

Bill No. CS for CS for SB 1112, 1st Eng.

Barcode 185710

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Bennett moved the following amendment:

Senate Amendment (with title amendment)

On page 2, between lines 2 and 3,

insert:

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

373.4144 Federal environmental permitting.--

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

(a) Facilitate coordination among the Department of Environmental Protection, the water management districts, the United Army Corps of Engineers, U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, Fish and Wildlife Conservation Commission, and other relevant federal, state, and local agencies in order to ensure a more efficient process of implementing regulatory duties and functions.

(b) Authorize the Department of Environmental Protection to obtain issuance by the United States Army Corps of Engineers, under state and federal law, of an expanded

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1 state programmatic general permit, or a series of regional
 2 permits, for categories of activities in waters of the United
 3 States governed by the Clean Water Act and in navigable waters
 4 under the Rivers and Harbors Act of 1899 which are similar in
 5 nature, will cause only minimal adverse environmental effects
 6 when performed separately, and will have only minimal
 7 cumulative adverse effects on the environment.

8 (c) Utilize the mechanism of the general permit or
 9 permits to eliminate overlapping federal, state, and local
 10 regulations that seek to protect the same resource and to
 11 avoid duplication of permitting between the United States Army
 12 Corps of Engineers and the department for minor work located
 13 in waters of the United States, including navigable waters,
 14 thus eliminating, in appropriate cases, the need for a
 15 separate individual approval from the United States Army Corps
 16 of Engineers, while ensuring the most stringent protection of
 17 wetland resources.

18 (d) Direct the department to not seek issuance of or
 19 take any action under any permit or permits unless the
 20 conditions are at least as protective of the environment and
 21 natural resources as existing state law under this part and
 22 federal law under the Clean Water Act and the Rivers and
 23 Harbors Act.

24 (e) Add slash pine and gallberry to the state list as
 25 facultative species as an incentive for and contingent upon
 26 the alignment of federal and state wetland jurisdictional
 27 delineation. The department shall report annually to the
 28 Legislature on its efforts to eliminate impediments to
 29 achieving greater efficiencies through expansion of a state
 30 programmatic general permit or regional general permit. The
 31 department is directed to develop, on or before October 1,

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1 ~~2005, a mechanism or plan to consolidate, to the maximum~~
2 ~~extent practicable, the federal and state wetland permitting~~
3 ~~programs. It is the intent of the Legislature that all dredge~~
4 ~~and fill activities impacting 10 acres or less of wetlands or~~
5 ~~waters, including navigable waters, be processed by the state~~
6 ~~as part of the environmental resource permitting program~~
7 ~~implemented by the department and the water management~~
8 ~~districts. The resulting mechanism or plan shall analyze and~~
9 ~~propose the development of an expanded state programmatic~~
10 ~~general permit program in conjunction with the United States~~
11 ~~Army Corps of Engineers pursuant to s. 404 of the Clean Water~~
12 ~~Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et~~
13 ~~seq., and s. 10 of the Rivers and Harbors Act of 1899.~~
14 ~~Alternatively, or in combination with an expanded state~~
15 ~~programmatic general permit, the mechanism or plan may propose~~
16 ~~the creation of a series of regional general permits issued by~~
17 ~~the United States Army Corps of Engineers pursuant to the~~
18 ~~referenced statutes. All of the regional general permits must~~
19 ~~be administered by the department or the water management~~
20 ~~districts or their designees.~~

21 (2) In order to commence efficient wetland permitting
22 and to avoid duplication, the department and water management
23 districts shall implement a voluntary statewide programmatic
24 general permit for all dredge and fill activities impacting 5
25 acres or less of wetlands or other surface waters, including
26 navigable waters, subject to agreement with the United States
27 Army Corps of Engineers in accordance with the following
28 conditions:

29 (a) By seeking to use the statewide programmatic
30 general permit authorized by this section, an applicant agrees
31 that the department or the district may apply the

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1 landward-most delineation of wetlands or other surface waters
2 applicable pursuant to this part or the regulations
3 implementing s. 404 of the Clean Water Act, Pub. L. No.
4 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of
5 the Rivers and Harbors Act of 1899. In the implementation of
6 the 1987 Corps of Engineers Wetlands Manual Technical Report
7 (87-1), the department or district must equate high organic
8 matter in the surface horizon in accordance with the National
9 Resource Conservation Service indications for hydric soils
10 approved for use in this state. The department must ensure
11 statewide coordination and consistency in the delineation of
12 surface waters and wetlands under the statewide programmatic
13 general permit authorized by this part by providing training
14 and guidance to the department and districts in the
15 implementation of the permit.

