

ARTICLE VI. PUMPING AND DREDGING CONTROL*

***Editor's note:** The provisions of this article are derived from the legislation shown in the history notes in this article. As these provisions apparently confer special powers upon the board of county commissioners to act within municipalities, they apparently must be an act of the legislature to effectuate their purpose. Therefore, they have not been edited in light of chapter 1 of the Code; however the provisions have been printed in a style consistent with that of the Code, spelling errors have been corrected, and catchlines have been supplied. Sections 13 and 14, providing for a repealer and an effective date, have not been codified.

Sec. 15-216. Purpose, scope, designation of provisions.

In order to provide for adequate regulation of the alteration by dredging, draglining, filling, pumping of earth or otherwise altering the shoreline, land contours, and/or water areas of our lakes or canals connecting said lakes within Orange County, Florida, and in the interest of public rights, public welfare, protection of the public riparian property rights, and the preservation of the natural beauty and attractiveness of said lakes and canals, there is hereby created the pumping and dredging control act.

(Code 1965, § 36-33.1; Laws of Fla. ch. 67-1829, § 1)

Sec. 15-217. Definitions.

The following terms and phrases, when used in this act [article], shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board means the Board of County Commissioners of Orange County, Florida.

Water or *waters* shall include rivers, lakes, streams, waterways, bays, springs, impoundments, inlets, canals, and all other waters or bodies of water, whether natural or artificial, located within Orange County, outside the Windermere Water and Navigation Control District, the Lake Conway Water and Navigation Control District, and the Reedy Creek Improvement District, or their successors and municipalities.

Person, firm, partnership or corporation, when used in this act [article], shall not include the State of Florida and Orange County, Florida.

Person shall mean any individual, firm, partnership or corporation.

(Code 1965, § 36-33.2; Laws of Fla. ch. 67-1829, § 2; Laws of Fla. ch. 82-341, § 1)

Sec. 15-218. Dredging, pumping of sand, construction, etc.; permits, regulations.

It shall be unlawful for any person, firm, partnership or corporation to do any dredging, pumping of sand, extension of lands, construction or extension of islands, creating canals, basins, inlets or bays, filling or creating obstructions in, on, or under any of the waters of the county, except as provided herein; provided, however, that this act [article] shall not apply to the pumping of water.

(a) Any person, firm, partnership or corporation desiring to perform or cause to be performed any of the activities listed in this section, shall apply to the county for a permit in order to lawfully perform the desired activity.

(b) Said application shall be accompanied by a plan or drawing showing specifically what is proposed to be done and the location of property owners who may be affected thereby. Said plan or drawing shall be to scale and shall show the depths of the waters and the elevation of the development above the waterline and shall have been drawn by an accredited civil engineer; said application shall include the names and mailing addresses of all the owners of property within five hundred (500) feet of the nearest point of said development; said application shall further include proof of ownership of the property which is proposed to be developed; the board may require such other information as may be necessary in the

processing and determination of the application.

(c) The application shall be filed with the agency or agencies designated by the board, and any party or parties filing an application shall pay a fee to cover all costs for newspaper publication, service by mail, and the payment of such other costs as may be necessary for the filing, processing and determination of the application. The amount of the fee shall be fixed by the board from time to time.

(d) The board shall set a public hearing and publish notice of such public hearing one (1) time in a newspaper of general circulation in the area that is qualified to publish legal notices, at least one (1) week prior to said public hearing. Said notice shall state the development proposed to be made, the legal description of the area in which the development is to be made, and a general description of the area involved. An affidavit of proof of said publication with a copy attached shall be furnished to the board before its consideration of said application. The board shall further cause notices to be sent by mail or personal service to each property owner within five hundred (500) feet of the proposed development, which shall in all events include the owners of the upland affected by any proposed fill between said upland and the nearest channel, and such other property owners as the board deems might be adversely affected by the proposed development, and such notices shall be substantially the same as are required to be published in a newspaper as hereinbefore provided; all municipalities or other public agencies who may be affected by said proposed development shall also be notified by mail as hereinbefore provided and shall have the right to be heard. The board shall have the right to issue a writ of subpoena to any person to compel attendance at any hearing for the purposes of testifying before the board, and the board shall pay the witnesses' fees required by statute for witnesses attending court in the State of Florida.

