

1 A bill to be entitled
2 An act relating to the Department of
3 Environmental Protection; amending s. 20.255,
4 F.S.; deleting the Office of the Youth Corps;
5 renaming the Division of Water Facilities as
6 the Division of Resource Management; deleting
7 the Division of Environmental Resource
8 Permitting; reinstating payment in lieu of
9 taxes; amending s. 373.4145, F.S.; conforming
10 references; extending the expiration date for
11 the interim permitting authority of the
12 Department of Environmental Protection in the
13 Northwest Florida Water Management District
14 pending adoption of rules; directing the
15 Northwest Florida Water Management District and
16 the Department of Environmental Protection to
17 develop a plan to implement a permitting
18 program under part IV of chapter 373, F.S.,
19 which is substantially equivalent to that in
20 the rest of the state by January 1, 2002;
21 requiring submittal of the plan to the Governor
22 and the Legislature; authorizing the department
23 and the Northwest Florida Water Management
24 District to adopt rules implementing part IV of
25 chapter 373, F.S., by January 1, 2002;
26 providing that certain jurisdictional
27 declaratory statements will not expire until
28 January 1, 2002; providing authorization for
29 the Secretary of the Department of
30 Environmental Protection to reorganize the
31 department under certain conditions; amending

1 s. 86, ch. 93-213, Laws of Florida; forgiving
2 the repayment of a loan; amending s. 373.136,
3 F.S.; allowing the prevailing party to recover
4 attorney's fees and costs; amending ss.
5 252.937, 378.901, 403.021, F.S.; conforming a
6 statutory cross-reference; providing an
7 effective date.

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9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Subsections (2) and (6), of section 20.255,
12 Florida Statutes, 1998 Supplement, are amended to read:

13 20.255 Department of Environmental Protection.--There
14 is created a Department of Environmental Protection.

15 (2) There shall be two deputy secretaries and an
16 executive coordinator for ecosystem management who are to be
17 appointed by and shall serve at the pleasure of the secretary.
18 The secretary may assign either deputy secretary the
19 responsibility to supervise, coordinate, and formulate policy
20 for any division, office, or district. The following special
21 offices are established and headed by managers, each of whom
22 is to be appointed by and serve at the pleasure of the
23 secretary: Office of General Counsel, Office of Inspector
24 General, Office of Communication, the latter including public
25 information, legislative liaison, cabinet liaison and special
26 projects, Office of Water Policy, Office of Intergovernmental
27 Programs, Office of Ecosystem Planning and Coordination,
28 Office of Environmental Education, and Office of Greenways and
29 Trails, ~~and an Office of the Youth Corps~~. The executive
30 coordinator for ecosystem management shall coordinate policy
31 within the department to assure the implementation of the

1 ecosystem management provisions of chapter 93-213, Laws of
2 Florida. The executive coordinator for ecosystem management
3 shall supervise only the Office of Water Policy, the Office of
4 Intergovernmental Programs, the Office of Ecosystem Planning
5 and Coordination, and the Office of Environmental Education.
6 The executive coordinator for ecosystem management may also be
7 delegated authority by the secretary to act on behalf of the
8 secretary; this authority may include the responsibility to
9 oversee the inland navigation districts. The other special
10 offices not supervised by the executive coordinator for
11 ecosystem management shall report to the secretary; however,
12 the secretary may assign them, for daily coordination
13 purposes, to report through a senior manager other than the
14 secretary. There shall be six administrative districts
15 involved in regulatory matters of waste management, water
16 facilities, wetlands, and air resources, which shall be headed
17 by managers, each of whom is to be appointed by and serve at
18 the pleasure of the secretary. Divisions of the department may
19 have one assistant or two deputy division directors, as
20 required to facilitate effective operation. The managers of
21 all divisions and offices specifically named in this section
22 and the directors of the six administrative districts are
23 exempt from part II of chapter 110 and are included in the
24 Senior Management Service in accordance with s. 110.205(2)(i).
25 No other deputy secretaries or senior management positions at
26 or above the division level, except those established in
27 chapter 110, may be created without specific legislative
28 authority.

29 (6) The following divisions of the Department of
30 Environmental Protection are established:

31 (a) Division of Administrative and Technical Services.

- 1 (b) Division of Air Resource Management.
2 (c) Division of Water Resource Management ~~Facilities~~.
3 (d) Division of Law Enforcement.
4 (e) Division of Marine Resources.
5 (f) Division of Waste Management.
6 (g) Division of Recreation and Parks.
7 (h) Division of State Lands, the director of which is
8 to be appointed by the secretary of the department, subject to
9 confirmation by the Governor and Cabinet sitting as the Board
10 of Trustees of the Internal Improvement Trust Fund.

