

1 A bill to be entitled

2 An act relating to environmental permitting; amending s.  
3 373.414, F.S.; limiting local government authority to  
4 prohibit mitigation of certain wetlands activities;  
5 prohibiting certain local government resource permitting  
6 in the Northwest Florida Water Management District;  
7 reenacting and amending s. 373.4145, F.S.; requiring the  
8 district and the Department of Environmental Protection to  
9 jointly develop rules for the regulation of certain  
10 activities related to stormwater management systems and  
11 the management and storage of surface waters; requiring  
12 the district and the department to streamline federal and  
13 state wetland permitting programs and to implement such  
14 measures; requiring certain exemptions and provisions for  
15 rules relating to certain dwellings; requiring the  
16 department and district to incorporate certain exemptions  
17 and general permits in joint rules; exempting certain  
18 activities and structures from permitting requirements;  
19 requiring the department and the district to enter into an  
20 operating agreement for the implementation of certain  
21 provisions; requiring the district to be responsible for  
22 the regulation and local delegation of certain activities;  
23 providing for continuing operation of certain earlier law;  
24 repealing certain provisions upon the adoption of rules;  
25 providing effect for failure to fund in any given fiscal  
26 year; providing an appropriation for operational expenses  
27 of the district; repealing s. 4 of ch. 2005-273, Laws of  
28 Florida, and s. 32 of ch. 2005-71, Laws of Florida, which  
29 specified dates certain for the repeal of certain

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30 provisions relating to permitting in the district;  
31 providing an effective date.

32  
33 Be It Enacted by the Legislature of the State of Florida:

34  
35 Section 1. Paragraph (b) of subsection (1) of section  
36 373.414, Florida Statutes, is amended to read:

37 373.414 Additional criteria for activities in surface  
38 waters and wetlands.--

39 (1) As part of an applicant's demonstration that an  
40 activity regulated under this part will not be harmful to the  
41 water resources or will not be inconsistent with the overall  
42 objectives of the district, the governing board or the department  
43 shall require the applicant to provide reasonable assurance that  
44 state water quality standards applicable to waters as defined in  
45 s. 403.031(13) will not be violated and reasonable assurance that  
46 such activity in, on, or over surface waters or wetlands, as  
47 delineated in s. 373.421(1), is not contrary to the public  
48 interest. However, if such an activity significantly degrades or  
49 is within an Outstanding Florida Water, as provided by department  
50 rule, the applicant must provide reasonable assurance that the  
51 proposed activity will be clearly in the public interest.

52 (b) If the applicant is unable to otherwise meet the  
53 criteria set forth in this subsection, the governing board or the  
54 department, in deciding to grant or deny a permit, shall consider  
55 measures proposed by or acceptable to the applicant to mitigate  
56 adverse effects that may be caused by the regulated activity.  
57 Local governments may not adopt or enforce ordinances,  
58 resolutions, regulations, or policies that prohibit or restrict

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59 mitigation that offsets wetland construction impacts pursuant to  
60 this part. Any local government ordinance or regulation intended  
61 to regulate construction in wetlands or surface waters shall  
62 consider measures proposed by or acceptable to the applicant to  
63 mitigate adverse effects that may be caused by the regulated  
64 activity. Such measures may include, but are not limited to,  
65 onsite mitigation, offsite mitigation, offsite regional  
66 mitigation, and the purchase of mitigation credits from  
67 mitigation banks permitted under s. 373.4136. It shall be the  
68 responsibility of the applicant to choose the form of mitigation.  
69 The mitigation must offset the adverse effects caused by the  
70 regulated activity. Local governments within the geographical  
71 jurisdiction of the Northwest Florida Water Management District  
72 shall not adopt or enforce wetland regulatory programs or  
73 criteria more stringent than or duplicative of the environmental  
74 resource permitting program enacted pursuant to s. 373.4145(1).

