

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

1 Representative Williams offered the following:

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

4 On page 2, between lines 2 and 3, insert:

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

7 373.4144 Federal environmental permitting.--

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

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

287081

5/2/2006 7:56:48 AM

Amendment No. (for drafter's use only)

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

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

36 (d) Direct the department to not seek issuance of or take
37 any action under any permit or permits unless the conditions are
38 at least as protective of the environment and natural resources
39 as existing state law under this part and federal law under the
40 Clean Water Act and the Rivers and Harbors Act.

41 (e) Add slash pine and gallberry to the state list as
42 facultative species as an incentive for and contingent upon the
43 alignment of federal and state wetland jurisdictional
44 delineation. The department shall report annually to the
45 Legislature on its efforts to eliminate impediments to achieving

287081

5/2/2006 7:56:48 AM

Amendment No. (for drafter's use only)

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

68 (2) In order to commence efficient wetland permitting and
69 to avoid duplication, the department and water management
70 districts shall implement a voluntary statewide programmatic
71 general permit for all dredge and fill activities impacting 5
72 acres or less of wetlands or other surface waters, including
73 navigable waters, subject to agreement with the United States

287081

5/2/2006 7:56:48 AM

Amendment No. (for drafter's use only)

74 Army Corps of Engineers in accordance with the following
75 conditions:

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

93 (b) By seeking to use the statewide programmatic general
94 permit authorized by this section, an applicant consents to
95 applicable substantive federal wetland regulatory criteria,
96 which are not included in this part, but which are authorized by
97 regulations implementing s. 404 of the Clean Water Act, Pub. L.
98 No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of
99 the Rivers and Harbors Act of 1899 as required by the United
100 States Army Corps of Engineers, notwithstanding the provisions
101 of s. 373.4145 and for the limited purposes of implementing the
102 statewide programmatic general permit authorized by this

287081

5/2/2006 7:56:48 AM

Amendment No. (for drafter's use only)

103 ~~section. The department is directed to file with the Speaker of~~
104 ~~the House of Representatives and the President of the Senate a~~
105 ~~report proposing any required federal and state statutory~~
106 ~~changes that would be necessary to accomplish the directives~~
107 ~~listed in this section and to coordinate with the Florida~~
108 ~~Congressional Delegation on any necessary changes to federal law~~
109 ~~to implement the directives.~~

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

121 (4) When granting or denying a development permit for
122 wetland construction, a local government must consider
123 mitigation proposed by the applicant, provided the mitigation
124 fully offsets the loss of wetland functions in accordance with
125 the uniform mitigation assessment method adopted pursuant to s.
126 373.414(18).

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

129 373.4211 Ratification of chapter 17-340, Florida
130 Administrative Code, on the delineation of the landward extent
131 of wetlands and surface waters.--Pursuant to s. 373.421, the
287081

5/2/2006 7:56:48 AM

Amendment No. (for drafter's use only)

132 Legislature ratifies chapter 17-340, Florida Administrative
133 Code, approved on January 13, 1994, by the Environmental
134 Regulation Commission, with the following changes:

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

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

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

287081

5/2/2006 7:56:48 AM

Amendment No. (for drafter's use only)

160 (b) Pursuant to s. 373.421, and subject to the conditions
161 described in this subsection, the Legislature ratifies the
162 changes to rule 62-340.450(3), Florida Administrative Code,
163 approved on February 23, 2006, by the Environmental Regulation
164 Commission which added slash pine (pinus elliotti) and gallberry
165 (ilex glabra) to the list of facultative plants. However, this
166 ratification and the rule revision does not take effect until
167 state and federal wetland jurisdictional delineation
168 methodologies are aligned.

169 (c) Surface water and wetland delineations identified and
170 approved by a permit issued under rules adopted under this part
171 on or before the effective date of the alignment of the state
172 and federal jurisdictional methodologies remain valid until the
173 expiration of the permit, notwithstanding the changes to rule
174 62-340.450(3), Florida Administrative Code. For purposes of this
175 paragraph, the term "identified and approved" means:

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

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

181
182 If surface water and wetland delineations are not identified and
183 approved pursuant to the permit issued under rules adopted under
184 this part, delineations within the geographical area to which
185 the permit applies shall be determined under the rules
186 applicable at the time the permit was issued, notwithstanding
187 the changes to rule 62-340.450(3), Florida Administrative Code,
188 as described in this subsection. This paragraph also applies to

287081

5/2/2006 7:56:48 AM

Amendment No. (for drafter's use only)

189 any modification of the permit issued under rules adopted
190 pursuant to this part, which does not constitute a substantial
191 modification, within the geographical area to which the permit
192 applies.

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

214 (e) A permit application under this part for dredging and
215 filling or other activity which is pending on or before the
216 effective date of the alignment of the state and federal
217 jurisdictional methodologies is exempt from the changes to rule
287081

5/2/2006 7:56:48 AM

Amendment No. (for drafter's use only)

218 62-340.450(3), Florida Administrative Code, as described in this
219 subsection.

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

227

228

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

230 On page 1, remove line 12, and insert:

231 include; amending s. 373.4144, F.S.; providing legislative
232 intent relating to coordinating activities among the
233 Department of Environmental Protection and specified
234 federal agencies; requiring the department and the water
235 management districts to implement a voluntary statewide
236 general permit for certain wetlands and surface waters;
237 detailing conditions applicable for statewide general
238 permits; requiring a local government to consider
239 mitigation proposed by the applicant when granting or
240 denying a development permit for wetland construction;
241 providing conditions; amending s. 373.4211, F.S.;
242 ratifying certain rules in the Florida Administrative Code
243 relating to surface water and wetland delineations;
244 providing for application to existing permits; providing
245 exemptions for certain specified activities; providing an
246 effective date.

287081

5/2/2006 7:56:48 AM