

Bill No. SB 2082

Barcode 875768

CHAMBER ACTION

Senate

House

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The Committee on Environmental Preservation and Conservation
(Jones) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 373.4144, Florida Statutes, is
amended to read:

373.4144 Federal environmental permitting.--

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

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

(b) Authorize the Department of Environmental

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1 Protection to obtain from the United States Army Corps of
 2 Engineers, pursuant to state and federal law and as set forth
 3 in this section, an expanded state programmatic general
 4 permit, or a series of regional general permits, for
 5 categories of activities conducted in waters of the United
 6 States governed by the Clean Water Act and in navigable waters
 7 under the Rivers and Harbors Act of 1899 that are similar in
 8 nature, that will cause only minimal adverse environmental
 9 effects when performed separately, and that will have only
 10 minimal cumulative adverse effects on the environment.

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

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

26 (e) Add slash pine and gallberry to the state list of
 27 facultative species as an incentive for and contingent upon
 28 the alignment of federal and state wetland jurisdictional
 29 delineation, so that the alignment eliminates an impediment to
 30 obtaining authorization from the United States Army Corps of
 31 Engineers for a state programmatic general permit or regional

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1 general permits. ~~The department is directed to develop, on or~~
2 ~~before October 1, 2005, a mechanism or plan to consolidate, to~~
3 ~~the maximum extent practicable, the federal and state wetland~~
4 ~~permitting programs. It is the intent of the Legislature that~~
5 ~~all dredge and fill activities impacting 10 acres or less of~~
6 ~~wetlands or waters, including navigable waters, be processed~~
7 ~~by the state as part of the environmental resource permitting~~
8 ~~program implemented by the department and the water management~~
9 ~~districts. The resulting mechanism or plan shall analyze and~~
10 ~~propose the development of an expanded state programmatic~~
11 ~~general permit program in conjunction with the United States~~
12 ~~Army Corps of Engineers pursuant to s. 404 of the Clean Water~~
13 ~~Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et~~
14 ~~seq., and s. 10 of the Rivers and Harbors Act of 1899.~~
15 ~~Alternatively, or in combination with an expanded state~~
16 ~~programmatic general permit, the mechanism or plan may propose~~
17 ~~the creation of a series of regional general permits issued by~~
18 ~~the United States Army Corps of Engineers pursuant to the~~
19 ~~referenced statutes. All of the regional general permits must~~
20 ~~be administered by the department or the water management~~
21 ~~districts or their designees.~~

22 (2) In order to effectuate efficient wetland
23 permitting and avoid duplication, the department and water
24 management districts are authorized to implement a voluntary
25 state programmatic general permit for all dredge and fill
26 activities impacting 1 acre or less of wetlands or other
27 surface waters, including navigable waters, subject to
28 agreement with the United States Army Corps of Engineers, if
29 the general permit is at least as protective of the
30 environment and natural resources as existing state law under
31 this part and federal law under the Clean Water Act and the

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1 ~~Rivers and Harbors Act of 1899. The department is directed to~~
 2 ~~file with the Speaker of the House of Representatives and the~~
 3 ~~President of the Senate a report proposing any required~~
 4 ~~federal and state statutory changes that would be necessary to~~
 5 ~~accomplish the directives listed in this section and to~~
 6 ~~coordinate with the Florida Congressional Delegation on any~~
 7 ~~necessary changes to federal law to implement the directives.~~

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

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

24 Section 2. Section 373.4212, Florida Statutes, is
 25 created to read:

26 373.4212 Ratification of department rule; facultative
 27 plants.--Pursuant to s. 373.421 and subject to the conditions
 28 described in this section, the Legislature ratifies the change
 29 to rule 62-340.450(3), Florida Administrative Code, approved
 30 on February 23, 2006, by the Environmental Regulation
 31 Commission which adds Pinus elliotti, and ilex glabra to the

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1 list of facultative plants. However, this ratification and the
2 rule revision shall not take effect until state and federal
3 wetland jurisdictional delineation methodologies are aligned.