75 1. The department or water management districts may accept  
76 the donation of money as mitigation only where the donation is  
77 specified for use in a duly noticed environmental creation,  
78 preservation, enhancement, or restoration project, endorsed by  
79 the department or the governing board of the water management  
80 district, which offsets the impacts of the activity permitted  
81 under this part. However, the provisions of this subsection shall  
82 not apply to projects undertaken pursuant to s. 373.4137 or  
83 chapter 378. Where a permit is required under this part to  
84 implement any project endorsed by the department or a water  
85 management district, all necessary permits must have been issued  
86 prior to the acceptance of any cash donation. After the effective  
87 date of this act, when money is donated to either the department

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88 | or a water management district to offset impacts authorized by a  
89 | permit under this part, the department or the water management  
90 | district shall accept only a donation that represents the full  
91 | cost to the department or water management district of  
92 | undertaking the project that is intended to mitigate the adverse  
93 | impacts. The full cost shall include all direct and indirect  
94 | costs, as applicable, such as those for land acquisition, land  
95 | restoration or enhancement, perpetual land management, and  
96 | general overhead consisting of costs such as staff time,  
97 | building, and vehicles. The department or the water management  
98 | district may use a multiplier or percentage to add to other  
99 | direct or indirect costs to estimate general overhead. Mitigation  
100 | credit for such a donation shall be given only to the extent that  
101 | the donation covers the full cost to the agency of undertaking  
102 | the project that is intended to mitigate the adverse impacts.  
103 | However, nothing herein shall be construed to prevent the  
104 | department or a water management district from accepting a  
105 | donation representing a portion of a larger project, provided  
106 | that the donation covers the full cost of that portion and  
107 | mitigation credit is given only for that portion. The department  
108 | or water management district may deviate from the full cost  
109 | requirements of this subparagraph to resolve a proceeding brought  
110 | pursuant to chapter 70 or a claim for inverse condemnation.  
111 | Nothing in this section shall be construed to require the owner  
112 | of a private mitigation bank, permitted under s. 373.4136, to  
113 | include the full cost of a mitigation credit in the price of the  
114 | credit to a purchaser of said credit.

115 |         2. The department and each water management district shall  
116 | report by March 1 of each year, as part of the consolidated

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117 annual report required by s. 373.036(7), all cash donations  
118 accepted under subparagraph 1. during the preceding water  
119 management district fiscal year for wetland mitigation purposes.  
120 The report shall exclude those contributions pursuant to s.  
121 373.4137. The report shall include a description of the endorsed  
122 mitigation projects and, except for projects governed by s.  
123 373.4135(6), shall address, as applicable, success criteria,  
124 project implementation status and timeframe, monitoring, long-  
125 term management, provisions for preservation, and full cost  
126 accounting.

127 3. If the applicant is unable to meet water quality  
128 standards because existing ambient water quality does not meet  
129 standards, the governing board or the department shall consider  
130 mitigation measures proposed by or acceptable to the applicant  
131 that cause net improvement of the water quality in the receiving  
132 body of water for those parameters which do not meet standards.

133 4. If mitigation requirements imposed by a local government  
134 for surface water and wetland impacts of an activity regulated  
135 under this part cannot be reconciled with mitigation requirements  
136 approved under a permit for the same activity issued under this  
137 part, including application of the uniform wetland mitigation  
138 assessment method adopted pursuant to subsection (18), the  
139 mitigation requirements for surface water and wetland impacts  
140 shall be controlled by the permit issued under this part.

141 Section 2. Section 373.4145, Florida Statutes, is reenacted  
142 and amended to read:

143 373.4145 ~~Interim~~ Part IV permitting program within the  
144 geographical jurisdiction of ~~for~~ the Northwest Florida Water  
145 Management District.--

146 (1) Within the geographical jurisdiction of the Northwest  
147 Florida Water Management District, taking into consideration the  
148 differing physical and natural characteristics of the area, the  
149 department and the district shall ~~the permitting authority of the~~  
150 ~~department under this part shall consist solely of the following,~~  
151 ~~notwithstanding the rule adoption deadline in s. 373.414(9):~~

152 (a) Jointly develop rules to regulate the construction,  
153 operation, alteration, maintenance, abandonment, and removal of  
154 stormwater management systems. The department shall adopt the  
155 rules no later than January 1, 2007; the district may implement  
156 rules prior to adoption pursuant to s. 120.54. Until the  
157 stormwater management system rules take effect, chapter 62-25 ~~17-~~  
158 ~~25, Florida Administrative Code, shall remain in full force and~~  
159 ~~effect,~~ and shall be implemented by the department.

