

1 A bill to be entitled

2 An act relating to environmental permitting programs;
3 amending s. 373.414, F.S., relating to additional criteria
4 for activities in surface waters and wetlands; revising a
5 date relating to an exemption from specified requirements;
6 providing for submission of financial responsibility prior
7 to the commencement of phosphate mining operations;
8 providing for review of financial responsibility;
9 providing mechanisms for providing financial
10 responsibility; providing exclusions; clarifying intent;
11 creating s. 373.4143, F.S.; providing legislative intent;
12 creating s. 373.4144, F.S.; providing for the
13 consolidation of federal and state wetland permitting
14 programs; providing duties of the Department of
15 Environmental Protection; requiring a report to the
16 Legislature and coordination with the Florida
17 Congressional Delegation; amending s. 373.4145, F.S., and
18 reenacting subsections (1)-(4), to continue the interim
19 part IV permitting program for the Northwest Florida Water
20 Management District; providing for future repeal of such
21 interim program; amending s. 10, ch. 2003-423, Laws of
22 Florida; revising the date by which the Peace River Basin
23 resource management plan must be submitted; providing an
24 effective date.

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26 WHEREAS, the Legislature recognizes that consolidation of
27 existing federal and state permitting associated with wetlands
28 and navigable waters is in the public interest by eliminating

29 unnecessary duplication and reducing subjective and potentially
 30 inconsistent permitting decisions, and

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

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

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

44 373.414 Additional criteria for activities in surface
 45 waters and wetlands.--

46 (13) Any declaratory statement issued by the department
 47 under s. 403.914, 1984 Supplement to the Florida Statutes 1983,
 48 as amended, or pursuant to rules adopted thereunder, or by a
 49 water management district under s. 373.421, in response to a
 50 petition filed on or before June 1, 1994, shall continue to be
 51 valid for the duration of such declaratory statement. Any such
 52 petition pending on June 1, 1994, shall be exempt from the
 53 methodology ratified in s. 373.4211, but the rules of the
 54 department or the relevant water management district, as
 55 applicable, in effect prior to the effective date of s.
 56 373.4211, shall apply. Until May 1, 1998, activities within the

57 | boundaries of an area subject to a petition pending on June 1,
58 | 1994, and prior to final agency action on such petition, shall
59 | be reviewed under the rules adopted pursuant to ss. 403.91-
60 | 403.929, 1984 Supplement to the Florida Statutes 1983, as
61 | amended, and this part, in existence prior to the effective date
62 | of the rules adopted under subsection (9), unless the applicant
63 | elects to have such activities reviewed under the rules adopted
64 | under this part, as amended in accordance with subsection (9).
65 | In the event that a jurisdictional declaratory statement
66 | pursuant to the vegetative index in effect prior to the
67 | effective date of chapter 84-79, Laws of Florida, has been
68 | obtained and is valid prior to the effective date of the rules
69 | adopted under subsection (9) or July 1, 1994, whichever is
70 | later, and the affected lands are part of a project for which a
71 | master development order has been issued pursuant to s.
72 | 380.06(21), the declaratory statement shall remain valid for the
73 | duration of the buildout period of the project. Any
74 | jurisdictional determination validated by the department
75 | pursuant to rule 17-301.400(8), Florida Administrative Code, as
76 | it existed in rule 17-4.022, Florida Administrative Code, on
77 | April 1, 1985, shall remain in effect for a period of 5 years
78 | following the effective date of this act if proof of such
79 | validation is submitted to the department prior to January 1,
80 | 1995. In the event that a jurisdictional determination has been
81 | revalidated by the department pursuant to this subsection and
82 | the affected lands are part of a project for which a development
83 | order has been issued pursuant to s. 380.06(15), a final
84 | development order to which s. 163.3167(8) applies has been

85 issued, or a vested rights determination has been issued
86 pursuant to s. 380.06(20), the jurisdictional determination
87 shall remain valid until the completion of the project, provided
88 proof of such validation and documentation establishing that the
89 project meets the requirements of this sentence are submitted to
90 the department prior to January 1, 1995. Activities proposed
91 within the boundaries of a valid declaratory statement issued
92 pursuant to a petition submitted to either the department or the
93 relevant water management district on or before ~~prior to~~ June 1,
94 1994, or a revalidated jurisdictional determination, prior to
95 its expiration shall continue thereafter to be exempt from the
96 methodology ratified in s. 373.4211 and to be reviewed under the
97 rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to
98 the Florida Statutes 1983, as amended, and this part, in
99 existence prior to the effective date of the rules adopted under
100 subsection (9), unless the applicant elects to have such
101 activities reviewed under the rules adopted under this part, as
102 amended in accordance with subsection (9).

