077

**RELATING TO:** Biscayne Bay Aquatic Preserve

**SPONSOR(S):** Representative Saunders

**EFFECTIVE DATE:** October 1, 1989, except that section 1 and section 7 shall take effect upon becoming law

**DATE BECAME LAW:** May 25, 1989

**CHAPTER #:** Chapter 89-25, Laws of Florida

**COMPANION BILL(S):** N/A

**OTHER COMMITTEES OF REFERENCE:** (1)

\*\*\*\*\*

**I. SUMMARY:**

**A. PRESENT SITUATION:**

Aquatic preserves are state-owned submerged lands having exceptional biological, aesthetic, or scientific value that have been set aside for the benefit of future generations. The first aquatic preserve was established in 1966. Since that time 41 aquatic preserves have been created under section 258.35, Florida Statutes, the Florida Aquatic Preserve Act of 1975, protecting about 1,900,000 acres of submerged lands.

Biscayne Bay Aquatic Preserve, located in Dade and Monroe Counties, was established by the Legislature so that the bay could "be preserved in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations."

Subparagraph 258.397(4)(a)2., Florida Statutes, states that the Board of Trustees of the Internal Improvement Trust Fund shall provide regulation of human activity within the Biscayne Bay Aquatic Preserve in such a manner as not to interfere unreasonably with lawful and traditional public uses of the preserve, such as sport and commercial fishing, boating and swimming.

Paragraph 250.397(4)(c), Florida Statutes, prohibits fishing within Biscayne Bay Aquatic Preserve with the use of seines or nets, except for fishing for shrimp or mullet, and when otherwise permitted by state law or by rules promulgated by the Department of Natural Resources.

**STORAGE NAME:** h1077f.nr

**DATE:** June 28, 1989

**PAGE:** 2

This prohibition is not found in other preserves. This language was drafted because the preserve had been heavily impacted by human activity. The prohibition against commercial fishing, except for shrimp and mullet fishing, was developed to provide the maximum levels of protection to the preserve's resources.

The restrictions on the use of nets in the preserve restricts all nets. This has been problematic for the Marine Patrol because the prohibition does not distinguish between the nets used for commercial purposes and those nets used by recreational fishermen such as landing nets to land a fish, or cast nets to catch bait fish, or bully nets that are used to catch spiny lobster. The intent of the original law was to control the use of nets for commercial purposes.

The Marine Fisheries Commission is the entity that is usually responsible for promulgating rules relating to the taking of marine life and the gear restrictions for such activities.

Boca Ciega Bay Aquatic Preserve has special restrictions placed on the sale, transfer, or lease of submerged lands within the preserve that require a showing of extreme hardship on the part of the applicant, or a determination that the project is in the overwhelming public interest. Only Biscayne Bay Aquatic Preserve and Lake Jackson Aquatic Preserve have similar restrictions. All of the other 38 preserves operate under the less stringent requirement that a project be in the public interest.

The Department of Natural Resources manages the aquatic preserves through the Division of State Lands, Bureau of Aquatic Preserves. The bureau consists of 26 full-time employees and 21 OPS employees. Only 29 of the 41 preserves have any staff within 50 to 100 miles. In fiscal year 1987-88, the bureau operated on expenditures of \$1,180,825.

To help alleviate the problems of under-staffing, the Bureau of Aquatic Preserves is developing a memorandum of agreement between the Department of Natural Resources and Pinellas County for the administration of Boca Ciega Bay and Pinellas County Aquatic Preserves. This bill helps facilitate such an agreement.

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

This bill will change paragraph 258.387(4)(c), Florida Statutes, to empower the Marine Fisheries Commission, instead of the Department of Natural Resources, as the exclusive rulemaking authority for regulating fishing in Biscayne Bay Aquatic Preserve, including the power to establish gear restrictions.

The bill excludes landing nets, cast nets, and bully nets from the definition of the terms "seines and nets."