(e) The board, in order to prevent undesirable situations which might result from the performance of any of the activities listed in this section, shall obtain such engineering or other data and hear such testimony under oath as may be necessary to determine:

- (1) The effect of the proposed plan or development on the use of said waters in said county for transportation and recreational or other public purposes and public conveniences.
- (2) The effect of the proposed plan or development on the free use of waters and waterways within the county.
- (3) The effect of the proposed plan or development upon erosion control in the said county.
- (4) The effect of the proposed plan or development upon the flow of waters in said county.
- (5) The effect of the proposed plan or development upon formation of stagnant pockets likely to collect debris.
- (6) The effect of the proposed plan or development upon the natural beauty and recreational advantage within said county.
- (7) The effect of the proposed plan or development upon the conservation of wildlife, marine life, and other natural resources.
- (8) The effect of the proposed plan or development upon the upland surrounding or necessarily affected by said plan or development.

The board, after public hearing, from said data and testimony, shall make findings of fact and determine whether or not the proposed plan or development will materially affect any of the rights and interests of the public heretofore set out in this section. Said findings of fact and said determination shall be reduced to writing and shall be filed with the clerk of the board and, when so filed shall be open to the public. The board shall, if it desires, or at the request of any applicant or any objector, cause the testimony taken at public hearings to be reported and transcribed, which testimony, together with all engineering and other data considered by the board, shall be filed with the clerk of the board, and, when so filed, the same shall be open to the public; provided, however, that the board may require the person or persons requesting the reporting of said testimony to post with the board sufficient moneys to pay the costs of reporting and transcribing the same.

If the board shall find that the proposed plan or development will not materially affect adversely any of the rights and interests of the public heretofore set out in this section, said board shall then grant and issue a permit for said proposed plan or development, or any modification thereof, according to the provisions of this act [article] as hereinbefore provided.

If the board shall find that the proposed plan or development will materially affect

adversely any of the rights or interests of the public heretofore set out in this section, the board shall deny the application and refuse to issue a permit for the proposed plan or development.

Said permit, if granted, shall not be effective until thirty (30) days after the filing of the determination with the clerk, and if a petition for rehearing is filed, until said petition is heard and determined.

Any person, firm, or corporation, including the State of Florida, Orange County, Florida, and any municipal corporation in said county, in the event they are aggrieved by the findings of fact and determination of the board, may, within thirty (30) days of such findings and determination, petition for rehearing, stating in their petition the grounds upon which the board has erred in its findings and wherein they are aggrieved by said findings. The board may, in its discretion, grant or deny such rehearing.

Any person, firm or corporation, including the State of Florida, Orange County, Florida, and any municipal corporation in said county who is aggrieved by the board's ruling on the petition for rehearing shall have the right to have the entire cause reviewed by the Circuit Court of the Ninth Judicial Circuit of Florida in and for Orange County as provided by law for other appeals in the circuit court.

(f) Provided however, that the board may waive any or all of the requirements of subsections (b), (c), (d) and (e) hereof, and grant a permit upon payment of any fee authorized herein if all of the following conditions exist:

(1) It appears from the application required in subsection (a) of this section, and upon an explanation of the purpose of the project to the board by the applicant or someone on his behalf that the rights and interests of the public will not be adversely affected by said project.

(2) The total cost of the project, less the cost of drawing plans and the cost of transporting the equipment to the site of the project, will not exceed one hundred dollars (\$100.00).

(3) The board unanimously approves the said waiver. Provided further that the provisions of subsection (f)(2) of this section shall not apply to reapplications as provided for in section 6 [section 15-221] herein.

(g) Provided however, that the provisions of this act [article] shall not be construed as affecting in any manner the rights and privileges of the Trustees of Internal Improvement Fund under the provisions of Chapter 253, Florida Statutes, and any amendments thereto, and this act [article] shall not be interpreted to exclude any person, firm, or corporation from complying with the provisions of said chapter when the same is applicable.

