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CHAMBER ACTION

1 The Agriculture & Environment Appropriations Committee
2 recommends the following:

Council/Committee Substitute

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to environmental permitting; amending s.
8 373.414, F.S.; limiting local government authority to
9 prohibit mitigation of certain wetlands activities;
10 prohibiting certain local government resource permitting
11 in the Northwest Florida Water Management District;
12 reenacting and amending s. 373.4145, F.S.; requiring the
13 district and the Department of Environmental Protection to
14 jointly develop rules for the regulation of certain
15 activities related to stormwater management systems and
16 the management and storage of surface waters; requiring
17 the district and the department to streamline federal and
18 state wetland permitting programs and to implement such
19 measures; requiring certain exemptions and provisions for
20 rules relating to certain dwellings; requiring the
21 department and district to incorporate certain exemptions
22 and general permits in joint rules; exempting certain
23 activities and structures from permitting requirements;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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24 requiring the department and the district to enter into an
 25 operating agreement for the implementation of certain
 26 provisions; requiring the district to be responsible for
 27 the regulation and local delegation of certain activities;
 28 providing for continuing operation of certain earlier law;
 29 repealing certain provisions upon the adoption of rules;
 30 providing effect for failure to fund in any given fiscal
 31 year; providing an appropriation for operational expenses
 32 of the district; repealing s. 4 of ch. 2005-273, Laws of
 33 Florida, and s. 32 of ch. 2005-71, Laws of Florida, which
 34 specified dates certain for the repeal of certain
 35 provisions relating to permitting in the district;
 36 providing an effective date.

37

38 Be It Enacted by the Legislature of the State of Florida:

39

40 Section 1. Paragraph (b) of subsection (1) of section
 41 373.414, Florida Statutes, is amended to read:

42 373.414 Additional criteria for activities in surface
 43 waters and wetlands.--

44 (1) As part of an applicant's demonstration that an
 45 activity regulated under this part will not be harmful to the
 46 water resources or will not be inconsistent with the overall
 47 objectives of the district, the governing board or the
 48 department shall require the applicant to provide reasonable
 49 assurance that state water quality standards applicable to
 50 waters as defined in s. 403.031(13) will not be violated and
 51 reasonable assurance that such activity in, on, or over surface

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52 | waters or wetlands, as delineated in s. 373.421(1), is not
53 | contrary to the public interest. However, if such an activity
54 | significantly degrades or is within an Outstanding Florida
55 | Water, as provided by department rule, the applicant must
56 | provide reasonable assurance that the proposed activity will be
57 | clearly in the public interest.

58 | (b) If the applicant is unable to otherwise meet the
59 | criteria set forth in this subsection, the governing board or
60 | the department, in deciding to grant or deny a permit, shall
61 | consider measures proposed by or acceptable to the applicant to
62 | mitigate adverse effects that may be caused by the regulated
63 | activity. Local governments may not adopt or enforce ordinances,
64 | resolutions, regulations, or policies that prohibit or restrict
65 | mitigation that offsets wetland construction impacts pursuant to
66 | this part. Any local government ordinance or regulation intended
67 | to regulate construction in wetlands or surface waters shall
68 | consider measures proposed by or acceptable to the applicant to
69 | mitigate adverse effects that may be caused by the regulated
70 | activity. Such measures may include, but are not limited to,
71 | onsite mitigation, offsite mitigation, offsite regional
72 | mitigation, and the purchase of mitigation credits from
73 | mitigation banks permitted under s. 373.4136. It shall be the
74 | responsibility of the applicant to choose the form of
75 | mitigation. The mitigation must offset the adverse effects
76 | caused by the regulated activity. Local governments within the
77 | geographical jurisdiction of the Northwest Florida Water
78 | Management District shall not adopt or enforce wetland
79 | regulatory programs or criteria more stringent than or

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80 | duplicative of the environmental resource permitting program
81 | enacted pursuant to s. 373.4145(1).