This bill amends subsection 258.396(3), Florida Statutes, relating to Boca Ciega Bay Aquatic Preserve, to allow the Board of Trustees of the Internal Improvement Trust Fund to sell,

transfer, or lease sovereignty submerged land upon finding the action to be in the public interest rather than upon a showing of extreme hardship by the applicant. This is the standard that applies to most other aquatic preserves (except Biscayne Bay and Lake Jackson Aquatic Preserves).

This bill revises, corrects, or clarifies certain technical details of the boundaries of the Indian River-Vero Beach to Fort Pierce Aquatic Preserve, Jensen Beach to Jupiter Inlet Aquatic Preserve, Rookery Bay Aquatic Preserve, Gasparilla Sound-Charlotte Harbor Aquatic Preserve, and Lemon Bay Aquatic Preserve.

The bill authorizes the Board of Trustees of the Internal Improvement Trust Fund (the Governor and Cabinet) to delegate administrative and enforcement authority to local government to staff and manage aquatic preserves.

This delegation of powers is contingent upon the board's determination that the local government administering the preserve:

1. Develops standards and criteria at least as restrictive as the management plan approved by the board pursuant to Chapter 18-20.013(2), Florida Administrative Code.
2. Provides for the enforcement of such restrictions.
3. Provides adequate staffing and financial resources to effectively execute the management plan.
4. Provides for improved management and enforcement of the aquatic preserve management plan and the rules regarding state-owned lands.

The bill does not allow the delegation of the authority to grant approval for the sale, lease, easement, or other uses of state-owned sovereignty land that presently require the approval of the board of trustees. This prohibition does not preclude agreements between the board and local governments that would allow the local government to process applications and present recommendations for final action to the board.

The bill requires that the board give prior notice of its intent to enter into such an agreement. The board may designate the local government as enforcement entity for the preserve. The local government must obtain approval of the Division of State Lands before seeking the penalties of section 258.46, Florida Statutes, in lieu of the penalties associated with the violation of the local ordinance. None of the provisions of this bill limit the authority of the Division to enforce its rules regarding aquatic preserves.

This bill provides for the annual evaluation of the success of the local government's administration of the aquatic preserve by the Department of Natural Resources and the Board of Trustees,

and gives the board the prerogative to renew or retract the delegation.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends paragraph (c) of subsection (4) of Section 258.397, Florida Statutes, to:

- a) Provide for the promulgation of rules by the Marine Fisheries Commission instead of the Department of Natural Resources regarding the taking of marine life.
- b) Excludes landing nets, cast nets, and bully nets from the definition of the terms "seines and nets."

Section 2. Amends paragraph (a) of subsection (3) of section 258.396, Florida Statutes, to allow the Board of Trustees of the Internal Improvement Trust Fund to sell, transfer, or lease sovereignty submerged lands within Boca Ciega Bay Aquatic Preserve upon finding the action to be in the public interest.

Section 3. Amends subsections (8), (9), and (31) of section 258.39, Florida Statutes, to revise, correct, or clarify the boundary descriptions of the Indian River-Vero Beach to Fort Pierce Aquatic Preserve, the Jensen Beach to Jupiter Inlet Aquatic Preserve, and the Rookery Bay Aquatic Preserve.

Section 4. Amends section 258.392, Florida Statutes, to correct and clarify the boundary description for the Gasparilla Sound-Charlotte Harbor Aquatic Preserve.

Section 5. Amends section 258.3925, Florida Statutes, to correct the boundary description for the Lemon Bay Aquatic Preserve.

Section 6. Adds subsection (3) to section 258.43, Florida Statutes, to empower the Board of Trustees of the Internal Improvement Trust Fund to delegate the management of aquatic preserves to a local government; requires that the delegation of authority be made only if the board determines that the local government can provide adequate management; limits the powers that can be delegated; and provides for review and evaluation of the delegation.