16 (b) By seeking to use the statewide programmatic
17 general permit authorized by this section, an applicant
18 consents to applicable substantive federal wetland regulatory
19 criteria, which are not included in this part, but which are
20 authorized by regulations implementing s. 404 of the Clean
21 Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251
22 et seq., and s. 10 of the Rivers and Harbors Act of 1899 as
23 required by the United States Army Corps of Engineers,
24 notwithstanding the provisions of s. 373.4145 and for the
25 limited purposes of implementing the statewide programmatic
26 general permit authorized by this section. ~~The department is~~
27 ~~directed to file with the Speaker of the House of~~
28 ~~Representatives and the President of the Senate a report~~
29 ~~proposing any required federal and state statutory changes~~
30 ~~that would be necessary to accomplish the directives listed in~~
31 ~~this section and to coordinate with the Florida Congressional~~

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1 ~~Delegation on any necessary changes to federal law to~~
2 ~~implement the directives.~~

3 (3) ~~Nothing in This section does not shall be~~
4 ~~construed to preclude the department from pursuing a series of~~
5 ~~regional general permits for construction activities in~~
6 ~~wetlands or surface waters or complete assumption of federal~~
7 ~~permitting programs regulating the discharge of dredged or~~
8 ~~fill material pursuant to s. 404 of the Clean Water Act, Pub.~~
9 ~~L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s.~~
10 ~~10 of the Rivers and Harbors Act of 1899, so long as the~~
11 ~~assumption encompasses all dredge and fill activities in, on,~~
12 ~~or over jurisdictional wetlands or waters, including navigable~~
13 ~~waters, within the state.~~

14 (4) When granting or denying a development permit for
15 wetland construction, a local government must consider
16 mitigation proposed by the applicant, provided the mitigation
17 fully offsets the loss of wetland functions in accordance with
18 the uniform mitigation assessment method adopted pursuant to
19 s. 373.414(18).

20 Section 4. Subsections (1) and (19) of section
21 373.4211, Florida Statutes, are amended to read:

22 373.4211 Ratification of chapter 17-340, Florida
23 Administrative Code, on the delineation of the landward extent
24 of wetlands and surface waters.--Pursuant to s. 373.421, the
25 Legislature ratifies chapter 17-340, Florida Administrative
26 Code, approved on January 13, 1994, by the Environmental
27 Regulation Commission, with the following changes:

28 (1) The last sentence of rule 17-340.100(1), Florida
29 Administrative Code, is changed to read: "The methodology
30 shall not be used to delineate areas which are not wetlands as
31 defined in subsection 17-340.200(19), F.A.C., which include

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1 agricultural and silvicultural lands resulting from conversion
2 of nonwetland pine flatwoods as defined in this rule, nor to
3 delineate as wetlands or surface waters areas exempted from
4 delineation by statute or agency rule." In addition, rule
5 17-340.100(2), Florida Administrative Code, is changed to
6 read: "The department is responsible for ensuring statewide
7 coordination and consistency in the delineation of surface
8 waters and wetlands pursuant to this rule by providing
9 training and guidance to the department, districts, and local
10 governments in implementing the methodology and technical peer
11 review of delineations of wetlands and surface waters as may
12 be requested."

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

15 "Within Monroe County and the Key Largo portion of Dade
16 County only, the following species shall be listed as
17 facultative: Alternanthera paronychioides, Byrsonima lucida,
18 Ernodea littoralis, Guapira discolor, Marnilkara bahamensis,
19 Pisonis rotundata, Pithecellobium keyensis, Pithecellobium
20 unquis-cati, Randia aculeata, Reynosia septentrionalis, and
21 Thrinax radiata."