160 Notwithstanding the provisions of this section, chapter 62-25 ~~17-~~  
161 ~~25, Florida Administrative Code, may be amended by the department~~  
162 as necessary to comply with any requirements of state or federal  
163 laws or regulations, or any condition imposed by a federal  
164 program, or as a requirement for receipt of federal grant funds.  
165 The intent of the rules created under this paragraph is to update  
166 existing stormwater rules, to improve water quality and water  
167 quality protection, and to apply the least restrictive measures  
168 and criteria adopted in other water management district rules.

169 (b) Jointly develop rules for the management and storage of  
170 surface waters under this part. The department shall adopt the  
171 rules no later than July 1, 2008; the district may implement  
172 rules prior to adoption pursuant to s. 120.54. Until the rules  
173 for the management and storage of surface waters under this part  
174 take effect, rules adopted pursuant to the authority of ss.

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175 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as  
176 amended, in effect prior to July 1, 1994, shall remain in full  
177 force and effect, and shall be implemented by the department.  
178 However, the department is authorized to establish additional  
179 exemptions and general permits for dredging and filling, if such  
180 exemptions or general permits do not allow significant adverse  
181 impacts to occur individually or cumulatively. However, for the  
182 purpose of chapter 62-312 ~~17-312~~, Florida Administrative Code,  
183 the landward extent of surface waters of the state identified in  
184 rule 62-312.030(2) ~~17-312.030(2)~~, Florida Administrative Code,  
185 shall be determined in accordance with the methodology in rules  
186 62-340.100 through 62-340.600 ~~17-340.100 through 17-340.600~~,  
187 Florida Administrative Code, ~~as ratified in s. 373.4211, upon the~~  
188 ~~effective date of such ratified methodology.~~ In implementing s.  
189 373.421(2), the department shall determine the extent of those  
190 surface waters and wetlands within the regulatory authority of  
191 the department as described in this paragraph. At the request of  
192 the petitioner, the department shall also determine the extent of  
193 surface waters and wetlands that ~~which~~ can be delineated by the  
194 methodology ratified in s. 373.4211, but that ~~which~~ are not  
195 subject to the regulatory authority of the department as  
196 described in this paragraph. The intent of the rules created  
197 under this paragraph is to improve the management and storage of  
198 surface waters with minimal impact on property interests and to  
199 consider the rural nature of the district relative to the  
200 permitting thresholds and requirements.

201 (c) Pursue streamlining of the federal and state wetland  
202 permitting programs pursuant to ss. 373.4143 and 373.4144.

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203        (d) Implement, to the maximum extent possible, streamlining  
204 measures, including electronic permitting, field permitting, and  
205 certification programs for activities with minimal individual or  
206 cumulative impact, informal wetland determinations, and other  
207 similar measures.

208        (2)-(e) The department may implement chapter 40A-4, Florida  
209 Administrative Code, in effect prior to July 1, 1994, pursuant to  
210 an interagency agreement with the Northwest Florida Water  
211 Management District adopted under s. 373.046(4).

212        (3) The rules adopted under subsection (1), as applicable,  
213 shall:

214        (a) Incorporate the exemptions in ss. 373.406 and  
215 403.813(2).

216        (b) Incorporate the provisions of rule 62-341.475(1)(f),  
217 Florida Administrative Code, applicable to single-family homes  
218 located entirely or partially within wholly owned, isolated  
219 wetlands.