Section 7. Provides that the act shall take effect October 1, 1989, except that section 1 and section 7 shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Expenditures will not be increased for the state. If some local governments assume responsibility for managing some aquatic preserves, the current situation of underfunding of

the Bureau of Aquatic Preserves would be somewhat relieved.

2. Recurring or Annualized Continuation Effects:

Same

3. Long Run Effects Other Than Normal Growth:

Same

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

If local governments assume responsibility for managing some aquatic preserves, there will be costs that will include first year salaries, benefits, expenses and operating capital outlay for the positions that local governments will need to satisfy the board requirements for a particular preserve. It should be noted that the first year expenses and continuing expenses are assumed by local governments voluntarily, and that these expenses are not mandated by the bill.

2. Recurring or Annualized Continuation Effects:

Recurring fiscal impacts will include manpower, administration and equipment costs as above.

3. Long Run Effects Other Than Normal Growth:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

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

None

D. FISCAL COMMENTS:

This local government program should help alleviate the problem of inadequate funding of the Department of Natural Resources for staffing and managing the state's aquatic preserves.

STORAGE NAME: h1077f.nr

DATE: June 28, 1989

PAGE: 6

III. LONG RANGE CONSEQUENCES:

This bill is consistent with the State Comprehensive Plan, particularly the following policy:

(9) COASTAL AND MARINE RESOURCES.--

(b) Policies--

6. Encourage land and water uses which are compatible with the protection of sensitive coastal resources.

(10) NATURAL SYSTEMS AND RECREATIONAL LANDS.--

(b) Policies--

2. Acquire, retain, manage, and inventory public lands to provide recreation, conservation, and related public benefits.

IV. COMMENTS:

This bill is consistent with the Natural Resources Committee Mission Statement:


Comprehensive vision must be formulated to protect our bays, wetlands, uplands, beaches, rivers, lakes, coastal areas, hammocks and woodlands.

Enhance the ability of state agencies charged with the enforcement of environmental laws.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

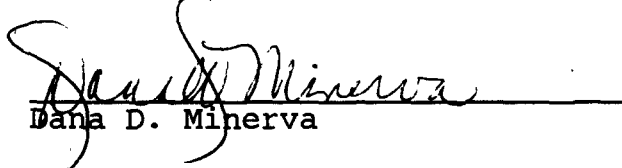
  
Mike Brothers

SECOND COMMITTEE OF REFERENCE:

Prepared by:

\_\_\_\_\_  
  
APPROPRIATIONS:  
Prepared by:  
  
\_\_\_\_\_

Staff Director:

  
Dana D. Minerva

Staff Director:

\_\_\_\_\_  
  
Staff Director:  
  
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REVISED: \_\_\_\_\_

BILL NO. CS/SB 162DATE: March 22, 1989Page 1

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Gee</u> <i>GG</i>	<u>Voiqt</u> <i>W</i>	1. <u>NRC</u>	<u>CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT: Aquatic preserves

BILL NO. AND SPONSOR: CS/SB 162 by Senator Grizzle

I. SUMMARY:

## A. Present Situation:

In 1975, the Legislature enacted Chapter 75-172, Laws of Florida, which established a system of aquatic preserves. Aquatic preserves are state-owned submerged lands, or submerged lands leased by the state from other governmental agencies, in areas having exceptional biological, aesthetic, or scientific value which are managed under a standardized set of management criteria providing guidelines for the review of development activities and the inventory of natural resources. There are currently 41 aquatic preserves in the state, which are administered by the Board of Trustees of the Internal Improvement Trust Fund (Trustees), consisting of the Governor and Cabinet.

Section 258.42, F.S., establishes restrictions on the activities the Trustees may permit in aquatic preserves. Dredging and filling is prohibited except in limited circumstances. Except for private docks for ingress or egress of riparian owners, multislip private and commercial docking facilities which are consistent with management criteria, shore protection structures, navigation aids, and public utility crossings, the erection of structures is prohibited. Leases are also prohibited except when in the public interest.