22 (b) Pursuant to s. 373.421, and subject to the
23 conditions described in this subsection, the Legislature
24 ratifies the changes to rule 62-340.450(3), Florida
25 Administrative Code, approved on February 23, 2006, by the
26 Environmental Regulation Commission which added slash pine
27 (pinus elliotti) and gallberry (flex glabral) to the list of
28 facultative plants. However, this ratification and the rule
29 revision does not take effect until state and federal wetland
30 jurisdictional delineation methodologies are aligned.

31 (c) Surface water and wetland delineations identified

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1 and approved by a permit issued under rules adopted under this
2 part on or before the effective date of the alignment of the
3 state and federal jurisdictional methodologies remain valid
4 until the expiration of the permit, notwithstanding the
5 changes to rule 62-340.450(3), Florida Administrative Code.

6 For purposes of this paragraph, the term "identified and
7 approved" means:

8 1. The delineation was field-verified by the
9 permitting agency and the verification was surveyed as part of
10 the application review process for the permit; or

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

13
14 If surface water and wetland delineations are not identified
15 and approved pursuant to the permit issued under rules adopted
16 under this part, delineations within the geographical area to
17 which the permit applies shall be determined under the rules
18 applicable at the time the permit was issued, notwithstanding
19 the changes to rule 62-340.450(3), Florida Administrative
20 Code, as described in this subsection. This paragraph also
21 applies to any modification of the permit issued under rules
22 adopted pursuant to this part, which does not constitute a
23 substantial modification, within the geographical area to
24 which the permit applies.

25 (d) Any declaratory statement issued by the department
26 under s. 403.914, Florida Statutes, 1984 Supplement, as
27 amended, pursuant to rules adopted thereunder, or by the
28 department or a water management district under s. 373.421, in
29 response to a petition filed on or before the effective date
30 of the alignment of the state and federal jurisdictional
31 methodologies, shall continue to be valid for the duration of

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1 the declaratory statement. Any such petition pending on or
 2 before the effective date of the alignment of the state and
 3 federal jurisdictional methodologies is exempt from the
 4 changes to rule 62-340.450(3), Florida Administrative Code, as
 5 described in this subsection, and is subject to the provisions
 6 of chapter 62-340, Florida Administrative Code, in effect
 7 before the change. Activities proposed within the boundaries
 8 of a valid declaratory statement issued pursuant to a petition
 9 submitted to the department or the relevant water management
 10 district on or before the effective date of the alignment of
 11 the state and federal jurisdictional methodologies, or a
 12 revalidated jurisdictional determination prior to its
 13 expiration, shall continue thereafter to be exempt from the
 14 changes to rule 62-340.450(3), Florida Administrative Code, as
 15 described in this subsection.

16 (e) A permit application under this part for dredging
 17 and filling or other activity which is pending on or before
 18 the effective date of the alignment of the state and federal
 19 jurisdictional methodologies is exempt from the changes to
 20 rule 62-340.450(3), Florida Administrative Code, as described
 21 in this subsection.

22 (f) Activities associated with mining operations as
 23 defined by and subject to ss. 378.201-378.212 and
 24 378.701-378.703 and included in a conceptual reclamation plan
 25 or modification application submitted on or before the
 26 effective date of the alignment of the state and federal
 27 jurisdictional methodologies are exempt from changes to rule
 28 62-340.450(3), Florida Administrative Code, as described in
 29 this subsection.

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31 (Redesignate subsequent sections.)

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

2 And the title is amended as follows:

3 On page 1, line 12, after the semicolon,

4

5 insert:

6 amending s. 373.4144, F.S.; providing

7 legislative intent relating to coordinating

8 activities among the Department of

9 Environmental Protection and specified federal

10 agencies; requiring the department and the

11 water management districts to implement a

12 voluntary statewide general permit for certain

13 wetlands and surface waters; detailing

14 conditions applicable for statewide general

15 permits; requiring a local government to

16 consider mitigation proposed by the applicant

17 when granting or denying a development permit

18 for wetland construction; providing conditions;

19 amending s. 323.4211, F.S.; ratifying certain

20 rules in the Florida Administrative Code

21 relating to surface water and wetland

22 delineations; providing for application to

23 existing permits; providing exemptions for

24 certain specified activities;

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