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HB 7163, Engrossed 1

2006 Legislature

1 A bill to be entitled
2 An act relating to environmental permitting; reenacting
3 and amending s. 373.4145, F.S.; requiring the Northwest
4 Florida Water Management District and the Department of
5 Environmental Protection to jointly develop rules for the
6 regulation of certain activities related to stormwater
7 management systems and the management and storage of
8 surface waters; requiring the district and the department
9 to streamline federal and state wetland permitting
10 programs and to implement such measures; requiring certain
11 exemptions and provisions for rules relating to certain
12 dwellings; requiring the department and district to
13 incorporate certain exemptions and general permits in
14 joint rules; exempting certain activities and structures
15 from permitting requirements; requiring the department and
16 the district to enter into an operating agreement for the
17 implementation of certain provisions; requiring the
18 district to be responsible for the regulation and local
19 delegation of certain activities; providing for continuing
20 operation of certain earlier law; repealing certain
21 provisions upon the adoption of rules; providing effect
22 for failure to fund in any given fiscal year; requiring
23 the department to negotiate with local governments in the
24 district by a certain date for delegation of
25 responsibility for certain permitting; requiring the
26 department to report to the Legislature by a certain date;
27 providing an appropriation for operational expenses of the

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28 district; repealing s. 4 of ch. 2005-273, Laws of Florida,
 29 and s. 32 of ch. 2005-71, Laws of Florida, which specified
 30 dates certain for the repeal of certain provisions
 31 relating to permitting in the district; prohibiting
 32 limitation or restriction on the protections from
 33 duplication contained in certain provisions of law;
 34 providing an effective date.

35

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

37

38 Section 1. Section 373.4145, Florida Statutes, is
 39 reenacted and amended to read:

40 373.4145 ~~Interim~~ Part IV permitting program within the
 41 geographical jurisdiction of ~~for~~ the Northwest Florida Water
 42 Management District.--

43 (1) Within the geographical jurisdiction of the Northwest
 44 Florida Water Management District, taking into consideration the
 45 differing physical and natural characteristics of the area, the
 46 department and the district shall ~~the permitting authority of~~
 47 ~~the department under this part shall consist solely of the~~
 48 ~~following, notwithstanding the rule adoption deadline in s.~~
 49 ~~373.414(9):~~

50 (a) Jointly develop rules to regulate the construction,
 51 operation, alteration, maintenance, abandonment, and removal of
 52 stormwater management systems. The department shall initiate the
 53 rulemaking process within 60 days after the effective date of
 54 this act and shall implement the rules no sooner than January 1,

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55 2007; the district may implement the rules without adoption
56 pursuant to s. 120.54. Until the stormwater management system
57 rules take effect, chapter 62-25 ~~17-25~~, Florida Administrative
58 Code, shall remain in full force and effect, and shall be
59 implemented by the department. Notwithstanding the provisions of
60 this section, chapter 62-25 ~~17-25~~, Florida Administrative Code,
61 may be amended by the department as necessary to comply with any
62 requirements of state or federal laws or regulations, or any
63 condition imposed by a federal program, or as a requirement for
64 receipt of federal grant funds. The intent of the rules created
65 under this paragraph is to update existing stormwater rules, to
66 improve water quality and flood protection, and to apply the
67 least restrictive measures and criteria adopted in other water
68 management district rules.

69 (b) Jointly develop rules for the management and storage
70 of surface waters under this part. The department shall initiate
71 the rulemaking process within 60 days after the effective date
72 of this act and shall implement the rules no sooner than January
73 1, 2008; the district may implement the rules without adoption
74 pursuant to s. 120.54. Until the rules for the management and
75 storage of surface waters under this part take effect, rules
76 adopted pursuant to the authority of ss. 403.91-403.929, 1984
77 Supplement to the Florida Statutes 1983, as amended, in effect
78 prior to July 1, 1994, shall remain in full force and effect,
79 and shall be implemented by the department. However, the
80 department is authorized to establish additional exemptions and
81 general permits for dredging and filling, if such exemptions or