82 | 1. The department or water management districts may accept
83 | the donation of money as mitigation only where the donation is
84 | specified for use in a duly noticed environmental creation,
85 | preservation, enhancement, or restoration project, endorsed by
86 | the department or the governing board of the water management
87 | district, which offsets the impacts of the activity permitted
88 | under this part. However, the provisions of this subsection
89 | shall not apply to projects undertaken pursuant to s. 373.4137
90 | or chapter 378. Where a permit is required under this part to
91 | implement any project endorsed by the department or a water
92 | management district, all necessary permits must have been issued
93 | prior to the acceptance of any cash donation. After the
94 | effective date of this act, when money is donated to either the
95 | department or a water management district to offset impacts
96 | authorized by a permit under this part, the department or the
97 | water management district shall accept only a donation that
98 | represents the full cost to the department or water management
99 | district of undertaking the project that is intended to mitigate
100 | the adverse impacts. The full cost shall include all direct and
101 | indirect costs, as applicable, such as those for land
102 | acquisition, land restoration or enhancement, perpetual land
103 | management, and general overhead consisting of costs such as
104 | staff time, building, and vehicles. The department or the water
105 | management district may use a multiplier or percentage to add to
106 | other direct or indirect costs to estimate general overhead.
107 | Mitigation credit for such a donation shall be given only to the

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108 | extent that the donation covers the full cost to the agency of
109 | undertaking the project that is intended to mitigate the adverse
110 | impacts. However, nothing herein shall be construed to prevent
111 | the department or a water management district from accepting a
112 | donation representing a portion of a larger project, provided
113 | that the donation covers the full cost of that portion and
114 | mitigation credit is given only for that portion. The department
115 | or water management district may deviate from the full cost
116 | requirements of this subparagraph to resolve a proceeding
117 | brought pursuant to chapter 70 or a claim for inverse
118 | condemnation. Nothing in this section shall be construed to
119 | require the owner of a private mitigation bank, permitted under
120 | s. 373.4136, to include the full cost of a mitigation credit in
121 | the price of the credit to a purchaser of said credit.

122 | 2. The department and each water management district shall
123 | report by March 1 of each year, as part of the consolidated
124 | annual report required by s. 373.036(7), all cash donations
125 | accepted under subparagraph 1. during the preceding water
126 | management district fiscal year for wetland mitigation purposes.
127 | The report shall exclude those contributions pursuant to s.
128 | 373.4137. The report shall include a description of the endorsed
129 | mitigation projects and, except for projects governed by s.
130 | 373.4135(6), shall address, as applicable, success criteria,
131 | project implementation status and timeframe, monitoring, long-
132 | term management, provisions for preservation, and full cost
133 | accounting.

134 | 3. If the applicant is unable to meet water quality
135 | standards because existing ambient water quality does not meet

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136 standards, the governing board or the department shall consider
 137 mitigation measures proposed by or acceptable to the applicant
 138 that cause net improvement of the water quality in the receiving
 139 body of water for those parameters which do not meet standards.

140 4. If mitigation requirements imposed by a local
 141 government for surface water and wetland impacts of an activity
 142 regulated under this part cannot be reconciled with mitigation
 143 requirements approved under a permit for the same activity
 144 issued under this part, including application of the uniform
 145 wetland mitigation assessment method adopted pursuant to
 146 subsection (18), the mitigation requirements for surface water
 147 and wetland impacts shall be controlled by the permit issued
 148 under this part.

149 Section 2. Section 373.4145, Florida Statutes, is
 150 reenacted and amended to read:

151 373.4145 ~~Interim~~ Part IV permitting program within the
 152 geographical jurisdiction of ~~for~~ the Northwest Florida Water
 153 Management District.--

154 (1) Within the geographical jurisdiction of the Northwest
 155 Florida Water Management District, taking into consideration the
 156 differing physical and natural characteristics of the area, the
 157 department and the district shall ~~the permitting authority of~~
 158 ~~the department under this part shall consist solely of the~~
 159 ~~following, notwithstanding the rule adoption deadline in s.~~
 160 373.414(9):

161 (a) Jointly develop rules to regulate the construction,
 162 operation, alteration, maintenance, abandonment, and removal of
 163 stormwater management systems. The department shall adopt the

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164 rules no later than January 1, 2007; the district may implement
165 rules prior to adoption pursuant to s. 120.54. Until the
166 stormwater management system rules take effect, chapter 62-25
167 ~~17-25~~, Florida Administrative Code, shall remain in full force
168 and effect, and shall be implemented by the department.
169 Notwithstanding the provisions of this section, chapter 62-25
170 ~~17-25~~, Florida Administrative Code, may be amended by the
171 department as necessary to comply with any requirements of state
172 or federal laws or regulations, or any condition imposed by a
173 federal program, or as a requirement for receipt of federal
174 grant funds. The intent of the rules created under this
175 paragraph is to update existing stormwater rules, to improve
176 water quality and water quality protection, and to apply the
177 least restrictive measures and criteria adopted in other water
178 management district rules.

