

CHAMBER ACTION

1 The State Resources Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to environmental permitting programs;
7 amending s. 373.414, F.S., relating to additional criteria
8 for activities in surface waters and wetlands; revising a
9 date relating to an exemption from specified requirements;
10 providing for submission of financial responsibility prior
11 to the commencement of phosphate mining operations;
12 providing for review of financial responsibility;
13 providing mechanisms for providing financial
14 responsibility; providing exclusions; clarifying intent;
15 creating s. 373.4143, F.S.; providing legislative intent;
16 creating s. 373.4144, F.S.; providing for the
17 consolidation of federal and state wetland permitting
18 programs; providing duties of the Department of
19 Environmental Protection; requiring a report to the
20 Legislature and coordination with the Florida
21 Congressional Delegation; amending s. 373.4145, F.S., and
22 reenacting subsections (1)-(4), to continue the interim
23 part IV permitting program for the Northwest Florida Water

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24 Management District; providing for future repeal of such
 25 interim program; amending s. 10, ch. 2003-423, Laws of
 26 Florida; revising the date by which the Peace River Basin
 27 resource management plan must be submitted; providing an
 28 effective date.

29
 30 WHEREAS, the Legislature recognizes that consolidation of
 31 existing federal and state permitting associated with wetlands
 32 and navigable waters is in the public interest by eliminating
 33 unnecessary duplication and reducing subjective and potentially
 34 inconsistent permitting decisions, and

35 WHEREAS, the Legislature further recognizes that
 36 consolidation of federal and state wetland and navigable waters
 37 permitting would reduce the substantial costs to both public and
 38 private sectors, provide a more efficient delivery of government
 39 services, and avoid protracted processing delays while
 40 maintaining the federal and state protection afforded to
 41 Florida's natural resources, NOW, THEREFORE,

42
 43 Be It Enacted by the Legislature of the State of Florida:

44
 45 Section 1. Subsection (13) of section 373.414, Florida
 46 Statutes, is amended, and subsection (19) is added to said
 47 section, to read:

48 373.414 Additional criteria for activities in surface
 49 waters and wetlands.--

50 (13) Any declaratory statement issued by the department
 51 under s. 403.914, 1984 Supplement to the Florida Statutes 1983,

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52 | as amended, or pursuant to rules adopted thereunder, or by a
 53 | water management district under s. 373.421, in response to a
 54 | petition filed on or before June 1, 1994, shall continue to be
 55 | valid for the duration of such declaratory statement. Any such
 56 | petition pending on June 1, 1994, shall be exempt from the
 57 | methodology ratified in s. 373.4211, but the rules of the
 58 | department or the relevant water management district, as
 59 | applicable, in effect prior to the effective date of s.
 60 | 373.4211, shall apply. Until May 1, 1998, activities within the
 61 | boundaries of an area subject to a petition pending on June 1,
 62 | 1994, and prior to final agency action on such petition, shall
 63 | be reviewed under the rules adopted pursuant to ss. 403.91-
 64 | 403.929, 1984 Supplement to the Florida Statutes 1983, as
 65 | amended, and this part, in existence prior to the effective date
 66 | of the rules adopted under subsection (9), unless the applicant
 67 | elects to have such activities reviewed under the rules adopted
 68 | under this part, as amended in accordance with subsection (9).
 69 | In the event that a jurisdictional declaratory statement
 70 | pursuant to the vegetative index in effect prior to the
 71 | effective date of chapter 84-79, Laws of Florida, has been
 72 | obtained and is valid prior to the effective date of the rules
 73 | adopted under subsection (9) or July 1, 1994, whichever is
 74 | later, and the affected lands are part of a project for which a
 75 | master development order has been issued pursuant to s.
 76 | 380.06(21), the declaratory statement shall remain valid for the
 77 | duration of the buildout period of the project. Any
 78 | jurisdictional determination validated by the department
 79 | pursuant to rule 17-301.400(8), Florida Administrative Code, as

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80 | it existed in rule 17-4.022, Florida Administrative Code, on
81 | April 1, 1985, shall remain in effect for a period of 5 years
82 | following the effective date of this act if proof of such
83 | validation is submitted to the department prior to January 1,
84 | 1995. In the event that a jurisdictional determination has been
85 | revalidated by the department pursuant to this subsection and
86 | the affected lands are part of a project for which a development
87 | order has been issued pursuant to s. 380.06(15), a final
88 | development order to which s. 163.3167(8) applies has been
89 | issued, or a vested rights determination has been issued
90 | pursuant to s. 380.06(20), the jurisdictional determination
91 | shall remain valid until the completion of the project, provided
92 | proof of such validation and documentation establishing that the
93 | project meets the requirements of this sentence are submitted to
94 | the department prior to January 1, 1995. Activities proposed
95 | within the boundaries of a valid declaratory statement issued
96 | pursuant to a petition submitted to either the department or the
97 | relevant water management district on or before ~~prior to~~ June 1,
98 | 1994, or a revalidated jurisdictional determination, prior to
99 | its expiration shall continue thereafter to be exempt from the
100 | methodology ratified in s. 373.4211 and to be reviewed under the
101 | rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to
102 | the Florida Statutes 1983, as amended, and this part, in
103 | existence prior to the effective date of the rules adopted under
104 | subsection (9), unless the applicant elects to have such
105 | activities reviewed under the rules adopted under this part, as
106 | amended in accordance with subsection (9).