11 ~~(i) Division of Environmental Resource Permitting.~~

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13 In order to ensure statewide and intradepartmental
14 consistency, the department's divisions shall direct the
15 district offices and bureaus on matters of interpretation and
16 applicability of the department's rules and programs.

17 Section 2. If the Department of Environmental
18 Protection or a water management district has made a payment
19 in lieu of taxes to a governmental entity and subsequently
20 suspended such payment, the department or water management
21 district shall reinstitute appropriate payment and continue
22 the payments in consecutive years until the governmental
23 entity has received a total of ten payments for each tax loss.

24 Section 3. Section 373.4145, Florida Statutes, is
25 amended to read:

26 373.4145 Interim Part IV permitting program for the
27 Northwest Florida Water Management District.--

28 (1) Within the geographical jurisdiction of the
29 Northwest Florida Water Management District, the permitting
30 authority of the department under this part shall consist

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1 solely of the following, notwithstanding the rule adoption
2 deadline in s. 373.414(9):

3 (a) Chapter 62-25 ~~17-25~~, Florida Administrative Code,
4 shall remain in full force and effect, and shall be
5 implemented by the department. Notwithstanding the provisions
6 of this section, chapter 62-25 ~~17-25~~, Florida Administrative
7 Code, may be amended by the department as necessary to comply
8 with any requirements of state or federal laws or regulations,
9 or any condition imposed by a federal program, or as a
10 requirement for receipt of federal grant funds.

11 (b) Rules adopted pursuant to the authority of ss.
12 403.91-403.929, 1984 Supplement to the Florida Statutes 1983,
13 as amended, in effect prior to July 1, 1994, shall remain in
14 full force and effect, and shall be implemented by the
15 department. However, the department is authorized to
16 establish additional exemptions and general permits for
17 dredging and filling, if such exemptions or general permits do
18 not allow significant adverse impacts to occur individually or
19 cumulatively. However, for the purpose of chapter 62-312
20 ~~17-312~~, Florida Administrative Code, the landward extent of
21 surface waters of the state identified in rule 62-312.030(2)
22 ~~17-312.030(2)~~, Florida Administrative Code, shall be
23 determined in accordance with the methodology in rules
24 62-340.100 ~~17-340.100~~ through 62-340.600 ~~17-340.600~~, Florida
25 Administrative Code, as ratified in s. 373.4211, upon the
26 effective date of such ratified methodology. In implementing
27 s. 373.421(2), the department shall determine the extent of
28 those surface waters and wetlands within the regulatory
29 authority of the department as described in this paragraph. At
30 the request of the petitioner, the department shall also
31 determine the extent of surface waters and wetlands which can

1 be delineated by the methodology ratified in s. 373.4211, but
2 which are not subject to the regulatory authority of the
3 department as described in this paragraph.

4 (c) The department may implement chapter 40A-4,
5 Florida Administrative Code, in effect prior to July 1, 1994,
6 pursuant to an interagency agreement with the Northwest
7 Florida Water Management District adopted under s. 373.046(4).

8 (2) The authority of the Northwest Florida Water
9 Management District to implement this part or to implement any
10 authority pursuant to delegation by the department shall not
11 be affected by this section. The rule adoption deadline in s.
12 373.414(9) shall not apply to said district.

13 (3) The division of permitting responsibilities in s.
14 373.046(4) shall not apply within the geographical
15 jurisdiction of the Northwest Florida Water Management
16 District.

17 (4) If the United States Environmental Protection
18 Agency approves an assumption of the federal program to
19 regulate the discharge of dredged or fill material by the
20 department or the water management districts, or both,
21 pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500,
22 as amended, 33 U.S.C. ss. 1251 et seq.; the United States Army
23 Corps of Engineers issues one or more state programmatic
24 general permits under the referenced statutes; or the United
25 States Environmental Protection Agency or the United States
26 Corps of Engineers approves any other delegation of regulatory
27 authority under the referenced statutes, then the department
28 may implement any permitting authority granted in this part
29 within the Northwest Florida Water Management District which
30 is prescribed as a condition of granting such assumption,
31 general permit, or delegation.

