

Bill No. CS for SB 1766

Barcode 323768

CHAMBER ACTION

Senate

House

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The Committee on Community Affairs (Bennett) recommended the following amendment:

Senate Amendment (with title amendment)

On page 27, between lines 14 and 15,

insert:

Section 12. Subsection (12) is added to section 373.406, Florida Statutes, to read:

373.406 Exemptions.--The following exemptions shall apply:

(12) Projects and activities of the Department of Transportation which are described in s. 373.4146 are exempt from regulation under this part and from any rule, manual, or order adopted under this part.

Section 13. Present paragraphs (b) and (c) of subsection (1) of section 373.414, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to that subsection, to read:

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

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1 (1) As part of an applicant's demonstration that an
2 activity regulated under this part will not be harmful to the
3 water resources or will not be inconsistent with the overall
4 objectives of the district, the governing board or the
5 department shall require the applicant to provide reasonable
6 assurance that state water quality standards applicable to
7 waters as defined in s. 403.031(13) will not be violated and
8 reasonable assurance that such activity in, on, or over
9 surface waters or wetlands, as delineated in s. 373.421(1), is
10 not contrary to the public interest. However, if such an
11 activity significantly degrades or is within an Outstanding
12 Florida Water, as provided by department rule, the applicant
13 must provide reasonable assurance that the proposed activity
14 will be clearly in the public interest.

15 (b) Projects and activities at the Department of
16 Transportation which are described in s. 373.4146 are exempt
17 from the public-interest criteria of this subsection.

18 Section 14. Subsection (7) is added to section
19 373.4145, Florida Statutes, to read:

20 373.4145 Interim part IV permitting program for the
21 Northwest Florida Water Management District.--

22 (7) Projects and activities of the Department of
23 Transportation which are described in s. 373.4146 are exempt
24 from this section and from any rule, manual, or order adopted
25 under this part.

26 Section 15. Section 373.4146, Florida Statutes, is
27 created to read:

28 373.4146 Permit exemptions for certain projects of the
29 Department of Transportation; establishment of permit
30 thresholds.--

31 (1) The following state transportation projects are

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1 exempt from regulation under this part and from any rule,
2 manual, or order adopted under this part:

- 3 (a) Widening of an existing lane;
- 4 (b) Paving of road shoulders;
- 5 (c) Replacing a bridge within the original footprint;
- 6 (d) Intersection improvements; and
- 7 (e) Wet detention and retention areas of less than
8 one-half acre for transportation projects less than 100 feet
9 wide.

10 (2) The Department of Transportation is not required
11 to determine the historic discharge rate for discharges to
12 tidally controlled bodies of water for any state
13 transportation project.

14 (3)(a) State transportation projects for which
15 environmental studies have been prepared are exempt from a
16 cumulative-impact review required pursuant to s.
17 373.414(8)(a).

18 (b) Mitigation that is otherwise required to address
19 secondary environmental impacts is not required for extensions
20 of existing culverts, for a total length of 75 feet.

21 (4) Linear transportation projects are exempt from
22 acreage thresholds under individual environmental resource
23 permits or dredge-and-fill permits.

24 (5) Transportation projects of less than 5 acres may
25 obtain general permits under this part.

26 (6) A permit under this part using the concurrent
27 review procedures under ss. 373.422 and 373.427 is not
28 required for transportation projects that are located on
29 sovereign submerged lands or other state-owned lands. In lieu
30 of obtaining environmental-resource permits or dredge-and-fill
31 permits, the Department of Transportation shall enter into a

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1 memorandum of understanding with the Department of
 2 Environmental Protection and the water management districts
 3 addressing the environmental impacts of a transportation
 4 project. The Department of Transportation shall obtain leases
 5 or easements for state-owned land pursuant to chapter 253 or
 6 chapter 258.

7 (7) The Department of Transportation and the water
 8 management districts shall jointly develop a method for
 9 determining the seasonal high-groundwater-table elevation,
 10 which shall be used by water management districts when
 11 evaluating state transportation projects.

12 (8) The Department of Transportation and the water
 13 management districts shall research and identify the specific
 14 constituents of highway stormwater runoff and shall jointly
 15 develop best-management practices to treat or minimize these
 16 identified constituents.