103 (19)(a) Financial responsibility for mitigation for
104 wetlands and other surface waters required by a permit issued
105 pursuant to this part for activities associated with the
106 extraction of phosphate are subject to approval by the
107 department as part of permit application review. Financial
108 responsibility for permitted activities which will occur over a
109 period of 3 years or less of mining operations must be provided
110 to the department prior to the commencement of mining operations
111 and shall be in an amount equal to 110 percent of the estimated
112 mitigation costs for wetlands and other surface waters affected

113 under the permit. For permitted activities which will occur over
114 a period of more than 3 years of mining operations, the initial
115 financial responsibility demonstration shall be in an amount
116 equal to 110 percent of the estimated mitigation costs for
117 wetlands and other surface waters affected in the first 3 years
118 of operation under the permit; and, for each year thereafter,
119 the financial responsibility demonstration shall be updated,
120 including to provide an amount equal to 110 percent of the
121 estimated mitigation costs for the next year of operations under
122 the permit for which financial responsibility has not already
123 been demonstrated and to release portions of the financial
124 responsibility mechanisms in accordance with applicable rules.

125 (b) The mechanisms for providing financial responsibility
126 pursuant to the permit shall, at the discretion of the
127 applicant, include the following:

- 128 1. Cash or cash equivalent deposited in an escrow account.
- 129 2. Irrevocable letter of credit.
- 130 3. Performance bond.
- 131 4. Trust fund agreement.
- 132 5. Guarantee bond.
- 133 6. Insurance certificate.
- 134 7. A demonstration that the applicant meets the financial
135 test and corporate guarantee requirements set forth in 40 C.F.R.
136 s. 264.143(f).
- 137 8. A demonstration that the applicant meets the self-
138 bonding provision set forth in 30 C.F.R. s. 800.23.

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140 The form and content of all financial responsibility mechanisms
141 shall be approved by the department. When utilizing an
142 irrevocable letter of credit, performance bond, or guarantee
143 bond, all payments made thereunder shall be deposited into a
144 stand-by trust fund established contemporaneously with the
145 posting of the financial assurance instrument. All trust fund
146 agreements and stand-by trust fund agreements shall provide that
147 distributions therefrom will be made only at the request of the
148 department and that the trustees of such funds shall be either a
149 National or state chartered banking institution or a state-
150 regulated trust company.

151 (c) The provisions of this subsection shall not apply to
152 any mitigation for wetlands and other surface waters that is
153 required pursuant to a permit or permits initially issued by the
154 department or district prior to January 1, 2005.

155 (d) Nothing provided in this subsection supersedes or
156 modifies the financial responsibility requirements of s.
157 378.209.

158 Section 2. Section 373.4143, Florida Statutes, is created
159 to read:

160 373.4143 Declaration of policy.--It is the policy of the
161 Legislature that the state provide efficient government services
162 by consolidating, to the maximum extent practicable, federal and
163 state permitting associated with wetlands and navigable waters
164 within the state.

165 Section 3. Section 373.4144, Florida Statutes, is created
166 to read:

167 373.4144 Federal environmental permitting.--

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

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

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

204 Section 4. Notwithstanding the repeal of subsections (1),
 205 (2), (3), and (4) of section 373.4145, Florida Statutes,
 206 scheduled for July 1, 2005, said subsections are reenacted, and
 207 subsection (6) of said section is amended, to read:

208 373.4145 Interim part IV permitting program for the
 209 Northwest Florida Water Management District.--

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

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

223 (b) Rules adopted pursuant to the authority of ss. 403.91-
224 403.929, 1984 Supplement to the Florida Statutes 1983, as
225 amended, in effect prior to July 1, 1994, shall remain in full
226 force and effect, and shall be implemented by the department.
227 However, the department is authorized to establish additional
228 exemptions and general permits for dredging and filling, if such
229 exemptions or general permits do not allow significant adverse
230 impacts to occur individually or cumulatively. However, for the
231 purpose of chapter 17-312, Florida Administrative Code, the
232 landward extent of surface waters of the state identified in
233 rule 17-312.030(2), Florida Administrative Code, shall be
234 determined in accordance with the methodology in rules 17-
235 340.100 through 17-340.600, Florida Administrative Code, as
236 ratified in s. 373.4211, upon the effective date of such
237 ratified methodology. In implementing s. 373.421(2), the
238 department shall determine the extent of those surface waters
239 and wetlands within the regulatory authority of the department
240 as described in this paragraph. At the request of the
241 petitioner, the department shall also determine the extent of
242 surface waters and wetlands which can be delineated by the
243 methodology ratified in s. 373.4211, but which are not subject
244 to the regulatory authority of the department as described in
245 this paragraph.

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

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

255 (3) The division of permitting responsibilities in s.
 256 373.046(4) shall not apply within the geographical jurisdiction
 257 of the Northwest Florida Water Management District.

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

273 (6) Subsections (1), (2), (3), and (4) shall be repealed
 274 effective July 1, 2010 ~~2005~~.

275 Section 5. Subsection (4) of section 10 of chapter 2003-
 276 423, Laws of Florida, is amended to read:

277 Section 10.

HB 759, Engrossed 1

2005

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

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