179 (b) Jointly develop rules for the management and storage
180 of surface waters under this part. The department shall adopt
181 the rules no later than July 1, 2008; the district may implement
182 rules prior to adoption pursuant to s. 120.54. Until the rules
183 for the management and storage of surface waters under this part
184 take effect, rules adopted pursuant to the authority of ss.
185 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as
186 amended, in effect prior to July 1, 1994, shall remain in full
187 force and effect, and shall be implemented by the department.
188 However, the department is authorized to establish additional
189 exemptions and general permits for dredging and filling, if such
190 exemptions or general permits do not allow significant adverse
191 impacts to occur individually or cumulatively. However, for the

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192 | purpose of chapter 62-312 ~~17-312~~, Florida Administrative Code,
 193 | the landward extent of surface waters of the state identified in
 194 | rule 62-312.030(2) ~~17-312.030(2)~~, Florida Administrative Code,
 195 | shall be determined in accordance with the methodology in rules
 196 | 62-340.100 through 62-340.600 ~~17-340.100 through 17-340.600~~,
 197 | Florida Administrative Code, ~~as ratified in s. 373.4211, upon~~
 198 | ~~the effective date of such ratified methodology~~. In implementing
 199 | s. 373.421(2), the department shall determine the extent of
 200 | those surface waters and wetlands within the regulatory
 201 | authority of the department as described in this paragraph. At
 202 | the request of the petitioner, the department shall also
 203 | determine the extent of surface waters and wetlands that ~~which~~
 204 | can be delineated by the methodology ratified in s. 373.4211,
 205 | but that ~~which~~ are not subject to the regulatory authority of
 206 | the department as described in this paragraph. The intent of the
 207 | rules created under this paragraph is to improve the management
 208 | and storage of surface waters with minimal impact on property
 209 | interests and to consider the rural nature of the district
 210 | relative to the permitting thresholds and requirements.

211 | (c) Pursue streamlining of the federal and state wetland
 212 | permitting programs pursuant to ss. 373.4143 and 373.4144.

213 | (d) Implement, to the maximum extent possible,
 214 | streamlining measures, including electronic permitting, field
 215 | permitting, and certification programs for activities with
 216 | minimal individual or cumulative impact, informal wetland
 217 | determinations, and other similar measures.

218 | (2)(e) The department may implement chapter 40A-4, Florida
 219 | Administrative Code, in effect prior to July 1, 1994, pursuant

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220 to an interagency agreement with the Northwest Florida Water
221 Management District adopted under s. 373.046(4).

222 (3) The rules adopted under subsection (1), as applicable,
223 shall:

224 (a) Incorporate the exemptions in ss. 373.406 and
225 403.813(2).

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

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

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

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

236 (d) Incorporate the exemptions and general permits that
237 have been enacted by rule under s. 373.414(9) by the department
238 and other water management districts and the general permits
239 authorized by s. 403.814.

240 (e) Exempt from permitting requirements activities and
241 structures that are exempt from permitting in any other water
242 management district.

243 (f) Exempt from permitting requirements the resurfacing or
244 paving of unpaved roads.

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

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248 ~~(2) The authority of the Northwest Florida Water~~
249 ~~Management District to implement this part or to implement any~~
250 ~~authority pursuant to delegation by the department shall not be~~
251 ~~affected by this section. The rule adoption deadline in s.~~
252 ~~373.414(9) shall not apply to said district.~~

253 (4)(3) The department and the division of permitting
254 responsibilities in s. 373.046(4) shall not apply within the
255 geographical jurisdiction of the Northwest Florida Water
256 Management District shall enter into an operating agreement
257 under s. 373.046 to effectively implement this section and
258 provide the district with the amount of responsibility under the
259 agreement that resources allow, including, at a minimum, the
260 responsibility for regulating silviculture and agriculture. The
261 operating agreement shall encourage local delegation of the
262 responsibilities under this section pursuant to s. 373.441.

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

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

267 (a) The operation and routine custodial maintenance of
268 activities legally in existence before the effective date of the
269 rules adopted under subsection (1), as long as the terms and
270 conditions of the permit, exemption, or other authorization for
271 such activities continue to be met.

272 (b) The activities approved in a permit issued pursuant to
273 s. 373.4145, Florida Statutes 1994, and the review of activities
274 proposed in applications received before the effective date of
275 the rules adopted under subsection (1), as applicable. This

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276 paragraph shall also apply to any modification of the plans,
277 terms, and conditions of a permit issued pursuant to s.
278 373.4145, Florida Statutes 1994, that lessens the environmental
279 impact, except that any such modification shall not extend the
280 time limit for construction beyond 2 additional years.

281
282 This subsection shall not apply to any activity that is altered,
283 modified, expanded, abandoned, or removed after adoption of the
284 applicable rules under subsection (1).