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82 | general permits do not allow significant adverse impacts to
83 | occur individually or cumulatively. However, for the purpose of
84 | chapter 62-312 ~~17-312~~, Florida Administrative Code, the landward
85 | extent of surface waters of the state identified in rule 62-
86 | 312.030(2) ~~17-312.030(2)~~, Florida Administrative Code, shall be
87 | determined in accordance with the methodology in rules 62-
88 | 340.100 through 62-340.600 ~~17-340.100 through 17-340.600~~,
89 | Florida Administrative Code, ~~as ratified in s. 373.4211, upon~~
90 | ~~the effective date of such ratified methodology.~~ In implementing
91 | s. 373.421(2), the department shall determine the extent of
92 | those surface waters and wetlands within the regulatory
93 | authority of the department as described in this paragraph. At
94 | the request of the petitioner, the department shall also
95 | determine the extent of surface waters and wetlands that ~~which~~
96 | can be delineated by the methodology ratified in s. 373.4211,
97 | but that ~~which~~ are not subject to the regulatory authority of
98 | the department as described in this paragraph. The intent of the
99 | rules created under this paragraph is to improve the management
100 | and storage of surface waters with minimal impact on property
101 | interests and to consider the rural nature, current development
102 | trends, and abundant natural resources of the district relative
103 | to the permitting thresholds and requirements.

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

106 | (d) Implement, to the maximum extent possible,
107 | streamlining measures, including electronic permitting, field
108 | permitting, and certification programs for activities with

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109 minimal individual or cumulative impact, informal wetland
 110 determinations, and other similar measures.

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

115 (3) The rules adopted under subsection (1), as applicable,
 116 shall:

117 (a) Incorporate the exemptions in ss. 373.406 and
 118 403.813(2).

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

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

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

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

129 (d) Incorporate the exemptions and general permits that
 130 are effective under this part and have been enacted by rule by
 131 the department and other water management districts, including
 132 the general permits authorized by s. 403.814.

133 (e) Provide an exemption for the repair, stabilization, or
 134 paving of county maintained roads existing on or before January
 135 1, 2002, and the repair or replacement of bridges that are part

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136 of the roadway consistent with the provisions of s.
137 403.813(2)(t), notwithstanding the provisions of s.
138 403.813(2)(t)7. requiring adoption of a general permit
139 applicable within the Northwest Florida Water Management
140 District and the repeal of such exemption upon the adoption of a
141 general permit.

142 (f) Exempt from rule criteria under paragraph (1)(b) an
143 alteration of a wholly owned, artificial surface water created
144 entirely from uplands that does not connect to surface waters of
145 the state, except for those created for the purpose of providing
146 mitigation under this part.

147 ~~(2) The authority of the Northwest Florida Water~~
148 ~~Management District to implement this part or to implement any~~
149 ~~authority pursuant to delegation by the department shall not be~~
150 ~~affected by this section. The rule adoption deadline in s.~~
151 ~~373.414(9) shall not apply to said district.~~

152 ~~(4)(3)~~ The department and the division of permitting
153 responsibilities in s. 373.046(4) shall not apply within the
154 geographical jurisdiction of the Northwest Florida Water
155 Management District shall enter into an operating agreement
156 under s. 373.046 to effectively implement this section and
157 provide the district with the amount of responsibility under the
158 agreement that resources allow, including, at a minimum, the
159 responsibility for regulating silviculture and agriculture. The
160 operating agreement shall encourage local delegation of the
161 responsibilities under this section pursuant to s. 373.441.

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

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

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

171 (b) The activities approved in a permit issued pursuant to
 172 s. 373.4145, Florida Statutes 1994, and the review of activities
 173 proposed in applications received and completed before the
 174 effective date of the rules adopted under subsection (1), as
 175 applicable. This paragraph shall also apply to any modification
 176 of the plans, terms, and conditions of a permit issued pursuant
 177 to s. 373.4145, Florida Statutes 1994, that lessens the
 178 environmental impact, except that any such modification shall
 179 not extend the time limit for construction beyond 2 additional
 180 years.

181
 182 This subsection shall not apply to any activity that is altered,
 183 modified, expanded, abandoned, or removed after adoption of the
 184 applicable rules under subsection (1).

185 (7) Unless the petitioner elects to apply rule 62-340,
 186 Florida Administrative Code, to all wetlands, the delineation of
 187 the landward extent of wetlands and other surface waters for
 188 petitions filed under s. 373.421(2) prior to the effective date

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189 of the rules adopted under paragraph (1)(b) shall continue to be
 190 determined in accordance with rule 62-312.030(2), Florida
 191 Administrative Code, in effect July 1, 1994, and rules 62-
 192 340.100 through 62-340.600, Florida Administrative Code, as
 193 ratified in s. 373.4211.