1 (5) Within the geographical jurisdiction of the
2 Northwest Florida Water Management District, the methodology
3 for determining the landward extent of surface waters of the
4 state under chapter 403 in effect prior to the effective date
5 of the methodology ratified in s. 373.4211 shall apply to:

6 (a) Activities permitted under the rules adopted
7 pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida
8 Statutes 1983, as amended, or which were exempted from
9 regulation under such rules, prior to July 1, 1994, and which
10 were permitted under chapter 17-25, Florida Administrative
11 Code, or exempt from chapter 17-25, Florida Administrative
12 Code, prior to July 1, 1994, provided:

13 1. An activity authorized by such permits is conducted
14 in accordance with the plans, terms, and conditions of such
15 permits.

16 2. An activity exempted from the permitting
17 requirements of the rules adopted pursuant to ss.
18 403.91-403.929, 1984 Supplement to the Florida Statutes 1983,
19 as amended, or chapter 17-25, Florida Administrative Code, is:

20 a. Commenced prior to July 1, 1994, and completed by
21 July 1, 1999;

22 b. Conducted in accordance with a plan depicting the
23 activity which has been submitted to and approved for
24 construction by the department, the appropriate local
25 government, the United States Army Corps of Engineers, or the
26 Northwest Florida Water Management District; and

27 c. Conducted in accordance with the terms of the
28 exemption.

29 (b) An activity within the boundaries of a valid
30 jurisdictional declaratory statement issued pursuant to s.
31 403.914, 1984 Supplement to the Florida Statutes 1983, as

1 amended, or the rules adopted thereunder, in response to a
2 petition received prior to June 1, 1994.

3 (c) Any modification of a permitted or exempt activity
4 as described in paragraph (a) which does not constitute a
5 substantial modification or which lessens the environmental
6 impact of such permitted or exempt activity. For the purposes
7 of this section, a substantial modification is one which is
8 reasonably expected to lead to substantially different
9 environmental impacts.

10 (d) Applications for activities permitted under the
11 rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement
12 to the 1983 Florida Statutes, as amended, which were pending
13 on June 15, 1994, unless the application elects to have
14 applied the delineation methodology ratified in s. 373.4211.

15 (6) Subsections (1), (2), (3), and (4) shall be
16 repealed upon the effective date of rules adopted under
17 paragraph (7)(c) effective July 1, 1999.

18 (7)(a) The department and the Northwest Florida Water
19 Management District are directed to develop a plan to
20 implement all or a portion of the Management and Storage of
21 Surface Water program under part IV by January 1, 2002. The
22 plan shall include recommendations for: developing rules under
23 part IV that are substantially equivalent to those in effect
24 in the rest of the state; dividing permitting responsibilities
25 between the department and the Northwest Florida Water
26 Management District; funding and staffing; applying the
27 unified wetlands delineation methodology to isolated wetlands;
28 implementing federal wetlands permitting programs; addressing
29 the implications of s. 70.001; and suggesting any legislation
30 needed to implement the plan.

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1 (b) The plan shall be presented by January 1, 2000, to
2 the Governor, the President of the Senate, the Speaker of the
3 House of Representatives, and to the chairs of the relevant
4 substantive and appropriations committees of the Legislature.

5 (c) The department and Northwest Florida Water
6 Management District are authorized to adopt rules implementing
7 all or a portion of the Management and Storage of Surface
8 Water program under part IV which are substantially equivalent
9 to those in effect in the rest of the state. Such rules shall
10 be effective no later than January 1, 2002.

11 (d) Any jurisdictional declaratory statement issued
12 for a project within the geographic jurisdiction of the
13 Northwest Florida Water Management District that is valid on
14 July 1, 1999 and for which there has been issued a permit
15 pursuant to chapters 403 and 373 for a phase of that project
16 and which identified proposed future development, including
17 mitigation, that would require an additional permit pursuant
18 to chapters 403 and 373 shall not expire until January 1,
19 2002.

20 Section 4. Subsection (2) of section 252.937, Florida
21 Statutes, 1998 Supplement, is amended to read:

22 252.937 Department powers and duties.--

23 (2) To ensure that this program is self-supporting,
24 the department shall provide administrative support, including
25 staff, facilities, materials, and services to implement this
26 part for specified stationary sources subject to s. 252.939
27 and shall provide necessary funding to local emergency
28 planning committees and county emergency management agencies
29 for work performed to implement this part. Each state agency
30 with regulatory, inspection, or technical assistance programs
31 for specified stationary sources subject to this part shall

1 enter into a memorandum of understanding with the department
2 which specifically outlines how each agency's staff,
3 facilities, materials, and services will be utilized to
4 support implementation. At a minimum, these agencies and
5 programs include: the Department of Environmental
6 Protection's Division of Air Resources Management and Division
7 of Water Resource Management Facilities, and the Department of
8 Labor and Employment Security's Division of Safety. It is the
9 Legislature's intent to implement this part as efficiently and
10 economically as possible, using existing expertise and
11 resources, if available and appropriate.