285 (7) Unless the petitioner elects to apply rule 62-340,
286 Florida Administrative Code, to all wetlands, the delineation of
287 the landward extent of wetlands and other surface waters for
288 petitions filed under s. 373.421(2) prior to the effective date
289 of the rules adopted under paragraph (1)(b) shall continue to be
290 determined in accordance with rule 62-312.030(2), Florida
291 Administrative Code, in effect July 1, 1994, and rules 62-
292 340.100 through 62-340.600, Florida Administrative Code, as
293 ratified in s. 373.4211.

294 ~~(4) If the United States Environmental Protection Agency~~
295 ~~approves an assumption of the federal program to regulate the~~
296 ~~discharge of dredged or fill material by the department or the~~
297 ~~water management districts, or both, pursuant to s. 404 of the~~
298 ~~Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss.~~
299 ~~1251 et seq.; the United States Army Corps of Engineers issues~~
300 ~~one or more state programmatic general permits under the~~
301 ~~referenced statutes; or the United States Environmental~~
302 ~~Protection Agency or the United States Corps of Engineers~~
303 ~~approves any other delegation of regulatory authority under the~~

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304 ~~referenced statutes, then the department may implement any~~
305 ~~permitting authority granted in this part within the Northwest~~
306 ~~Florida Water Management District which is prescribed as a~~
307 ~~condition of granting such assumption, general permit, or~~
308 ~~delegation.~~

309 (8)~~(5)~~ Within the geographical jurisdiction of the
310 Northwest Florida Water Management District, the methodology for
311 determining the landward extent of surface waters of the state
312 under chapter 403 in effect prior to the effective date of the
313 methodology ratified in s. 373.4211 shall apply to:

314 (a) Activities permitted under the rules adopted pursuant
315 to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes
316 1983, as amended, or that ~~which~~ were exempted from regulation
317 under such rules, prior to July 1, 1994, and that ~~which~~ were
318 permitted under chapter 62-25 ~~17-25~~, Florida Administrative
319 Code, or exempt from chapter 62-25 ~~17-25~~, Florida Administrative
320 Code, prior to July 1, 1994, provided:

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

324 2. An activity exempted from the permitting requirements
325 of the rules adopted pursuant to ss. 403.91-403.929, 1984
326 Supplement to the Florida Statutes 1983, as amended, or chapter
327 62-25 ~~17-25~~, Florida Administrative Code, is:

328 a. Commenced prior to July 1, 1994, and completed by July
329 1, 1999;

330 b. Conducted in accordance with a plan depicting the
331 activity that ~~which~~ has been submitted to and approved for

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332 construction by the department, the appropriate local
333 government, the United States Army Corps of Engineers, or the
334 Northwest Florida Water Management District; and

335 c. Conducted in accordance with the terms of the
336 exemption.

337 (b) An activity within the boundaries of a valid
338 jurisdictional declaratory statement issued pursuant to s.
339 403.914, 1984 Supplement to the Florida Statutes 1983, as
340 amended, or the rules adopted thereunder, in response to a
341 petition received prior to June 1, 1994.

342 (c) Any modification of a permitted or exempt activity as
343 described in paragraph (a) that ~~which~~ does not constitute a
344 substantial modification or that ~~which~~ lessens the environmental
345 impact of such permitted or exempt activity. For the purposes of
346 this section, a substantial modification is one that ~~which~~ is
347 reasonably expected to lead to substantially different
348 environmental impacts.

349 (d) Applications for activities permitted under the rules
350 adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the
351 1983 Florida Statutes, as amended, that ~~which~~ were pending on
352 June 15, 1994, unless the application elects to have applied the
353 delineation methodology ratified in s. 373.4211.

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

356 (10) In the event that the Legislature in any given fiscal
357 year fails to fund and staff the environmental resource
358 permitting program established under this section, the
359 environmental resource permitting program shall be suspended for

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360 that fiscal year and the rules and statutes governing
361 development activity in the district shall revert to those in
362 effect on April 1, 2006, until such time as funding and staffing
363 levels are restored consistent with this section.

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

366 Section 3. The sum of \$2,740,000 is appropriated from the
367 General Revenue Fund to the Department of Environmental
368 Protection for the 2006-2007 fiscal year for the operational
369 expenditures of the Northwest Florida Water Management District
370 pursuant to s. 373.4145, Florida Statutes, as amended by this
371 act.

372 Section 4. Section 4 of chapter 2005-273, Laws of Florida,
373 and section 32 of chapter 2005-71, Laws of Florida, are
374 repealed.

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