

Bill No. CS for SB 1730

Barcode 941302

CHAMBER ACTION

Senate

House

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Senator Dockery moved the following amendment:

**Senate Amendment (with title amendment)**

On page 2, before line 1,

insert:

Section 1. Subsection (13) of section 373.414, Florida Statutes, is amended, and subsection (19) is added to that section, to read:

373.414 Additional criteria for activities in surface waters and wetlands.--

(13) Any declaratory statement issued by the department under s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, or by a water management district under s. 373.421, in response to a petition filed on or before June 1, 1994, shall continue to be valid for the duration of such declaratory statement. Any such petition pending on June 1, 1994, shall be exempt from the methodology ratified in s. 373.4211, but the rules of the department or the relevant water management district, as applicable, in effect prior to

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1 the effective date of s. 373.4211, shall apply. Until May 1,  
2 1998, activities within the boundaries of an area subject to a  
3 petition pending on June 1, 1994, and prior to final agency  
4 action on such petition, shall be reviewed under the rules  
5 adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the  
6 Florida Statutes 1983, as amended, and this part, in existence  
7 prior to the effective date of the rules adopted under  
8 subsection (9), unless the applicant elects to have such  
9 activities reviewed under the rules adopted under this part,  
10 as amended in accordance with subsection (9). In the event  
11 that a jurisdictional declaratory statement pursuant to the  
12 vegetative index in effect prior to the effective date of  
13 chapter 84-79, Laws of Florida, has been obtained and is valid  
14 prior to the effective date of the rules adopted under  
15 subsection (9) or July 1, 1994, whichever is later, and the  
16 affected lands are part of a project for which a master  
17 development order has been issued pursuant to s. 380.06(21),  
18 the declaratory statement shall remain valid for the duration  
19 of the buildout period of the project. Any jurisdictional  
20 determination validated by the department pursuant to rule  
21 17-301.400(8), Florida Administrative Code, as it existed in  
22 rule 17-4.022, Florida Administrative Code, on April 1, 1985,  
23 shall remain in effect for a period of 5 years following the  
24 effective date of this act if proof of such validation is  
25 submitted to the department prior to January 1, 1995. In the  
26 event that a jurisdictional determination has been revalidated  
27 by the department pursuant to this subsection and the affected  
28 lands are part of a project for which a development order has  
29 been issued pursuant to s. 380.06(15), a final development  
30 order to which s. 163.3167(8) applies has been issued, or a  
31 vested rights determination has been issued pursuant to s.

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1 380.06(20), the jurisdictional determination shall remain  
 2 valid until the completion of the project, provided proof of  
 3 such validation and documentation establishing that the  
 4 project meets the requirements of this sentence are submitted  
 5 to the department prior to January 1, 1995. Activities  
 6 proposed within the boundaries of a valid declaratory  
 7 statement issued pursuant to a petition submitted to either  
 8 the department or the relevant water management district on or  
 9 before ~~prior to~~ June 1, 1994, or a revalidated jurisdictional  
 10 determination, prior to its expiration shall continue  
 11 thereafter to be exempt from the methodology ratified in s.  
 12 373.4211 and to be reviewed under the rules adopted pursuant  
 13 to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes  
 14 1983, as amended, and this part, in existence prior to the  
 15 effective date of the rules adopted under subsection (9),  
 16 unless the applicant elects to have such activities reviewed  
 17 under the rules adopted under this part, as amended in  
 18 accordance with subsection (9).

19 (19)(a) Financial responsibility for mitigation for  
 20 wetlands and other surface waters required by a permit issued  
 21 pursuant to part IV for activities associated with the  
 22 extraction of phosphate are subject to approval by the  
 23 department as part of permit-application review. Financial  
 24 responsibility for permitted activities that will occur over a  
 25 period of 3 years or less of mining operations must be  
 26 provided to the department prior to the commencement of mining  
 27 operations and shall be in an amount equal to 110 percent of  
 28 the estimated mitigation costs for wetlands and other surface  
 29 waters affected under the permit. For permitted activities  
 30 that will occur over a period of more than 3 years of mining  
 31 operations, the initial financial-responsibility demonstration

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1 shall be in an amount equal to 110 percent of the estimated  
 2 mitigation costs for wetlands and other surface waters  
 3 affected in the first 3 years of operation under the permit;  
 4 each year thereafter, the financial-responsibility  
 5 demonstration shall be updated, including the provision of an  
 6 amount equal to 110 percent of the estimated mitigation costs  
 7 for the next year of operations under the permit for which  
 8 financial responsibility has not already been demonstrated and  
 9 to release portions of the financial-responsibility mechanisms  
 10 in accordance with applicable rules.

11 (b) The mechanisms for providing financial  
 12 responsibility pursuant to the permit shall, at the discretion  
 13 of the applicant, include the following:

14 1. Cash or cash equivalent deposited in an escrow  
 15 account.

16 2. Irrevocable letter of credit.

17 3. Performance bond.

18 4. Trust fund agreement.

19 5. Guarantee bond.

20 6. Insurance certificate.