12 Section 5. Paragraph (a) of subsection (1) of section
13 378.901, Florida Statutes, is amended to read:

14 378.901 Life-of-the-mine permit.--

15 (1) As used in this section, the term:

16 (a) "Bureau" means the Bureau of Mine Reclamation of
17 the Division of Water Resource Management ~~Environmental~~
18 ~~Resource Permitting~~ of the Department of Environmental
19 Protection.

20 Section 6. Paragraph (a) of subsection (9) of section
21 403.021, Florida Statutes, is amended to read:

22 403.021 Legislative declaration; public policy.--

23 (9)

24 (a) The Legislature finds and declares that it is
25 essential to preserve and maintain authorized water depth in
26 the existing navigation channels, port harbors, turning
27 basins, and harbor berths of this state in order to provide
28 for the continued safe navigation of deepwater shipping
29 commerce. The department shall recognize that maintenance of
30 authorized water depths consistent with port master plans
31 developed pursuant to s. 163.3178(2)(k) is an ongoing,

1 continuous, beneficial, and necessary activity that is in the
2 public interest; and it shall develop a regulatory process
3 that shall enable the ports of this state to conduct such
4 activities in an environmentally sound, safe, expeditious, and
5 cost-efficient manner. It is the further intent of the
6 Legislature that the permitting and enforcement of dredging,
7 dredged-material management, and other related activities for
8 Florida's deepwater ports pursuant to this chapter and
9 chapters 161, 253, and 373 shall be consolidated within the
10 department's Division of Water Resource Management
11 ~~Environmental Resource Permitting~~ and, with the concurrence of
12 the affected deepwater port or ports, may be administered by a
13 district office of the department or delegated to an approved
14 local environmental program.

15 Section 7. Section 86 of chapter 93-213, Laws of
16 Florida, is amended to read:

17 Section 86. The Department of Environmental Regulation
18 is authorized 54 career service positions for administering
19 the state NPDES program. Twenty-five career service positions
20 are authorized for startup of the program beginning July 1,
21 1993, and the remaining 29 career service positions beginning
22 January 1, 1994. The state NPDES program staffing shall start
23 July 1, 1993, with completion targeted for 6 months following
24 United States Environmental Protection Agency authorization to
25 administer the National Pollutant Discharge Elimination System
26 program. Implementation of positions is subject to review and
27 final approval by the secretary of the Department of
28 Environmental Regulation. The sum of \$3.2 million is hereby
29 appropriated from the Pollution Recovery Trust Fund to cover
30 program startup costs. ~~Such funds are to be repaid from a fund~~
31 ~~the Legislature deems appropriate, no later than July 1, 2000.~~

1 Section 8. Section 373.136, Florida Statutes, is
2 amended to read:

3 373.136 Enforcement of regulations and orders.--

4 (1) The governing board may enforce its regulations
5 and orders adopted pursuant to this chapter, by suit for
6 injunction or other appropriate action in the courts of the
7 state.

8 (2) Any person who prevails in an action or legal
9 proceeding brought against them by the department, the
10 governing board of any water management district, any local
11 board, or a local government to which authority has been
12 delegated under s. 373.103(8), pursuant to this chapter shall
13 be entitled to recover reasonable attorney's fees and costs.

14 (3)~~(2)~~ Any action by a citizen of the state to seek
15 judicial enforcement of any of the provisions of this chapter
16 shall be governed by the Florida Environmental Protection Act,
17 s. 403.412.

18 Section 9. Notwithstanding section 20.255(2), Florida
19 Statutes, the Secretary of the Department of Environmental
20 Protection is authorized to restructure and reorganize the
21 department within the current statutory prescribed divisions
22 and in compliance with section 216.292(4), Florida Statutes,
23 1998 Supplement, to increase efficiency in carrying out the
24 agency's statutory mission and objectives. Actions taken under
25 the authority granted by this section must be taken in
26 consultation with the Executive Office of the Governor. The
27 secretary shall submit a report describing actions taken and
28 additional plans for implementing the provisions of this
29 section to the Governor, the President of the Senate, and the
30 Speaker of the House of Representatives by 30 days after this
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1 bill becomes a law. The department shall submit status reports
2 on a monthly basis through December 1999.

3 Section 10. This act shall take effect July 1, 1999.
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