

# Hopping Green & Sams

Attorneys and Counselors

## MEMORANDUM

TO: Florida Association of Mitigation Bankers  
c/o Victoria Colangelo

FROM: Eric T. Olsen *E.T.O.*

RE: CS for SB 1118

DATE: May 20, 2010

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Attached please find a copy of CS for SB 1118 that was passed by the 2010 Florida Legislature. While this bill primarily deals with docks, this bill also requires the Department of Environmental Protection (DEP) to maintain a list of projects or activities that permit applicants may consider when developing proposals to meet mitigation or public interest requirements of Chapter 403, F.S., Chapter 253, F.S. (regarding obtaining permission to use sovereign submerged lands), or Chapter 373, F.S. (regarding Environmental Resource Permitting and consumptive use permitting). This list must include mitigation banks.

Note also that this bill encourages each county government to also develop an inventory of projects or activities for inclusion on the list by obtaining input from local stakeholders. The bill authorizes counties to establish dedicated trust funds for depositing public interest donations to be used for future public interest projects.

The DEP list of mitigation or public interest projects does not have to be adopted by rule, and listing of a specific project or activity does not imply DEP approval for such project or activity. The participation of the water management districts in the development of this list is not specified in the bill.

If this bill becomes law, the FAMB should follow the development of this list to ensure that mitigation banks are properly listed and the benefits to permit applicants of using a mitigation bank (e.g. simplicity of use by transfer of credits and transfer of mitigation liability) are properly set forth.

We will monitor the development of this list on behalf of the FAMB and keep you informed as appropriate.

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1  
2 An act relating to docks; amending s. 258.42, F.S.;  
3 authorizing the placement of roofs on certain  
4 residential single-family docks; amending s. 403.061,  
5 F.S.; authorizing the Department of Environmental  
6 Protection to adopt rules that include special  
7 criteria for approving certain docking facilities in  
8 shellfish harvesting waters; deleting an obsolete  
9 provision; authorizing the department to maintain a  
10 list of projects or activities for applicants to  
11 consider when developing proposals in order to meet  
12 mitigation or public interest requirements; directing  
13 the department to expand online self-certification for  
14 certain exemptions and general permits and to report  
15 on such activities to the Legislature; prohibiting  
16 local governments from specifying the method or form  
17 for documenting that a project meets specified  
18 requirements; amending s. 403.813, F.S.; clarifying  
19 provisions relating to permits issued at district  
20 centers to authorize the use of different construction  
21 materials or minor deviations when replacing or  
22 repairing docks and piers; providing an effective  
23 date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Paragraph (e) of subsection (3) of section  
28 258.42, Florida Statutes, is amended to read:

29 258.42 Maintenance of preserves.—The Board of Trustees of

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30 the Internal Improvement Trust Fund shall maintain such aquatic  
31 preserves subject to the following provisions:

32 (3)

33 (e) ~~There shall be no erection of~~ Structures may not be  
34 erected within the preserve, except:

35 1. Private residential docks may be approved for reasonable  
36 ingress or egress of riparian owners. Slips at private  
37 residential single-family docks which contain boat lifts or  
38 davits that do not float in the water when loaded may not, in  
39 whole or in part, be enclosed by walls, but may be roofed if the  
40 roof does not overhang more than 1 foot beyond the footprint of  
41 the lift and the boat stored at the lift. Such roofs are not  
42 included in the square-footage calculation of a terminal  
43 platform.

44 2. Private residential multislip docks may be approved if  
45 located within a reasonable distance of a publicly maintained  
46 navigation channel, or a natural channel of adequate depth and  
47 width to allow operation of the watercraft for which the docking  
48 facility is designed without the craft having an adverse impact  
49 on marine resources. The distance shall be determined in  
50 accordance with criteria established by the trustees by rule,  
51 based on ~~a consideration of~~ the depth of the water, nature and  
52 condition of bottom, and presence of manatees.

53 3. Commercial docking facilities shown to be consistent  
54 with the use or management criteria of the preserve may be  
55 approved if the facilities are located within a reasonable  
56 distance of a publicly maintained navigation channel, or a  
57 natural channel of adequate depth and width to allow operation  
58 of the watercraft for which the docking facility is designed

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59 without the craft having an adverse impact on marine resources.  
60 The distance shall be determined in accordance with criteria  
61 established by the trustees by rule, based on ~~a consideration of~~  
62 the depth of the water, nature and condition of bottom, and  
63 presence of manatees.