220        (c) Exempt from the notice and permitting requirements of  
221 this part the construction or private use of a single-family  
222 dwelling unit, duplex, triplex, or quadruplex that:

223        1. Is not part of a larger common plan of development or  
224 sale proposed by the applicant.

225        2. Does not involve wetlands or other surface waters.

226        (d) Incorporate the exemptions and general permits that  
227 have been enacted by rule under s. 373.414(9) by the department  
228 and other water management districts and the general permits  
229 authorized by s. 403.814.



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230 (e) Exempt from permitting requirements activities and  
231 structures that are exempt from permitting in any other water  
232 management district.

233 (f) Exempt from permitting requirements the resurfacing or  
234 paving of unpaved roads.

235 (g) Exempt from permitting requirements the alteration of  
236 wholly owned, artificially created surface waters that do not  
237 connect to any waters of the state.

238 ~~(2) The authority of the Northwest Florida Water Management~~  
239 ~~District to implement this part or to implement any authority~~  
240 ~~pursuant to delegation by the department shall not be affected by~~  
241 ~~this section. The rule adoption deadline in s. 373.414(9) shall~~  
242 ~~not apply to said district.~~

243 ~~(4)(3) The department and the division of permitting~~  
244 ~~responsibilities in s. 373.046(4) shall not apply within the~~  
245 ~~geographical jurisdiction of the Northwest Florida Water~~  
246 ~~Management District shall enter into an operating agreement under~~  
247 ~~s. 373.046 to effectively implement this section and provide the~~  
248 ~~district with the amount of responsibility under the agreement~~  
249 ~~that resources allow, including, at a minimum, the responsibility~~  
250 ~~for regulating silviculture and agriculture. The operating~~  
251 ~~agreement shall encourage local delegation of the~~  
252 ~~responsibilities under this section pursuant to s. 373.441.~~

253 (5) The provisions of s. 373.414(11)-(14) shall not apply  
254 to rules adopted under this section.

255 (6) The following activities shall continue to be governed  
256 by the provisions of s. 373.4145, Florida Statutes 1994:

257 (a) The operation and routine custodial maintenance of  
258 activities legally in existence before the effective date of the

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259 rules adopted under subsection (1), as long as the terms and  
260 conditions of the permit, exemption, or other authorization for  
261 such activities continue to be met.

262 (b) The activities approved in a permit issued pursuant to  
263 s. 373.4145, Florida Statutes 1994, and the review of activities  
264 proposed in applications received before the effective date of  
265 the rules adopted under subsection (1), as applicable. This  
266 paragraph shall also apply to any modification of the plans,  
267 terms, and conditions of a permit issued pursuant to s. 373.4145,  
268 Florida Statutes 1994, that lessens the environmental impact,  
269 except that any such modification shall not extend the time limit  
270 for construction beyond 2 additional years.

271  
272 This subsection shall not apply to any activity that is altered,  
273 modified, expanded, abandoned, or removed after adoption of the  
274 applicable rules under subsection (1).

275 (7) Unless the petitioner elects to apply rule 62-340,  
276 Florida Administrative Code, to all wetlands, the delineation of  
277 the landward extent of wetlands and other surface waters for  
278 petitions filed under s. 373.421(2) prior to the effective date  
279 of the rules adopted under paragraph (1)(b) shall continue to be  
280 determined in accordance with rule 62-312.030(2), Florida  
281 Administrative Code, in effect July 1, 1994, and rules 62-340.100  
282 through 62-340.600, Florida Administrative Code, as ratified in  
283 s. 373.4211.