Actual management of aquatic preserves is conducted by the Bureau of Aquatic Preserves of the Department of Natural Resources (DNR). The bureau's manpower resources only permit on-site management for approximately one-half of the preserves. In some cases, due to limited staffing, decisions on permit applications have been delayed. The department reports that delegation of certain management and use authorization responsibilities to local governments could enhance management effectiveness, efficiency, and expedite response to use requests by the public.

## B. Effect of Proposed Changes:

The bill provides that the Trustees may, by agreement, delegate to a local government the administration and enforcement of the standards and criteria established in a resource inventory and management plan for an aquatic preserve adopted by the Trustees, if the Trustees determine that the delegation is in the public interest.

Such delegation shall be made only if the Trustees determine that the local government's program for administering and enforcing the adopted standards and criteria:

1. Adopts by ordinance, regulation, or local law standards and criteria no less restrictive than those in the management plan

approved by the Trustees pursuant to the provisions of Chapter 18-20.013(2), Florida Administrative Code.

2. Provides for the enforcement of such requirements by appropriate administrative and judicial processes.

3. Provides for administrative organization, staff, and financial and other resources necessary to effectively and efficiently enforce such requirements.

4. Provides for improved management and enforcement of the standards and criteria in the resource inventory and management plans and of the rules adopted by the Trustees pertaining to state-owned lands.

A delegation may not include the authority to grant approval for the sale, lease, easement, or other uses of state-owned sovereignty lands that require approval by the Trustees as provided by the Trustees' rules on the effective date of this act. However, agreements between the Trustees and local governments providing that the local government shall process applications and present recommendations for final action to the Trustees are not precluded.

The bill requires the Trustees to publish notice of an intended delegation in the Florida Administrative Weekly at least 21 days prior to adoption of the agreement. Also, the DNR Division of State Lands must, at least annually, update its rules to include a current list of management agreements adopted by the Trustees. Each list must identify the parties to the agreements, the date and location of each agreement, and specify the nature of the authority delegated by each agreement.

The Trustees may designate the local government as its enforcement arm for purposes of s. 258.46, F.S.; such local government may directly enforce the provisions of s. 258.46, F.S., or rely on its local ordinance for enforcement of the plan. A local government must obtain approval from the Division of State Lands, however, before seeking any penalties established by s. 258.46, F.S., if attempting enforcement pursuant to that statute in lieu of penalties under its ordinance.

Annually, on the anniversary of a delegation, the department shall present to the Trustees an evaluation of decisions made by the local governments during the previous year. The Trustees shall, upon reviewing this evaluation, either act to renew the delegation, act to retract the delegation, or act to renew the delegation with specific directives to the local government to take corrective action concerning any deficiencies in its processing or application of the standards and criteria in the rules approved by the Trustees or a management plan adopted for the preserves.

The bill does not affect the enforcement authority of the Division of State Lands. The bill takes affect October 1, 1989.

## II. ECONOMIC IMPACT AND FISCAL NOTE:

### A. Public:

To the extent that increasing the speed of permit issuance confers an economic benefit on permit applicants, the bill could benefit some applicants, if the aquatic preserve in which they wish to conduct activities is the subject of a management agreement with a local government which results in increased response time for permitting. Otherwise, the bill would have no measureable impact on the public.

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**B. Government:**

Local governments seeking delegation of aquatic preserve management and enforcement functions would likely experience increased costs for plan development and the actual management of preserves. It is not possible to estimate such expenses at this time.

The bill could result in undetermined savings to DNR as a result of decreased workload and increased efficiency if delegation occurs, as DNR now has on-site management capability for only approximately one-half the existing preserves.

**III. COMMENTS:**

If the intent of the requirement that the Division of State Lands annually update its rules to include a list of current management agreements is to identify the location of the aquatic preserves under such agreements, the language at page 2, line 31 may not accomplish this, as the list is required to identify the location of the agreements, rather than the actual aquatic preserves.

**IV. AMENDMENTS:**

None.