107 (19)(a) Financial responsibility for mitigation for
 108 wetlands and other surface waters required by a permit issued
 109 pursuant to this part for activities associated with the
 110 extraction of phosphate are subject to approval by the
 111 department as part of permit application review. Financial
 112 responsibility for permitted activities which will occur over a
 113 period of 3 years or less of mining operations must be provided
 114 to the department prior to the commencement of mining operations
 115 and shall be in an amount equal to 110 percent of the estimated
 116 mitigation costs for wetlands and other surface waters affected
 117 under the permit. For permitted activities which will occur over
 118 a period of more than 3 years of mining operations, the initial
 119 financial responsibility demonstration shall be in an amount
 120 equal to 110 percent of the estimated mitigation costs for
 121 wetlands and other surface waters affected in the first 3 years
 122 of operation under the permit; and, for each year thereafter,
 123 the financial responsibility demonstration shall be updated,
 124 including to provide an amount equal to 110 percent of the
 125 estimated mitigation costs for the next year of operations under
 126 the permit for which financial responsibility has not already
 127 been demonstrated and to release portions of the financial
 128 responsibility mechanisms in accordance with applicable rules.

129 (b) The mechanisms for providing financial responsibility
 130 pursuant to the permit shall, at the discretion of the
 131 applicant, include the following:

- 132 1. Cash or cash equivalent deposited in an escrow account.
- 133 2. Irrevocable letter of credit.
- 134 3. Performance bond.

- 135 4. Trust fund agreement.
- 136 5. Guarantee bond.
- 137 6. Insurance certificate.
- 138 7. A demonstration that the applicant meets the financial
- 139 test and corporate guarantee requirements set forth in 40 C.F.R.
- 140 s. 264.143(f).

141 8. A demonstration that the applicant meets the self-

142 bonding provision set forth in 30 C.F.R. s. 800.23. The form and

143 content of all financial responsibility mechanisms shall be

144 approved by the department. When utilizing an irrevocable letter

145 of credit, performance bond, or guarantee bond, all payments

146 made thereunder shall be deposited into a stand-by trust fund

147 established contemporaneously with the posting of the financial

148 assurance instrument. All trust fund agreements and stand-by

149 trust fund agreements shall provide that distributions therefrom

150 will be made only at the request of the department and that the

151 trustees of such funds shall be either a national banking

152 institution or a state-regulated trust company.

153 (c) The provisions of this subsection shall not apply to

154 any mitigation for wetlands and other surface waters that is

155 required pursuant to a permit or permits initially issued by the

156 department or district prior to January 1, 2005.

157 (d) Nothing provided in this subsection supersedes or

158 modifies the financial responsibility requirements of s.

159 378.209.

160 Section 2. Section 373.4143, Florida Statutes, is created

161 to read:

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162 373.4143 Declaration of policy.--It is the policy of the
 163 Legislature that the state provide efficient government services
 164 by consolidating, to the maximum extent practicable, federal and
 165 state permitting associated with wetlands and navigable waters
 166 within the state.

167 Section 3. Section 373.4144, Florida Statutes, is created
 168 to read:

169 373.4144 Federal environmental permitting.--

170 (1) The department is directed to develop, on or before
 171 October 1, 2005, a mechanism or plan to consolidate, to the
 172 maximum extent practicable, the federal and state wetland
 173 permitting programs. It is the intent of the Legislature that
 174 all dredge and fill activities impacting 10 acres or less of
 175 wetlands or waters, including navigable waters, be processed by
 176 the state as part of the environmental resource permitting
 177 program implemented by the department and the water management
 178 districts. The resulting mechanism or plan shall analyze and
 179 propose the development of an expanded state programmatic
 180 general permit program in conjunction with the United States
 181 Army Corps of Engineers pursuant to s. 404 of the Clean Water
 182 Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,
 183 and s. 10 of the Rivers and Harbors Act of 1899. Alternatively,
 184 or in combination with an expanded state programmatic general
 185 permit, the mechanism or plan may propose the creation of a
 186 series of regional general permits issued by the United States
 187 Army Corps of Engineers pursuant to the referenced statutes. All
 188 of the regional general permits must be administered by the
 189 department or the water management districts or their designees.