17 Section 16. Section 373.422, Florida Statutes, is
 18 amended to read:

19 373.422 Applications for activities on state
 20 sovereignty lands or other state lands; exemption.--If
 21 sovereignty lands or other lands owned by the state are the
 22 subject of a proposed activity, the issuance of a permit by
 23 the department or a water management district must be
 24 conditioned upon the receipt by the applicant of all necessary
 25 approvals and authorizations under chapters 253 and 258 before
 26 the undertaking of the activity. The department or the
 27 governing board must issue its permit conditioned upon the
 28 securing of the necessary consent or approvals by the
 29 applicant. Once the department has adopted rules under s.
 30 373.427 for concurrent review of applications for permits
 31 under this part and proprietary authorizations under chapters

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1 253 and 258 to use submerged lands, the permitting conditions
 2 required under this section cease to apply to those
 3 applications. If the approval or authorization of the board is
 4 required, the applicant may not commence any excavation,
 5 construction, or other activity until the approval or
 6 authorization has been issued. The Department of
 7 Transportation is exempt from the provisions of this section
 8 requiring concurrent review of state transportation projects
 9 proposed for sovereign submerged lands or other state-owned
 10 lands.

11 Section 17. Section 373.427, Florida Statutes, is
 12 amended to read:

13 373.427 Concurrent permit review; exemptions.--

14 (1) The department, in consultation with the water
 15 management districts, may adopt procedural rules requiring
 16 concurrent application submittal and establishing a concurrent
 17 review procedure for any activity regulated under this part
 18 that also requires any authorization, permit, waiver,
 19 variance, or approval described in paragraphs (a)-(d), except
 20 as specified in subsection (8). The rules must address
 21 concurrent review of applications under this part and any one
 22 or more of the authorizations, permits, waivers, variances,
 23 and approvals described in paragraphs (a)-(d), except as
 24 specified in subsection (8). Applicants that propose such
 25 activities must submit, as part of the permit application
 26 under this part, all information necessary to satisfy the
 27 requirements for:

28 (a) Proprietary authorization under chapter 253 or
 29 chapter 258 to use submerged lands owned by the board of
 30 trustees;

31 (b) Coastal construction permits under s. 161.041;

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1 (c) Coastal construction control line permits under s.
2 161.053; and

3 (d) Waiver or variance of the setback requirements
4 under s. 161.052.

5
6 The rules adopted under this section may also require
7 submittal of such information as is necessary to determine
8 whether the proposed activity will occur on submerged lands
9 owned by the board of trustees. Notwithstanding s. 120.60, an
10 application under this part is not complete and the timeframes
11 for license approval or denial shall not commence until all
12 information required by rules adopted under this section is
13 received. For applications concurrently reviewed under this
14 section, the agency that conducts the concurrent application
15 review shall issue a notice of consolidated intent to grant or
16 deny the applicable authorizations, permits, waivers,
17 variances, and approvals. The issuance of the notice of
18 consolidated intent to grant or deny is deemed in compliance
19 with s. 120.60 timeframes for license approval or denial on
20 the concurrently processed applications for any required
21 permit, waiver, variance, or approval under this chapter or
22 chapter 161. Failure to satisfy these timeframes shall not
23 result in approval by default of the application to use board
24 of trustees-owned submerged lands. If an administrative
25 proceeding pursuant to ss. 120.569 and 120.57 is timely
26 requested, the case shall be conducted as a single
27 consolidated administrative proceeding on all such
28 concurrently processed applications. Once the rules adopted
29 pursuant to this section become effective, they shall
30 establish the concurrent review procedure for applications
31 submitted to both the department and the water management

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1 districts, including those applications for categories of
 2 activities requiring authorization to use board of
 3 trustees-owned submerged lands for which the board of trustees
 4 has not delegated authority to take final agency action
 5 without action by the board of trustees.

6 (2) In addition to the provisions set forth in
 7 subsection (1) and notwithstanding s. 120.60, the procedures
 8 established in this subsection shall apply to concurrently
 9 reviewed applications which request proprietary authorization
 10 to use board of trustees-owned submerged lands for activities
 11 for which there has been no delegation of authority to take
 12 final agency action without action by the board of trustees.

13 (a) Unless waived by the applicant, within 90 days of
 14 receipt of a complete application, the department or water
 15 management district shall issue a recommended consolidated
 16 intent to grant or deny on all of the concurrently reviewed
 17 applications, and shall submit the recommended consolidated
 18 intent to the board of trustees for its consideration of the
 19 application to use board of trustees-owned submerged lands.
 20 The recommended consolidated intent shall not constitute a
 21 point of entry to request a hearing pursuant to ss. 120.569
 22 and 120.57. Unless waived by the applicant, the board of
 23 trustees shall consider the board of trustees-owned submerged
 24 lands portion of the recommended consolidated intent at its
 25 next regularly scheduled meeting for which notice may be
 26 properly given, and the board of trustees shall determine
 27 whether the application to use board of trustees-owned
 28 submerged lands should be granted, granted with modifications,
 29 or denied. The board of trustees shall then direct the
 30 department or water management district to issue a notice of
 31 intent to grant or deny the application to use board of

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1 trustees-owned submerged lands. Unless waived by the
 2 applicant, within 14 days following the action by the board of
 3 trustees, the department or water management district shall
 4 issue a notice of consolidated intent to grant or deny on the
 5 application to use board of trustees-owned submerged lands, in
 6 accordance with the directions of the board of trustees,
 7 together with all of the concurrently reviewed applications.

