

Bill No. SB 2082

Barcode 052386

CHAMBER ACTION

Senate

House

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The Committee on General Government Appropriations (Bennett)
recommended the following **substitute for amendment** (875768):

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 373.4132, Florida Statutes, is
amended to read:

373.4132 Dry storage facility permitting.--The
governing board or the department shall require a permit under
this part, including s. 373.4145, for the construction,
alteration, operation, maintenance, abandonment, or removal of
a dry storage facility for 10 or more vessels that is
functionally associated with a boat launching area; however,
developments of regional impact for which a development order
has been issued under chapter 380, before July 1,1995,
authorizing a dry slip storage that has yet to be constructed,
is entitled to the number of dry slips approved under the
development order subject to the condition that no more than
15 percent of the watercraft from the dry slip storage may

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1 access the water each day. As part of an applicant's
 2 demonstration that such a facility will not be harmful to the
 3 water resources and will not be inconsistent with the overall
 4 objectives of the district, the governing board or department
 5 shall require the applicant to provide reasonable assurance
 6 that the secondary impacts from the facility will not cause
 7 adverse impacts to the functions of wetlands and surface
 8 waters, including violations of state water quality standards
 9 applicable to waters as defined in s. 403.031(13), and will
 10 meet the public interest test of s. 373.414(1)(a), including
 11 the potential adverse impacts to manatees. ~~Nothing in This~~
 12 section does not shall affect the authority of the governing
 13 board or the department to regulate such secondary impacts
 14 under this part for other regulated activities.

15 Section 2. Subsection (15) of section 373.414, Florida
 16 Statutes, is amended to read:

17 373.414 Additional criteria for activities in surface
 18 waters and wetlands.--

19 (15) Activities associated with mining operations as
 20 defined by and subject to ss. 378.201-378.212 and
 21 378.701-378.703 and included in a conceptual reclamation plan
 22 or modification application submitted prior to July 1, 1996,
 23 shall continue to be reviewed under the rules of the
 24 department adopted pursuant to ss. 403.91-403.929, 1984
 25 Supplement to the Florida Statutes 1983, as amended, the rules
 26 of the water management districts under this part, and
 27 interagency agreements, in effect on January 1, 1993. Such
 28 activities are shall be exempt from rules adopted under
 29 ~~pursuant to~~ subsection (9) and the statewide methodology
 30 ratified under ~~pursuant to~~ s. 373.4211. As of January 1, 1994,
 31 such activities may be issued permits authorizing construction

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1 for the life of the mine. Lands added to a conceptual
 2 reclamation plan subject to this subsection through a
 3 modification submitted after July 1, 1996, which are
 4 contiguous to the conceptual reclamation plan area are exempt
 5 from rules adopted under subsection (9) if the total acreage
 6 of the conceptual reclamation plan is not increased through
 7 the modification and the cumulative acreage added does not
 8 exceed 3 percent of the conceptual reclamation plan area.
 9 Lands that have been mined or disturbed by mining activities,
 10 lands subject to a conservation easement under which the
 11 grantee is a state or federal regulatory agency, and lands
 12 otherwise preserved as a part of a permitting review may not
 13 be removed from the conceptual reclamation plan area under
 14 this subsection.

15 Section 3. Section 373.4144, Florida Statutes, is
 16 amended to read:

17 373.4144 Federal environmental permitting.--

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

19 (a) Facilitate coordination and a more efficient
 20 process of implementing regulatory duties and functions
 21 between the Department of Environmental Protection, the water
 22 management districts, the United States Army Corps of
 23 Engineers, the United States Fish and Wildlife Service, the
 24 National Marine Fisheries Service, the United States
 25 Environmental Protection Agency, the Fish and Wildlife
 26 Conservation Commission, and other relevant federal and state
 27 agencies.

28 (b) Authorize the Department of Environmental
 29 Protection to obtain from the United States Army Corps of
 30 Engineers, under state and federal law and as set forth in
 31 this section, an expanded state programmatic general permit,

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1 or a series of regional general permits, for categories of
 2 activities conducted in waters of the United States governed
 3 by the Clean Water Act and in navigable waters under the
 4 Rivers and Harbors Act of 1899 which are similar in nature,
 5 which will cause only minimal adverse environmental effects
 6 when performed separately, and which will have only minimal
 7 cumulative adverse effects on the environment.

8 (c) Use a state general permit or regional general
 9 permits to eliminate overlapping federal and state regulations
 10 that relate to the same resource and to avoid duplication of
 11 permitting between the United States Army Corps of Engineers
 12 and the department for minor work located in waters of the
 13 United States, including navigable waters, thus eliminating,
 14 if appropriate, the need for separate approval from the United
 15 States Army Corps of Engineers while ensuring the most
 16 stringent protection of wetland resources.