21 7. Demonstration that the applicant meets the  
 22 financial test and corporate guarantee requirements set forth  
 23 in 40 C.F.R. s. 264.143(f).

24 8. A demonstration that the applicant meets the  
 25 self-bonding provision set forth in 30 C.F.R. s. 800.23.

26  
 27 The form and content of all financial responsibility  
 28 mechanisms shall be approved by the department. When using an  
 29 irrevocable letter of credit, performance bond, or guarantee  
 30 bond, all payments made thereunder shall be deposited into a  
 31 stand-by trust fund established contemporaneously with the

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1 posting of the financial assurance instrument. All Trust Fund  
 2 Agreements and Standby Trust Fund Agreements shall provide  
 3 that distributions therefrom will be made only at the request  
 4 of the department and that the trustees of such funds shall be  
 5 either a national or state-chartered banking institution or a  
 6 state-regulated trust company.

7 (c) This subsection does not apply to any mitigation  
 8 for wetlands and other surface waters which is required  
 9 pursuant to a permit or permits initially issued by the  
 10 department or district prior to January 1, 2005.

11 (d) Nothing in this subsection supersedes or modifies  
 12 the financial responsibility requirements of s. 378.209.

13 Section 2. Section 10 of chapter 2003-423, Laws of  
 14 Florida, is amended to read:

15 Section 10. (1) The Department of Environmental  
 16 Protection, in consultation with the Southwest Florida Water  
 17 Management District, shall study cumulative impacts of changes  
 18 in landform and hydrology in the Peace River Basin. The study  
 19 shall evaluate cumulative impacts of activities conducted in  
 20 the Peace River Basin prior to state regulation, or pursuant  
 21 to an exemption, a permit, or a reclamation plan, on water  
 22 resources of the basin, including surface waters,  
 23 groundwaters, fisheries, aquatic and estuarine habitat, and  
 24 water supplies. The study must also include an evaluation of  
 25 the effectiveness of existing regulatory programs in avoiding,  
 26 minimizing, mitigating, or compensating for cumulative impacts  
 27 on water resources of the basin. In addition, the study shall  
 28 evaluate the environmental benefits, legal issues, and  
 29 economic impacts of limiting activities, including mining  
 30 activities, on waters and environmentally sensitive areas  
 31 around waterbodies by establishing a buffer within the

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1 100-year floodplain of major perennial streams within the  
 2 Peace River Basin, including the Peace River, Horse Creek, and  
 3 the Myakka River. The study shall also recommend ways in which  
 4 any buffer areas recommended as prohibited areas can be  
 5 considered as mitigation under applicable permitting programs.

6 (2) Upon completion of the study, the department shall  
 7 prepare and adopt a resource management plan for the Peace  
 8 River Basin to minimize any identified existing and future  
 9 adverse cumulative impacts to water resources of the basin,  
 10 including surface waters, groundwaters, wetlands, fisheries,  
 11 aquatic and estuarine habitat, and water supplies. The plan  
 12 must identify regulatory and nonregulatory actions necessary  
 13 to minimize existing and future adverse cumulative impacts  
 14 identified in the study and, where appropriate, must also  
 15 recommend statutory changes to improve regulatory programs to  
 16 minimize identified cumulative impacts to water resources of  
 17 the basin.

18 (3) Rulemaking authority is granted to the Department  
 19 of Environmental Protection and the Southwest Florida Water  
 20 Management District to implement the regulatory  
 21 recommendations identified in the study or the resource  
 22 management plan.

23 (4) The resource management plan shall be submitted to  
 24 the Governor, the President of the Senate, and the Speaker of  
 25 the House of Representatives no later than January 31, 2007  
 26 ~~July 1, 2005~~.

27 (5) The department may use up to \$750,000 from the  
 28 Nonmandatory Land Reclamation Trust Fund to prepare the study  
 29 and plan required in this section.

30 (6) The department may establish a technical advisory  
 31 committee to assist the department in developing a plan of

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1 study, reviewing interim findings, and reviewing final  
 2 recommendations. The technical advisory committee may include  
 3 representatives from the following interests in the Peace  
 4 River Basin: industrial, mining, agriculture, development,  
 5 environmental, fishing, regional water supply, regional  
 6 planning council, and local government.

7

8 (Redesignate subsequent sections.)

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11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 On page 1, line 3, after the first semicolon,

14

15 insert:

16 amending s. 373.414, F.S.; specifying that  
 17 certain regulatory requirements or exemptions  
 18 relating to the permitting of activities in  
 19 surface waters and wetlands by the Department  
 20 of Environmental Protection or the water  
 21 management districts which apply to activities  
 22 that are within the boundaries of a declaratory  
 23 statement that was issued pursuant to a  
 24 petition filed before June 1, 1994, also apply  
 25 when a petition was filed on June 1, 1994;  
 26 requiring financial responsibility for  
 27 mitigation of wetlands and other surface  
 28 waters; specifying the financial-responsibility  
 29 demonstration for permitted activities  
 30 occurring over a period of 3 years or more of  
 31 mining activities; extending the due date of

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