8 (b) The timely issuance of a recommended consolidated
 9 intent to grant or deny as set forth in paragraph (a) is
 10 deemed in compliance with s. 120.60 timeframes for license
 11 approval or denial on the concurrently processed applications
 12 for any required permit, waiver, variance, or approval under
 13 this chapter or chapter 161. Failure to satisfy these
 14 timeframes shall not result in approval by default of the
 15 application to use board of trustees-owned submerged lands.

16 (c) Any petition for an administrative hearing
 17 pursuant to ss. 120.569 and 120.57 must be filed within 14
 18 days of the notice of consolidated intent to grant or deny.
 19 Unless waived by the applicant, within 60 days after the
 20 recommended order is submitted, or at the next regularly
 21 scheduled meeting for which notice may be properly given,
 22 whichever is latest, the board of trustees shall determine
 23 what action to take on any recommended order issued under ss.
 24 120.569 and 120.57 on the application to use board of
 25 trustees-owned submerged lands, and shall direct the
 26 department or water management district on what action to take
 27 in the final order concerning the application to use board of
 28 trustees-owned submerged lands. The department or water
 29 management district shall determine what action to take on any
 30 recommended order issued under ss. 120.569 and 120.57
 31 regarding any concurrently processed permits, waivers,

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1 variances, or approvals required by this chapter or chapter
 2 161. The department or water management district shall then
 3 take final agency action by entering a consolidated final
 4 order addressing each of the concurrently reviewed
 5 authorizations, permits, waivers, or approvals. Failure to
 6 satisfy these timeframes shall not result in approval by
 7 default of the application to use board of trustees-owned
 8 submerged lands. Any provisions relating to authorization to
 9 use board of trustees-owned submerged lands shall be as
 10 directed by the board of trustees. Issuance of the
 11 consolidated final order within 45 days after receipt of the
 12 direction of the board of trustees regarding the application
 13 to use board of trustees-owned submerged lands is deemed in
 14 compliance with the timeframes for issuance of final orders
 15 under s. 120.60. The final order shall be subject to the
 16 provisions of s. 373.4275.

17 (3) After the effective date of rules adopted under
 18 this section, neither the department nor a water management
 19 district may issue a permit under this part unless the
 20 requirements for issuance of any additional required
 21 authorizations, permits, waivers, variances, and approvals set
 22 forth in this section which are subject to concurrent review
 23 are also satisfied.

24 (4) When both an environmental resource permit or
 25 dredge and fill permit and a waiver, or variance set forth in
 26 paragraphs (1)(b)-(d) are granted in a consolidated order,
 27 these permits shall be consolidated into a single permit to be
 28 known as a joint coastal permit.

29 (5) Any application fee required under s. 373.109 for
 30 a permit under this part is in addition to any fees required
 31 for any of the concurrently reviewed applications for

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1 authorizations, permits, waivers, variances, or approvals set
2 forth in subsection (1) or subsection (2). The application
3 fees must be allocated, deposited, and used as provided in s.
4 373.109.

5 (6) Whenever a concurrently processed application
6 includes an application to use board of trustees-owned
7 submerged lands, any noticing requirements of s. 253.115 shall
8 be met, in addition to those in s. 373.413.

9 (7) When a water management district acts pursuant to
10 a delegation under s. 253.002, any person instituting an
11 administrative or judicial proceeding regarding such action
12 shall serve a copy of the petition or complaint on the board
13 of trustees. The department or the Department of Legal
14 Affairs, acting on behalf of the board of trustees, may
15 intervene in any such proceeding.

16 (8)(a) Projects by the Department of Transportation
17 which need a sovereign-submerged-land easement or lease from
18 the board of trustees are exempt from the concurrent-review
19 provisions of this section. However, the Department of
20 Transportation must obtain proprietary authorization under
21 chapter 253 or chapter 258 to use submerged lands owned by the
22 board of trustees.

23 (b) The department, the water management districts,
24 and the Department of Transportation shall develop a
25 memorandum of understanding governing the use of sovereign
26 submerged lands for state transportation projects. The
27 memorandum of understanding must address best-engineering
28 practices to minimize the project's environmental impacts,
29 mitigation of unavoidable environmental impacts, and other
30 related issues.