(Code 1965, § 36-33.3; Laws of Fla. ch. 67-1829, § 3; Laws of Fla. ch. 82-341, § 2)

Sec. 15-219. Conduct of hearings; employment, authority, compensation of examiner, reporter; findings, reports; hearings on exceptions to report.

The board may, if it deems it necessary, employ an examiner or examiners who shall conduct such of the public hearings provided for by section 3 [section 15-218] of this act [article] as may be referred to said examiner or examiners by the board.

(a) The board may enter an order referring the hearing to an examiner, which order shall be filed by the clerk of the board and shall become a part of the records of said board.

(b) The examiner shall regulate all of the proceedings in every hearing before him, upon every reference, and he shall have full authority to examine the proponent, the objector and all witnesses, upon oath, touching all material matters relative to the application and also to direct the mode in which the matters requiring evidence shall be proved before him, and generally to do other acts, and direct all other inquiries and proceedings in the matter before him which he may deem necessary and proper to the justice and merits thereof and the rights of the parties. The examiner shall also administer the oath to all witnesses testifying before him.

(c) The evidence in all examinations before the examiner shall be taken down in writing by the examiner or by some other person, by his authority, in his presence and shall be transcribed and filed with his report.

(d) The examiner shall forthwith, after the public hearing, make his report to the board. Said report shall

be in writing and shall make findings of fact and recommendations as to the determination of the application, and attached to said report and made a part thereof, shall be all testimony taken at said public hearing together with all engineering and other data considered by the examiner in making his recommendations.

(e) Said report shall be filed with the clerk of the board and said clerk shall notify by mail or personal service all of the persons, firms, or corporations entitled under section 3 [section 15-218] of this act [article] to notice of the hearing that said report has been filed. Any person, firm, or corporation, including the State of Florida and any municipality within said county, in the event they are aggrieved by the findings of fact and recommendations of the examiner, may, within thirty (30) days of the mailing of the notice of the filing of said report, file exceptions to said report, which exceptions shall specify wherein they are aggrieved and wherein the report and recommendations are erroneous. If no exceptions are filed within the said time as above provided, the report shall be confirmed by order of the board. If exceptions are filed, they shall stand for hearing before the board within thirty (30) days of the filing of the exceptions and notice of said hearing, in writing by the clerk, shall be given to those persons entitled under the terms of this act [article] to notice of the filing of the examiner's report.

(f) At the hearing of exceptions to the examiner's report, the board shall consider the exceptions to the examiner's report and the record of testimony taken before the examiner, without presumptions as to the examiner's findings of fact, the engineering and other data, and shall either confirm the examiner's report or enter such other determination in the matter as is proper; said order shall be filed with the clerk of the board and shall be open to the public. After the entry of said order, the procedure for rehearing before the board and review by the circuit court shall be the same as heretofore provided where the board originally hears the testimony.

(g) The compensation of the examiner and of all other persons necessary to conduct said hearings, including a reporter, shall be paid by the board.

(Code 1965, § 36-33.4; Laws of Fla. ch. 67-1829, § 4)

Sec. 15-220. Right of upland owner to construct dock or wharf, preserved.

The aforementioned provisions of section 3 [section 15-218] shall not deny the right of any upland owner to construct a dock or wharf in front of his upland as provided by the laws of the state, but said board may make reasonable rules and regulations for the construction thereof in order to carry out the provisions and intent of this act [article].

(Code 1965, § 36-33.5; Laws of Fla. ch. 67-1829, § 5)

Sec. 15-221. Time limits on permits; revocation for noncompliance with, violation of terms.

No permit shall be issued for more than a one-year period. Work under said permit must be commenced within six (6) months from the date of issuance and shall be completed within one (1) year from the date of issuance of said permit; and in the event said work is not commenced or completed within said period, reapplication shall be made to the board. For any noncompliance with or for violations of its terms, the permit may be revoked after notice of intent so to do has been furnished by the board and opportunity afforded within reasonable time for hearings thereon.

(Code 1965, § 36-33.6; Laws of Fla. ch. 67-1829, § 6)

Sec. 15-222. Authority to enforce findings and determinations.

