

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Williams offered the following:

2  
3 **Amendment (with title amendment)**

4 On page 2, between lines 2 and 3,

5  
6 insert:

7 Section 3. Section 373.4144, Florida Statutes, is amended  
8 to read:

9 373.4144 ~~Federal~~ Environmental permitting.--

10 (1) It is the intent of the Legislature to:

11 (a) Facilitate the coordination of and a more efficient  
12 process of implementing regulatory duties and functions among  
13 the Department of Environmental Protection, water management  
14 districts, the United States Army Corps of Engineers, the United  
15 States Fish and Wildlife Service, the National Marine Fisheries  
16 Service, the United States Environmental Protection Agency, the

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17 Fish and Wildlife Conservation Commission, and other relevant  
18 federal and state agencies.

19 (b) Authorize the Department of Environmental Protection  
20 to obtain issuance by the United States Army Corps of Engineers,  
21 pursuant to state and federal law and as set forth herein, of an  
22 expanded state programmatic general permit or a series of  
23 regional permits for categories of activities in waters of the  
24 United States governed by the Clean Water Act and in navigable  
25 waters under the Rivers and Harbors Act of 1899 that are similar  
26 in nature, cause only minimal adverse environmental effects when  
27 performed separately, and have only minimal cumulative adverse  
28 effects on the environment.

29 (c) Utilize the mechanism of a general permit or permits  
30 to eliminate overlapping federal and state regulations that seek  
31 to protect the same resource and to avoid duplication of  
32 permitting between the United States Army Corps of Engineers and  
33 the department for minor work located in waters of the United  
34 States, including navigable waters, thereby eliminating, in  
35 appropriate cases, the need for a separate individual approval  
36 from the United States Army Corps of Engineers while ensuring  
37 the most stringent protection of wetland resources.

38 (d) Direct the department not to seek issuance of or take  
39 any action pursuant to any such permit or permits unless the  
40 conditions are at least as protective of the environment and  
41 natural resources as existing state law under part IV of chapter  
42 373 and existing federal law under the Clean Water Act and the  
43 Rivers and Harbors Act.

44 (e) Add slash pine and gallberry to the state list as  
45 facultative species as an incentive for and contingent upon the  
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46 alignment of federal and state wetland jurisdictional  
47 delineation, and the alignment, which seeks to delineate the  
48 same wetland communities. The department shall report annually  
49 to the Legislature on efforts to eliminate impediments to  
50 achieving greater efficiencies through expansion of a state  
51 programmatic general permit or regional general permits. The  
52 ~~department is directed to develop, on or before October 1, 2005,~~  
53 ~~a mechanism or plan to consolidate, to the maximum extent~~  
54 ~~practicable, the federal and state wetland permitting programs.~~  
55 ~~It is the intent of the Legislature that all dredge and fill~~  
56 ~~activities impacting 10 acres or less of wetlands or waters,~~  
57 ~~including navigable waters, be processed by the state as part of~~  
58 ~~the environmental resource permitting program implemented by the~~  
59 ~~department and the water management districts. The resulting~~  
60 ~~mechanism or plan shall analyze and propose the development of~~  
61 ~~an expanded state programmatic general permit program in~~  
62 ~~conjunction with the United States Army Corps of Engineers~~  
63 ~~pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500,~~  
64 ~~as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers~~  
65 ~~and Harbors Act of 1899. Alternatively, or in combination with~~  
66 ~~an expanded state programmatic general permit, the mechanism or~~  
67 ~~plan may propose the creation of a series of regional general~~  
68 ~~permits issued by the United States Army Corps of Engineers~~  
69 ~~pursuant to the referenced statutes. All of the regional general~~  
70 ~~permits must be administered by the department or the water~~  
71 ~~management districts or their designees.~~

72 (2) In order to effectuate efficient wetland permitting  
73 and avoid duplication, the department and water management  
74 districts shall implement a voluntary statewide programmatic

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75 general permit for all dredge and fill activities impacting 5  
76 acres or less of wetlands or other surface waters, including  
77 navigable waters, subject to agreement with the United States  
78 Army Corps of Engineers in accordance with the following  
79 conditions:

80 (a) By seeking to use the statewide programmatic general  
81 permit authorized by this section, an applicant consents to the  
82 department or district applying the landward-most delineation of  
83 wetlands or other surface waters applicable pursuant to this  
84 part or the regulations implementing s. 404 of the Clean Water  
85 Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,  
86 and s. 10 of the Rivers and Harbors Act of 1899. In the  
87 implementation of the 1987 Corps of Engineers Wetlands Manual  
88 Technical Report (87-1), the department or district shall equate  
89 high organic matter in the surface horizon in accordance with  
90 the National Resource Conservation Service indications for  
91 hydric soils approved for use in this state. The department  
92 shall ensure statewide coordination and consistency in the  
93 delineation of surface waters and wetlands, pursuant to the  
94 statewide programmatic general permit authorized by this part,  
95 by providing training and guidance to the department and  
96 districts in the implementation of such permit.