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

10 (a) The delineation was field verified by the
11 permitting agency and such verification was surveyed as part
12 of the application review process for the permit; or

13 (b) The delineation was field verified by the
14 permitting agency and approved pursuant to the permit.

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

25 (3) Any declaratory statement issued by the department
26 under s. 403.914, 1984 Supplement to the Florida Statutes
27 1983, as amended, pursuant to rules adopted thereunder, or by
28 the department or a water management district under s.
29 373.421, in response to a petition filed on or before the
30 effective date of this act, shall continue to be valid for the
31 duration of such declaratory statement. Any petition pending

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1 on or before the effective date of this act shall be exempt
2 from the change to rule 62-340.450(3) and shall be subject to
3 the provisions of chapter 62-340, Florida Administrative Code,
4 in effect prior to such change. Activities proposed within the
5 boundaries of a valid declaratory statement issued pursuant to
6 a petition submitted to either the department or the relevant
7 water management district on or before the effective date of
8 this act, or a revalidated jurisdictional determination prior
9 to its expiration, shall continue thereafter to be exempt from
10 the change to rule 62-340.450(3).

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

15 (5) Activities associated with mining operations as
16 defined by and subject to ss. 378.201-378.212 and
17 378.701-378.703 and included in a conceptual reclamation plan
18 or modification application submitted on or before the
19 effective date of this act shall be exempt from change to rule
20 62-340.450(3).

21 Section 3. Subsection (5) is added to section 161.041,
22 Florida Statutes, to read:

23 161.041 Permits required.--

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

29 Section 4. Subsection (2) of section 373.4141, Florida
30 Statutes, is amended to read:

31 373.4141 Permits; processing.--

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1 (2) A permit shall be approved or denied within 90
2 days after receipt of the original application, the last item
3 of timely requested additional material, or the applicant's
4 written request to begin processing the permit application.
5 When the department or the district denies an application for
6 a permit, the department or the district shall provide written
7 notice to the applicant. The notice shall include legal
8 authority for the denial of the permit and a citation to the
9 applicable portions of an ordinance, rule, or statute.

10 Section 5. Present subsection (9) of section 403.087,
11 Florida Statutes, is redesignated as subsection (10), and a
12 new subsection (9) is added to that section, to read:

13 403.087 Permits; general issuance; denial; revocation;
14 prohibition; penalty.--

15 (9) When the department denies an application for a
16 permit, the department shall provide written notice to the
17 applicant. The notice shall include legal authority for the
18 denial of the permit and a citation to the applicable portions
19 of an ordinance, rule, or statute.

20 Section 6. The Division of Statutory Revision is
21 directed to substitute the date on which this act takes effect
22 for the phrase "the effective date of this act" wherever it
23 occurs in provisions of s. 373.4212, Florida Statutes, as
24 amended by this act, when preparing that section for
25 publication in the next edition of the Florida Statutes.

26 Section 7. This act shall take effect upon becoming a
27 law.

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

31 And the title is amended as follows:

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1 Delete everything before the enacting clause

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3 and insert:

4 A bill to be entitled

5 An act relating to environmental permitting;

6 amending s. 373.4144, F.S.; providing

7 legislative intent relating to seeking permits

8 from the United States Army Corps of Engineers;

9 revising provisions requiring the Department of

10 Environmental Protection to develop and

11 consolidate federal and state wetland

12 permitting programs; authorizing implementation

13 of a state programmatic general permit or

14 regional general permits by the department and

15 water management districts for certain dredge

16 and fill activities; specifying conditions

17 applicable to such permit or permits; creating

18 s. 373.4212, F.S.; ratifying changes to

19 department rule relating to facultative plants;

20 postponing the effect of the rule until state

21 and federal wetland delineation methodologies

22 are aligned; providing for permit modification

23 under certain circumstances; providing for

24 certain declaratory statements from the

25 department; providing exemptions for certain

26 permit petitions and applications relating to

27 specified activities; amending ss. 161.041,

28 373.4141, and 403.087, F.S.; requiring the

29 department and water management districts to

30 provide applicants with written notice of

31 permit denial; providing criteria for such

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notice; providing a directive to the Division
of Statutory Revision; providing an effective
date.