64 4. Structures for shore protection, including restoration  
65 of seawalls at their previous location or upland of or within 18  
66 inches waterward of their previous location, approved  
67 navigational aids, or public utility crossings authorized under  
68 paragraph (a) may be approved.

69  
70 ~~A~~ ~~No~~ structure under this paragraph or chapter 253 may not ~~shall~~  
71 be prohibited solely because the local government fails to adopt  
72 a marina plan or other policies dealing with the siting of such  
73 structures in its local comprehensive plan.

74 Section 2. Subsection (29) of section 403.061, Florida  
75 Statutes, is amended, present subsection (40) is renumbered as  
76 section (42), and new subsections (40) and (41) are added to  
77 that section, to read:

78 403.061 Department; powers and duties.—The department shall  
79 have the power and the duty to control and prohibit pollution of  
80 air and water in accordance with the law and rules adopted and  
81 promulgated by it and, for this purpose, to:

82 (29) Adopt by rule special criteria to protect Class II and  
83 Class III shellfish harvesting waters. Such rules may include  
84 special criteria for approving docking facilities that have 10  
85 or fewer slips if the construction and operation of such  
86 facilities will not result in the closure of shellfish waters.  
87 ~~Rules previously adopted by the department in rule 17-~~

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88 ~~4.28(8)(a), Florida Administrative Code, are hereby ratified and~~  
89 ~~determined to be a valid exercise of delegated legislative~~  
90 ~~authority and shall remain in effect unless amended by the~~  
91 ~~Environmental Regulation Commission.~~

92 (40) Maintain a list of projects or activities, including  
93 mitigation banks, which applicants may consider when developing  
94 proposals in order to meet the mitigation or public interest  
95 requirements of this chapter, chapter 253, or chapter 373. The  
96 contents of such list are not a rule as defined in chapter 120,  
97 and listing a specific project or activity does not imply  
98 department approval for such project or activity. Each county  
99 government is encouraged to develop an inventory of projects or  
100 activities for inclusion on the list by obtaining input from  
101 local stakeholders in the public, private, and nonprofit  
102 sectors, including local governments, port authorities, marine  
103 contractors, other representatives of the marine construction  
104 industry, environmental or conservation organizations, and other  
105 interested parties. A county may establish dedicated trust funds  
106 for depositing public interest donations to be used for future  
107 public interest projects, including improving on-water law  
108 enforcement capabilities.

109 (41) Expand the use of online self-certification and other  
110 forms of online authorization for appropriate exemptions,  
111 general permits, and individual permits by the department and  
112 the water management districts if such expansion is economically  
113 feasible. The department shall report on the progress of these  
114 activities to the President of the Senate, the Speaker of the  
115 House of Representatives, and the Legislative Committee on  
116 Intergovernmental Relations by February 15, 2011.

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117 Notwithstanding any other provision of law, a local government  
118 may not specify the method or form for documenting that a  
119 project meets the requirements for authorization under chapter  
120 161, chapter 253, chapter 373, or this chapter. This includes  
121 Internet-based department programs that provide for self-  
122 certification.

123

124 The department shall implement such programs in conjunction with  
125 its other powers and duties and shall place special emphasis on  
126 reducing and eliminating contamination that presents a threat to  
127 humans, animals or plants, or to the environment.

128 Section 3. Paragraph (d) of subsection (1) of section  
129 403.813, Florida Statutes, is amended to read:

130 403.813 Permits issued at district centers; exceptions.—

131 (1) A permit is not required under this chapter, chapter  
132 373, chapter 61-691, Laws of Florida, or chapter 25214 or  
133 chapter 25270, 1949, Laws of Florida, for activities associated  
134 with the following types of projects; however, except as  
135 otherwise provided in this subsection, nothing in this  
136 subsection relieves an applicant from any requirement to obtain  
137 permission to use or occupy lands owned by the Board of Trustees  
138 of the Internal Improvement Trust Fund or any water management  
139 district in its governmental or proprietary capacity or from  
140 complying with applicable local pollution control programs  
141 authorized under this chapter or other requirements of county  
142 and municipal governments:

143 (d) The replacement or repair of existing docks and piers,  
144 except that ~~no~~ fill material may not ~~is to~~ be used and ~~provided~~  
145 ~~that~~ the replacement or repaired dock or pier must be ~~is~~ in the

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146 same location and of the same configuration and dimensions as  
147 the dock or pier being replaced or repaired. This does not  
148 preclude the use of different construction materials or minor  
149 deviations to allow upgrades to current structural and design  
150 standards.

151 Section 4. This act shall take effect July 1, 2010.