The board shall have the power to enforce its findings and determinations by injunction or other legal process.

(Code 1965, § 36-33.7; Laws of Fla. ch. 67-1829, § 7)

Sec. 15-223. Construction of provisions.

The provisions of this act [article] shall be liberally construed in order to effectively carry out its purposes.

(Code 1965, § 36-33.8; Laws of Fla. ch. 67-1829, § 8)

Sec. 15-224. Advisory committee; creation, function, membership.

For the purpose of assisting and advising the board of county commissioners there is hereby created an advisory committee. There shall be three (3) members of said advisory committee to be appointed by the board from among the resident freeholders within said county for a term of two (2) years, and the said members shall serve without any compensation or remuneration whatsoever. Vacancies occurring on said committee shall be filled by the board.

(Code 1965, § 36-33.9; Laws of Fla. ch. 67-1829, § 9)

Cross references: Boards, commissions, authorities, etc., § 2-136 et seq.

Sec. 15-225. Penalties; remedies.

(a) Any person, firm, partnership, or corporation convicted of violating any of the provisions of this act [article], or who shall fail to abide by and obey all orders and resolutions promulgated as hereby provided, shall be deemed guilty of a misdemeanor of the second degree, punishable as provided by general law.

(b) The provisions of this act [article] and all rules adopted or enforced under this act [article], are deemed to be provisions of local law as contemplated under Section 403.182(8), Florida Statutes, as that provision may be amended from time to time. Therefore, all remedies of the department of environmental regulation under Chapter 403, Florida Statutes, as that chapter may be amended from time to time, are available and may be used by the board in enforcing any provisions of this act [article] and rules and orders promulgated thereunder.

(Code 1965, § 36-33.10; Laws of Fla. ch. 67-1829, § 10; Laws of Fla. ch. 82-341, § 3)

Editor's note: The catchline for the above section was present in the 1982 amendments to it.

State law references: Penalty for misdemeanor violations, F.S. §§ 775.081, 775.082.

Sec. 15-226. Purposes declared public.

It is determined by the legislature of the State of Florida that the purposes of this act [article] are hereby declared and found to be for a good and valid county purpose, and the board is authorized and empowered to budget and expend in each fiscal year such funds as may be deemed necessary to meet the requirements to carry out the purposes of this act [article]. Such funds shall be appropriated from the general revenue fund.

(Code 1965, § 36-33.11; Laws of Fla. ch. 67-1829, § 11)

Sec. 15-227. Saving clause.

If any section, sentence, clause, phrase or word of this act [article] is for any reason held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of this act [article], and it shall be construed to have been the legislative intent to pass this act without such unconstitutional, invalid or inoperative part therein, and the remainder of this act [article], after the exclusion of such part or parts shall be deemed and held to be valid as if such part or parts had not been included herein, or if this act, or any provision thereof, shall be held inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other person, property, or circumstance.

(Laws of Fla. ch. 67-1829, § 12)

Editor's note: The catchline for the above section is the same as that present in the legislation from which it is derived.

Sec. 15-228. Determination of natural landward extent of waters for regulatory purposes.

It is recognized that the levels of waters in the county naturally rise and fall, depending upon hydrological, meteorological and geological circumstances and features. The natural rise and fall of the waters is essential to good water quality, but often makes it difficult to determine the natural landward extent of the waters. The board may enact new rules, or amend or enforce existing rules, establishing a method of making such determinations, based upon ecological factors which represent these fluctuations in water levels. Ecological factors include, but are not limited to,

hydrologic and hydrographic systems and botanical and geological indicators. The landward extent of waters shall have no significance with respect to sovereign ownership. The grant of authority continued herein shall be supplemental and additional to authority conferred upon the board by other laws, and shall not be construed as in derogation of any authority now existing.

(Code 1965, § 36-33.12; Laws of Fla. ch. 67-1829, § 15; Laws of Fla. ch. 82-341, § 4)

Editor's note: The catchline for the above section is the same as that present in the legislation from which it is derived.

Secs. 15-229--15-250. Reserved.