194 ~~(4) If the United States Environmental Protection Agency~~
 195 ~~approves an assumption of the federal program to regulate the~~
 196 ~~discharge of dredged or fill material by the department or the~~
 197 ~~water management districts, or both, pursuant to s. 404 of the~~
 198 ~~Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss.~~
 199 ~~1251 et seq.; the United States Army Corps of Engineers issues~~
 200 ~~one or more state programmatic general permits under the~~
 201 ~~referenced statutes; or the United States Environmental~~
 202 ~~Protection Agency or the United States Corps of Engineers~~
 203 ~~approves any other delegation of regulatory authority under the~~
 204 ~~referenced statutes, then the department may implement any~~
 205 ~~permitting authority granted in this part within the Northwest~~
 206 ~~Florida Water Management District which is prescribed as a~~
 207 ~~condition of granting such assumption, general permit, or~~
 208 ~~delegation.~~

209 (8)(5) Within the geographical jurisdiction of the
 210 Northwest Florida Water Management District, the methodology for
 211 determining the landward extent of surface waters of the state
 212 under chapter 403 in effect prior to the effective date of the
 213 methodology ratified in s. 373.4211 shall apply to:

214 (a) Activities permitted under the rules adopted pursuant
 215 to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes

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216 | 1983, as amended, or that ~~which~~ were exempted from regulation
 217 | under such rules, prior to July 1, 1994, and that ~~which~~ were
 218 | permitted under chapter 62-25 ~~17-25~~, Florida Administrative
 219 | Code, or exempt from chapter 62-25 ~~17-25~~, Florida Administrative
 220 | Code, prior to July 1, 1994, provided:

221 | 1. An activity authorized by such permits is conducted in
 222 | accordance with the plans, terms, and conditions of such
 223 | permits.

224 | 2. An activity exempted from the permitting requirements
 225 | of the rules adopted pursuant to ss. 403.91-403.929, 1984
 226 | Supplement to the Florida Statutes 1983, as amended, or chapter
 227 | 62-25 ~~17-25~~, Florida Administrative Code, is:

228 | a. Commenced prior to July 1, 1994, and completed by July
 229 | 1, 1999;

230 | b. Conducted in accordance with a plan depicting the
 231 | activity that ~~which~~ has been submitted to and approved for
 232 | construction by the department, the appropriate local
 233 | government, the United States Army Corps of Engineers, or the
 234 | Northwest Florida Water Management District; and

235 | c. Conducted in accordance with the terms of the
 236 | exemption.

237 | (b) An activity within the boundaries of a valid
 238 | jurisdictional declaratory statement issued pursuant to s.
 239 | 403.914, 1984 Supplement to the Florida Statutes 1983, as
 240 | amended, or the rules adopted thereunder, in response to a
 241 | petition received prior to June 1, 1994.

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242 (c) Any modification of a permitted or exempt activity as
 243 described in paragraph (a) that ~~which~~ does not constitute a
 244 substantial modification or that ~~which~~ lessens the environmental
 245 impact of such permitted or exempt activity. For the purposes of
 246 this section, a substantial modification is one that ~~which~~ is
 247 reasonably expected to lead to substantially different
 248 environmental impacts.

249 (d) Applications for activities permitted under the rules
 250 adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the
 251 1983 Florida Statutes, as amended, that ~~which~~ were pending on
 252 June 15, 1994, unless the application elects to have applied the
 253 delineation methodology ratified in s. 373.4211.

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

256 (10) If the Legislature in any given fiscal year fails to
 257 fund and staff the environmental resource permitting program
 258 established under this section, the environmental resource
 259 permitting program shall be suspended for that fiscal year and
 260 the rules and statutes governing development activity in the
 261 district shall revert to those in effect on April 1, 2006, until
 262 such time as funding and staffing levels are restored consistent
 263 with this section.

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

266 Section 2. On or before October 1, 2006, the Department of
 267 Environmental Protection shall enter into negotiations with any
 268 local government within the Northwest Florida Water Management

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269 District that requests to be delegated the responsibilities
270 under this act pursuant to s. 373.441, Florida Statutes, in
271 order to minimize duplicative permitting programs and increase
272 governmental efficiency while maintaining environmental
273 standards. The department shall report to the President of the
274 Senate and the Speaker of the House of Representatives by March
275 1, 2007, regarding progress made in the negotiation of
276 environmental permitting with any local government and
277 delegation of responsibilities thereto in accordance with this
278 section.

279 Section 3. The sum of \$2,740,000 is appropriated from the
280 General Revenue Fund to the Department of Environmental
281 Protection for the 2006-2007 fiscal year for the operational
282 expenditures of the Northwest Florida Water Management District
283 pursuant to s. 373.4145, Florida Statutes, as amended by this
284 act.

285 Section 4. Section 4 of chapter 2005-273, Laws of Florida,
286 and section 32 of chapter 2005-71, Laws of Florida, are
287 repealed.

288 Section 5. No authority granted by this act shall limit or
289 restrict the protections from duplication contained in s.
290 163.3162 or s. 823.14, Florida Statutes.

291 Section 6. This act shall take effect July 1, 2006.