97 (b) By seeking to use the statewide programmatic general  
98 permit authorized by this section, an applicant consents to  
99 applicable substantive federal wetland regulatory criteria,  
100 which are not included pursuant to this part but which are  
101 authorized by the regulation implementing s. 404 of the Clean  
102 Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et  
103 seq., and s. 10 of the Rivers and Harbors Act of 1899 as

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104 required by the Corps of Engineers, notwithstanding the  
105 provisions of s. 373.4145 and for the limited purposes of  
106 implementing the statewide programmatic general permit  
107 authorized by this section.

108 ~~(2) The department is directed to file with the Speaker of~~  
109 ~~the House of Representatives and the President of the Senate a~~  
110 ~~report proposing any required federal and state statutory~~  
111 ~~changes that would be necessary to accomplish the directives~~  
112 ~~listed in this section and to coordinate with the Florida~~  
113 ~~Congressional Delegation on any necessary changes to federal law~~  
114 ~~to implement the directives.~~

115 (3) Nothing in this section shall be construed to preclude  
116 the department from pursuing a series of regional general  
117 permits for construction activities in wetlands or surface  
118 waters or complete assumption of federal permitting programs  
119 regulating the discharge of dredged or fill material pursuant to  
120 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,  
121 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors  
122 Act of 1899, so long as the assumption encompasses all dredge  
123 and fill activities in, on, or over jurisdictional wetlands or  
124 waters, including navigable waters, within the state.

125 Section 4. Subsections (1) and (19) of section 373.4211,  
126 Florida Statutes, are amended to read:

127 373.4211 Ratification of chapter 17-340, Florida  
128 Administrative Code, on the delineation of the landward extent  
129 of wetlands and surface waters.--Pursuant to s. 373.421, the  
130 Legislature ratifies chapter 17-340, Florida Administrative  
131 Code, approved on January 13, 1994, by the Environmental  
132 Regulation Commission, with the following changes:

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133 (1) The last sentence of rule 17-340.100(1), Florida  
134 Administrative Code, is changed to read: "The methodology shall  
135 not be used to delineate areas which are not wetlands as defined  
136 in subsection 17-340.200(19), F.A.C., which include agricultural  
137 and silvicultural lands resulting from conversion of non-wetland  
138 pine flatwoods as defined in this rule, nor to delineate as  
139 wetlands or surface waters areas exempted from delineation by  
140 statute or agency rule." In addition, rule 17-340.100(2),  
141 Florida Administrative Code, is changed to read: "The department  
142 shall be responsible for ensuring statewide coordination and  
143 consistency in the delineation of surface waters and wetlands  
144 pursuant to this rule by providing training and guidance to the  
145 department, districts, and local governments in implementing the  
146 methodology and technical peer review of delineations of  
147 wetlands and surface waters as may be requested."

148 (19) (a) Rule 17-340.450(3) is amended by adding, after the  
149 species list, the following language:

150 "Within Monroe County and the Key Largo portion of Dade  
151 County only, the following species shall be listed as  
152 facultative: *Alternanthera paronychioides*, *Byrsonima lucida*,  
153 *Ernodea littoralis*, *Guapira discolor*, *Marnilkara bahamensis*,  
154 *Pisonis rotundata*, *Pithecellobium keyensis*, *Pithecellobium*  
155 *unquis-cati*, *Randia aculeata*, *Reynosia septentrionalis*, and  
156 *Thrinax radiata*."

157 (b) Pursuant to s. 373.421, the Legislature ratifies the  
158 changes to rule 62-340.450(3), Florida Administrative Code,  
159 approved on February 23, 2006, by the Environmental Regulation  
160 Commission that add slash pine (*pinus elliotti*) and gallberry  
161 (*ilex glabra*) to the list of facultative plants. However, this

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162 ratification and the rule revision shall not take effect until  
163 state and federal wetland jurisdictional delineation  
164 methodologies are aligned.

