

## ENROLLED

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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.

25  
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

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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,

38  
 39 Be It Enacted by the Legislature of the State of Florida:

40  
 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

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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

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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

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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.--

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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.

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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.



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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).

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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.

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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.