17 (d) Direct the department to not seek issuance of or
 18 take any action pursuant to obtaining a general permit or
 19 regional general permits unless conditions are at least as
 20 protective of the environment and natural resources as
 21 existing state law under this part and federal law under the
 22 Clean Water Act and the Rivers and Harbors Act of 1899.

23 (e) Add slash pine and gallberry to the state list of
 24 facultative species as an incentive for and contingent upon
 25 the alignment of federal and state wetland jurisdictional
 26 delineation, so that the alignment eliminates an impediment to
 27 obtaining authorization from the United States Army Corps of
 28 Engineers for a state programmatic general permit or regional
 29 general permits. The department is directed to develop, on or
 30 before October 1, 2005, a mechanism or plan to consolidate, to
 31 the maximum extent practicable, the federal and state wetland

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1 ~~permitting programs. It is the intent of the Legislature that~~
2 ~~all dredge and fill activities impacting 10 acres or less of~~
3 ~~wetlands or waters, including navigable waters, be processed~~
4 ~~by the state as part of the environmental resource permitting~~
5 ~~program implemented by the department and the water management~~
6 ~~districts. The resulting mechanism or plan shall analyze and~~
7 ~~propose the development of an expanded state programmatic~~
8 ~~general permit program in conjunction with the United States~~
9 ~~Army Corps of Engineers pursuant to s. 404 of the Clean Water~~
10 ~~Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et~~
11 ~~seq., and s. 10 of the Rivers and Harbors Act of 1899.~~
12 ~~Alternatively, or in combination with an expanded state~~
13 ~~programmatic general permit, the mechanism or plan may propose~~
14 ~~the creation of a series of regional general permits issued by~~
15 ~~the United States Army Corps of Engineers pursuant to the~~
16 ~~referenced statutes. All of the regional general permits must~~
17 ~~be administered by the department or the water management~~
18 ~~districts or their designees.~~

19 (2) In order to effectuate efficient wetland
20 permitting and avoid duplication, the department and water
21 management districts are authorized to implement a voluntary
22 state programmatic general permit for all dredge and fill
23 activities impacting 5 acres or less of wetlands or other
24 surface waters, including navigable waters, subject to
25 agreement with the United States Army Corps of Engineers, if
26 the general permit is at least as protective of the
27 environment and natural resources as existing state law under
28 this part and federal law under the Clean Water Act and the
29 Rivers and Harbors Act of 1899. ~~The department is directed to~~
30 ~~file with the Speaker of the House of Representatives and the~~
31 ~~President of the Senate a report proposing any required~~

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1 ~~federal and state statutory changes that would be necessary to~~
 2 ~~accomplish the directives listed in this section and to~~
 3 ~~coordinate with the Florida Congressional Delegation on any~~
 4 ~~necessary changes to federal law to implement the directives.~~

5 (3) ~~Nothing in~~ This section does not ~~shall be~~
 6 ~~construed to~~ preclude the department from pursuing a series of
 7 regional general permits for construction activities in
 8 wetlands or surface waters or complete assumption of federal
 9 permitting programs regulating the discharge of dredged or
 10 fill material pursuant to s. 404 of the Clean Water Act, Pub.
 11 L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s.
 12 10 of the Rivers and Harbors Act of 1899., ~~so long as~~ The
 13 assumption of federal permitting programs must encompass
 14 ~~encompasses~~ all dredge and fill activities in, on, or over
 15 jurisdictional wetlands or waters, including navigable waters,
 16 within the state.

17 (4) The department shall report annually to the
 18 Legislature on its efforts to eliminate impediments to
 19 achieving greater efficiencies through expansion of a state
 20 programmatic general permit or of regional general permits.

21 Section 4. Section 373.4212, Florida Statutes, is
 22 created to read:

23 373.4212 Ratification of department rule; facultative
 24 plants.--Pursuant to s. 373.421 and subject to the conditions
 25 described in this section, the Legislature ratifies the change
 26 to rule 62-340.450(3), Florida Administrative Code, approved
 27 on February 23, 2006, by the Environmental Regulation
 28 Commission which adds Pinus elliottii, and Ilex glabra to the
 29 list of facultative plants. This ratification and the rule
 30 revision may not take effect until state and federal wetland
 31 jurisdictional delineation methodologies are aligned.

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1 (1) Surface water and wetland delineations identified
 2 and approved by a permit issued under rules adopted under this
 3 part before the effective date of this act remain valid until
 4 the expiration of the permit, notwithstanding the change to
 5 rule 62-340.450(3). For purposes of this section, the term
 6 "identified and approved" means:

7 (a) The delineation was field-verified by the
 8 permitting agency and the verification was surveyed as part of
 9 the application review process for the permit; or

10 (b) The delineation was field-verified by the
 11 permitting agency and approved pursuant to the permit.

12 (2) Where surface water and wetland delineations were
 13 not identified and approved under the permit issued under
 14 rules adopted under this part, delineations within the
 15 geographical area to which the permit applies shall be
 16 determined pursuant to the rules applicable at the time the
 17 permit was issued, notwithstanding the change to rule
 18 62-340.450(3). This section also applies to any modification
 19 of the permit issued under rules adopted under this part which
 20 do not constitute a substantial modification within the
 21 geographical area to which the permit applies.