165 (c) Surface water and wetland delineations identified and  
166 approved by a permit issued under rules adopted pursuant to this  
167 part on or before the effective date of the alignment of the  
168 state and federal jurisdictional methodologies shall remain  
169 valid until expiration of such permit, notwithstanding the  
170 changes to rule 62-340.450(3), Florida Administrative Code, as  
171 described in this subsection. For purposes of this paragraph,  
172 the term "identified and approved" means:

173 1. The delineation was field-verified by the permitting  
174 agency, and the verification was surveyed as part of the  
175 application review process for the permit; or

176 2. The delineation was field-verified by the permitting  
177 agency and approved pursuant to the permit.

178  
179 Where surface water and wetland delineations were not identified  
180 and approved pursuant to the permit issued under rules adopted  
181 pursuant to this part, delineations within the geographical area  
182 to which such permit applies shall be determined pursuant to the  
183 rules applicable at the time the permit was issued,  
184 notwithstanding the changes to rule 62-340.450(3), Florida  
185 Administrative Code, as described in this subsection. This  
186 paragraph shall also apply to any modification of the permit  
187 issued under rules adopted pursuant to this part, which does not  
188 constitute a substantial modification, within the geographical  
189 area to which the permit applies.

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190       (d) Any declaratory statement issued by the department  
191 under s. 403.914, 1984 Supplement to the Florida Statutes 1983,  
192 as amended, pursuant to rules adopted thereunder, or by the  
193 department or a water management district under s. 373.421, in  
194 response to a petition filed on or before the effective date of  
195 the alignment of the state and federal jurisdictional  
196 methodologies, shall continue to be valid for the duration of  
197 such declaratory statement. Any such petition pending on or  
198 before the effective date of the alignment of the state and  
199 federal jurisdictional methodologies shall be exempt from the  
200 changes to rule 62-340.450(3), Florida Administrative Code, as  
201 described in this subsection and shall be subject to the  
202 provisions of chapter 62-340, Florida Administrative Code, in  
203 effect prior to such change. Activities proposed within the  
204 boundaries of a valid declaratory statement issued pursuant to a  
205 petition submitted to either the department or the relevant  
206 water management district on or before the effective date of the  
207 alignment of the state and federal jurisdictional methodologies,  
208 or a revalidated jurisdictional determination prior to its  
209 expiration, shall continue thereafter to be exempt from the  
210 changes to rule 62-340.450(3), Florida Administrative Code, as  
211 described in this subsection.

212       (e) A permit application under this part for dredging and  
213 filling or other activity which is pending on or before the  
214 effective date of the alignment of the state and federal  
215 jurisdictional methodologies shall be exempt from the changes to  
216 rule 62-340.450(3), Florida Administrative Code, as described in  
217 this subsection.

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218       (f) Activities associated with mining operations as  
 219 defined by and subject to ss. 378.201-378.212 and 378.701-  
 220 378.703 and included in a conceptual reclamation plan or  
 221 modification application submitted on or before the effective  
 222 date of the alignment of the state and federal jurisdictional  
 223 methodologies shall be exempt from changes to rule 62-  
 224 340.450(3), Florida Administrative Code, as described in this  
 225 subsection.

226

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

228       On page 1, lines 1 through 12,  
 229 remove: the entire title

230

231 and insert:

232

A bill to be entitled

233       An act relating to permitting; creating s. 125.022, F.S.;

234       requiring a county to give written notice of the decision

235       to deny a development permit; requiring that the notice

236       include specific information; defining the term

237       "development permit"; creating s. 166.033, F.S.; requiring

238       a municipality to give written notice of the decision to

239       deny a development permit; requiring that the notice

240       include specific information; defining the term

241       "development permit"; amending s. 373.4144, F.S.;

242       providing legislative intent; removing provisions

243       requiring the Department of Environmental Protection to

244       develop a mechanism consolidating federal and state

245       wetland permitting programs; authorizing implementation of

246       a voluntary statewide programmatic general permit by the

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247 department and water management districts for certain  
248 dredge and fill activities under certain conditions;  
249 specifying conditions applicable to the permit; amending  
250 s. 373.4211, F.S.; revising specific administrative rule  
251 provisions concerning the vegetative index used to  
252 delineate the landward extent of wetlands and surface  
253 waters and coordination and consistency in the delineation  
254 of surface water and wetlands; delaying implementation of  
255 rule revision; providing for the grandfathering of certain  
256 permit applications and petitions relating to specified  
257 activities; providing an effective date.