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190 (2) The department is directed to file with the Speaker of
 191 the House of Representatives and the President of the Senate a
 192 report proposing any required federal and state statutory
 193 changes that would be necessary to accomplish the directives
 194 listed in this section and to coordinate with the Florida
 195 Congressional Delegation on any necessary changes to federal law
 196 to implement the directives.

197 (3) Nothing in this section shall be construed to preclude
 198 the department from pursuing complete assumption of federal
 199 permitting programs regulating the discharge of dredged or fill
 200 material pursuant to s. 404 of the Clean Water Act, Pub. L. No.
 201 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the
 202 Rivers and Harbors Act of 1899, so long as the assumption
 203 encompasses all dredge and fill activities in, on, or over
 204 jurisdictional wetlands or waters, including navigable waters,
 205 within the state.

206 Section 4. Notwithstanding the repeal of subsections (1),
 207 (2), (3), and (4) of section 373.4145, Florida Statutes,
 208 scheduled for July 1, 2005, said subsections are reenacted, and
 209 subsection (6) of said section is amended, to read:

210 373.4145 Interim part IV permitting program for the
 211 Northwest Florida Water Management District.--

212 (1) Within the geographical jurisdiction of the Northwest
 213 Florida Water Management District, the permitting authority of
 214 the department under this part shall consist solely of the
 215 following, notwithstanding the rule adoption deadline in s.
 216 373.414(9):

217 (a) Chapter 17-25, Florida Administrative Code, shall
 218 remain in full force and effect, and shall be implemented by the
 219 department. Notwithstanding the provisions of this section,
 220 chapter 17-25, Florida Administrative Code, may be amended by
 221 the department as necessary to comply with any requirements of
 222 state or federal laws or regulations, or any condition imposed
 223 by a federal program, or as a requirement for receipt of federal
 224 grant funds.

225 (b) Rules adopted pursuant to the authority of ss. 403.91-
 226 403.929, 1984 Supplement to the Florida Statutes 1983, as
 227 amended, in effect prior to July 1, 1994, shall remain in full
 228 force and effect, and shall be implemented by the department.
 229 However, the department is authorized to establish additional
 230 exemptions and general permits for dredging and filling, if such
 231 exemptions or general permits do not allow significant adverse
 232 impacts to occur individually or cumulatively. However, for the
 233 purpose of chapter 17-312, Florida Administrative Code, the
 234 landward extent of surface waters of the state identified in
 235 rule 17-312.030(2), Florida Administrative Code, shall be
 236 determined in accordance with the methodology in rules 17-
 237 340.100 through 17-340.600, Florida Administrative Code, as
 238 ratified in s. 373.4211, upon the effective date of such
 239 ratified methodology. In implementing s. 373.421(2), the
 240 department shall determine the extent of those surface waters
 241 and wetlands within the regulatory authority of the department
 242 as described in this paragraph. At the request of the
 243 petitioner, the department shall also determine the extent of
 244 surface waters and wetlands which can be delineated by the

245 methodology ratified in s. 373.4211, but which are not subject
 246 to the regulatory authority of the department as described in
 247 this paragraph.

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

252 (2) The authority of the Northwest Florida Water
 253 Management District to implement this part or to implement any
 254 authority pursuant to delegation by the department shall not be
 255 affected by this section. The rule adoption deadline in s.
 256 373.414(9) shall not apply to said district.

257 (3) The division of permitting responsibilities in s.
 258 373.046(4) shall not apply within the geographical jurisdiction
 259 of the Northwest Florida Water Management District.

260 (4) If the United States Environmental Protection Agency
 261 approves an assumption of the federal program to regulate the
 262 discharge of dredged or fill material by the department or the
 263 water management districts, or both, pursuant to s. 404 of the
 264 Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss.
 265 1251 et seq.; the United States Army Corps of Engineers issues
 266 one or more state programmatic general permits under the
 267 referenced statutes; or the United States Environmental
 268 Protection Agency or the United States Corps of Engineers
 269 approves any other delegation of regulatory authority under the
 270 referenced statutes, then the department may implement any
 271 permitting authority granted in this part within the Northwest
 272 Florida Water Management District which is prescribed as a

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273 | condition of granting such assumption, general permit, or
274 | delegation.

275 | (6) Subsections (1), (2), (3), and (4) shall be repealed
276 | effective July 1, 2010 ~~2005~~.

277 | Section 5. Subsection (4) of section 10 of chapter 2003-
278 | 423, Laws of Florida, is amended to read:

279 | Section 10.

280 | (4) The resource management plan shall be submitted to the
281 | Governor, the President of the Senate, and the Speaker of the
282 | House of Representatives no later than January 31, 2007 ~~July 1,~~
283 | ~~2005~~.

284 | Section 6. This act shall take effect upon becoming a law.