22 (3) Any declaratory statement issued by the department
 23 under s. 403.914, 1984 Supplement to the Florida Statutes
 24 1983, as amended, pursuant to rules adopted thereunder, or by
 25 the department or a water management district under s.
 26 373.421, in response to a petition filed on or before the
 27 effective date of this act shall continue to be valid for the
 28 duration of such declaratory statement. Any petition pending
 29 on or before the effective date of this act shall be exempt
 30 from the change to rule 62-340.450(3) and shall be subject to
 31 the provisions of chapter 62-340, Florida Administrative Code,

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1 in effect prior to such change. Activities proposed within the
 2 boundaries of a valid declaratory statement issued pursuant to
 3 a petition submitted to either the department or the relevant
 4 water management district on or before the effective date of
 5 this act, or are validated jurisdictional determination prior
 6 to its expiration, shall continue thereafter to be exempt from
 7 the change to rule 62-340.450(3).

8 (4) A permit application under this part for dredging
 9 and filling or other activity that is pending on or before the
 10 effective date of this act is exempt from the change to rule
 11 62-340.450(3).

12 (5) Activities associated with mining operations as
 13 defined by and subject to ss. 378.201-378.212 and
 14 378.701-378.703 and included in a conceptual reclamation plan
 15 or modification application submitted on or before the
 16 effective date of this act is exempt from change to rule
 17 62-340.450(3).

18 Section 5. Subsection (5) is added to section 161.041,
 19 Florida Statutes, to read:

20 161.041 Permits required.--

21 (5) When the department denies an application for a
 22 permit, the department shall provide written notice to the
 23 applicant. The notice must include legal authority for the
 24 denial of the permit and a citation to the applicable portions
 25 of an ordinance, rule, or statute.

26 Section 6. Subsection (2) of section 373.4141, Florida
 27 Statutes, is amended to read:

28 373.4141 Permits; processing.--

29 (2) A permit shall be approved or denied within 90
 30 days after receipt of the original application, the last item
 31 of timely requested additional material, or the applicant's

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1 written request to begin processing the permit application.
 2 When the department or the district denies an application for
 3 a permit, the department or the district shall provide written
 4 notice to the applicant. The notice must include legal
 5 authority for the denial of the permit and a citation to the
 6 applicable portions of an ordinance, rule, or statute.

7 Section 7. Present subsection (9) of section 403.087,
 8 Florida Statutes, is redesignated as subsection (10), and a
 9 new subsection (9) is added to that section, to read:

10 403.087 Permits; general issuance; denial; revocation;
 11 prohibition; penalty.--(9) When the department denies an
 12 application for a permit, the department shall provide written
 13 notice to the applicant. The notice must include legal
 14 authority for the denial of the permit and a citation to the
 15 applicable portions of an ordinance, rule, or statute.

16 Section 8. The Division of Statutory Revision is
 17 directed to substitute the date on which this act takes effect
 18 for the phrase "the effective date of this act" wherever it
 19 occurs in provisions of s. 373.4212, Florida Statutes, as
 20 amended by this act, when preparing that section for
 21 publication in the next edition of the Florida Statutes.

22 Section 9. This act shall take effect upon becoming a
 23 law.

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

27 And the title is amended as follows:

28 Delete everything before the enacting clause

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30 and insert:

31 A bill to be entitled

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1 An act relating to environmental permitting;
2 amending s. 373.4132, F.S.; authorizing certain
3 dry slip storage to be constructed under
4 specified conditions; amending s. 373.414,
5 F.S.; providing that certain lands added to a
6 conceptual reclamation plan are exempt from
7 specified rules; amending s. 373.4144, F.S.;
8 providing legislative intent relating to
9 seeking permits from the United States Army
10 Corps of Engineers; revising provisions
11 requiring the Department of Environmental
12 Protection to develop and consolidate federal
13 and state wetland permitting programs;
14 authorizing implementation of a state
15 programmatic general permit or regional general
16 permits by the department and water management
17 districts for certain dredge and fill
18 activities; specifying conditions applicable to
19 such permit or permits; creating s. 373.4212,
20 F.S.; ratifying changes to department rule
21 relating to facultative plants; postponing the
22 effect of the rule until state and federal
23 wetland delineation methodologies are aligned;
24 providing for permit modification under certain
25 circumstances; providing for certain
26 declaratory statements from the department;
27 providing exemptions for certain permit
28 petitions and applications relating to
29 specified activities; amending ss. 161.041,
30 373.4141, and 403.087, F.S.; requiring the
31 department and water management districts to

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1 provide applicants with written notice of
2 permit denial; providing criteria for such
3 notice; providing a directive to the Division
4 of Statutory Revision; providing an effective
5 date.

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