284 ~~(4) If the United States Environmental Protection Agency~~  
285 ~~approves an assumption of the federal program to regulate the~~  
286 ~~discharge of dredged or fill material by the department or the~~  
287 ~~water management districts, or both, pursuant to s. 404 of the~~

288 ~~Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss.~~  
 289 ~~1251 et seq., the United States Army Corps of Engineers issues~~  
 290 ~~one or more state programmatic general permits under the~~  
 291 ~~referenced statutes; or the United States Environmental~~  
 292 ~~Protection Agency or the United States Corps of Engineers~~  
 293 ~~approves any other delegation of regulatory authority under the~~  
 294 ~~referenced statutes, then the department may implement any~~  
 295 ~~permitting authority granted in this part within the Northwest~~  
 296 ~~Florida Water Management District which is prescribed as a~~  
 297 ~~condition of granting such assumption, general permit, or~~  
 298 ~~delegation.~~

299 (8)~~(5)~~ Within the geographical jurisdiction of the  
 300 Northwest Florida Water Management District, the methodology for  
 301 determining the landward extent of surface waters of the state  
 302 under chapter 403 in effect prior to the effective date of the  
 303 methodology ratified in s. 373.4211 shall apply to:

304 (a) Activities permitted under the rules adopted pursuant  
 305 to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes  
 306 1983, as amended, or that ~~which~~ were exempted from regulation  
 307 under such rules, prior to July 1, 1994, and that ~~which~~ were  
 308 permitted under chapter 62-25 ~~17-25~~, Florida Administrative Code,  
 309 or exempt from chapter 62-25 ~~17-25~~, Florida Administrative Code,  
 310 prior to July 1, 1994, provided:

311 1. An activity authorized by such permits is conducted in  
 312 accordance with the plans, terms, and conditions of such permits.

313 2. An activity exempted from the permitting requirements of  
 314 the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement  
 315 to the Florida Statutes 1983, as amended, or chapter 62-25 ~~17-25~~,  
 316 Florida Administrative Code, is:

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317 a. Commenced prior to July 1, 1994, and completed by July  
318 1, 1999;

319 b. Conducted in accordance with a plan depicting the  
320 activity that ~~which~~ has been submitted to and approved for  
321 construction by the department, the appropriate local government,  
322 the United States Army Corps of Engineers, or the Northwest  
323 Florida Water Management District; and

324 c. Conducted in accordance with the terms of the exemption.

325 (b) An activity within the boundaries of a valid  
326 jurisdictional declaratory statement issued pursuant to s.  
327 403.914, 1984 Supplement to the Florida Statutes 1983, as  
328 amended, or the rules adopted thereunder, in response to a  
329 petition received prior to June 1, 1994.

330 (c) Any modification of a permitted or exempt activity as  
331 described in paragraph (a) that ~~which~~ does not constitute a  
332 substantial modification or that ~~which~~ lessens the environmental  
333 impact of such permitted or exempt activity. For the purposes of  
334 this section, a substantial modification is one that ~~which~~ is  
335 reasonably expected to lead to substantially different  
336 environmental impacts.

337 (d) Applications for activities permitted under the rules  
338 adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the  
339 1983 Florida Statutes, as amended, that ~~which~~ were pending on  
340 June 15, 1994, unless the application elects to have applied the  
341 delineation methodology ratified in s. 373.4211.

342 (9) Subsections (2) and (8) are repealed on the effective  
343 date of the rules adopted under subsection (1).

344 (10) In the event that the Legislature in any given fiscal  
345 year fails to fund and staff the environmental resource

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346 permitting program established under this section, the  
347 environmental resource permitting program shall be suspended for  
348 that fiscal year and the rules and statutes governing development  
349 activity in the district shall revert to those in effect on April  
350 1, 2006, until such time as funding and staffing levels are  
351 restored consistent with this section.

352 ~~(6) Subsections (1), (2), (3), and (4) shall be repealed~~  
353 ~~effective July 1, 2006.~~

354 Section 3. The sum of \$2,740,000 is appropriated from the  
355 Water Management Lands Trust Fund to the Department of  
356 Environmental Protection for the 2006-2007 fiscal year for the  
357 operational expenditures of the Northwest Florida Water  
358 Management District pursuant to s. 373.4145, Florida Statutes, as  
359 amended by this act.

360 Section 4. Section 4 of chapter 2005-273, Laws of Florida,  
361 and section 32 of chapter 2005-71, Laws of Florida, are repealed.

362 Section 5. This act shall take effect July 1, 2006.