31 Section 18. Paragraph (b) of subsection (7) of section

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1 373.036, Florida Statutes, is amended to read:

2 373.036 Florida water plan; district water management
3 plans.--

4 (7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL
5 REPORT.--

6 (b) The consolidated annual report shall contain the
7 following elements, as appropriate to that water management
8 district:

9 1. A district water management plan annual report or
10 the annual work plan report allowed in subparagraph (2)(e)4.

11 2. The department-approved minimum flows and levels
12 annual priority list and schedule required by s. 373.042(2).

13 3. The annual 5-year capital improvements plan
14 required by s. 373.536(6)(a)3.

15 4. The alternative water supplies annual report
16 required by s. 373.1961(2)(k).

17 5. The final annual 5-year water resource development
18 work program required by s. 373.536(6)(a)4.

19 6. The Florida Forever Water Management District Work
20 Plan annual report required by s. 373.414(1)(c)2. ~~s.~~
21 ~~373.199(7).~~

22 7. The mitigation donation annual report required by
23 s. 373.414(1)(c)2. ~~s. 373.414(1)(b)2.~~

24 Section 19. Paragraph (e) of subsection (6) of section
25 373.4135, Florida Statutes, is amended to read:

26 373.4135 Mitigation banks and offsite regional
27 mitigation.--

28 (6) An environmental creation, preservation,
29 enhancement, or restoration project, including regional
30 offsite mitigation areas, for which money is donated or paid
31 as mitigation, that is sponsored by the department, a water

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1 management district, or a local government and provides
 2 mitigation for five or more applicants for permits under this
 3 part, or for 35 or more acres of adverse impacts, shall be
 4 established and operated under a memorandum of agreement. The
 5 memorandum of agreement shall be between the governmental
 6 entity proposing the mitigation project and the department or
 7 water management district, as appropriate. Such memorandum of
 8 agreement need not be adopted by rule. For the purposes of
 9 this subsection, one creation, preservation, enhancement, or
 10 restoration project shall mean one or more parcels of land
 11 with similar ecological communities that are intended to be
 12 created, preserved, enhanced, or restored under a common
 13 scheme.

14 (e) Projects governed by this subsection, except for
 15 projects established pursuant to subsection (7), shall be
 16 subject to the provisions of s. 373.414(1)(c)1. ~~s.~~
 17 ~~373.414(1)(b)1.~~

18 Section 20. Paragraph (d) of subsection (6) of section
 19 373.4136, Florida Statutes, is amended to read:

20 373.4136 Establishment and operation of mitigation
 21 banks.--

22 (6) MITIGATION SERVICE AREA.--The department or water
 23 management district shall establish a mitigation service area
 24 for each mitigation bank permit. The department or water
 25 management district shall notify and consider comments
 26 received on the proposed mitigation service area from each
 27 local government within the proposed mitigation service area.
 28 Except as provided herein, mitigation credits may be withdrawn
 29 and used only to offset adverse impacts in the mitigation
 30 service area. The boundaries of the mitigation service area
 31 shall depend upon the geographic area where the mitigation

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1 bank could reasonably be expected to offset adverse impacts.
2 Mitigation service areas may overlap, and mitigation service
3 areas for two or more mitigation banks may be approved for a
4 regional watershed.

5 (d) If the requirements in s. 373.414(1)(c) ~~s.~~
6 ~~373.414(1)(b)~~ and (8) are met, the following projects or
7 activities regulated under this part shall be eligible to use
8 a mitigation bank, regardless of whether they are located
9 within the mitigation service area:

10 1. Projects with adverse impacts partially located
11 within the mitigation service area.

12 2. Linear projects, such as roadways, transmission
13 lines, distribution lines, pipelines, or railways.

14 3. Projects with total adverse impacts of less than 1
15 acre in size.

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17 (Redesignate subsequent sections.)
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19

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

21 And the title is amended as follows:

22 On page 3, line 17, after the semicolon,
23

24 insert:

25 amending ss. 373.406, 373.414, 373.4145,
26 373.422, 373.427, F.S., and creating s.
27 373.4146, F.S.; exempting certain projects and
28 activities of the Department of Transportation
29 from state regulation or management of surface
30 waters, from the public-interest criteria
31 governing the use of surface waters and

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1 wetlands, from the regulation of the permitting
2 program for the Northwest Florida Water
3 Management District, and from concurrent review
4 of state transportation projects proposed for
5 sovereign submerged lands or other state-owned
6 lands; amending ss. 373.036, 373.4135, and
7 373.4136, F.S.; conforming cross-references;

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