

By Senator Bennett

21-1507-07

1 A bill to be entitled
2 An act relating to permitting of activities
3 that affect wetlands; amending s. 373.4144,
4 F.S.; removing provisions requiring the
5 Department of Environmental Protection to
6 develop a mechanism consolidating federal and
7 state wetland permitting programs; providing
8 legislative intent to facilitate coordination
9 of certain wetland permitting activities of the
10 department, water management districts, and the
11 federal government by authorizing the
12 department to secure issuance of a state
13 programmatic permit or a series of regional
14 programmatic permits by the United States Army
15 Corps of Engineers; specifying conditions
16 applicable to such a permit; requiring the
17 department to provide an annual report to the
18 Legislature concerning efforts to secure the
19 state programmatic general permit or one or
20 more regional general permits; requiring the
21 department and the water management districts
22 to implement, subject to approval by the United
23 States Army Corps of Engineers, a voluntary
24 statewide programmatic general permit for
25 dredge and fill activities that affect certain
26 wetlands or surface waters; specifying
27 conditions applicable to such a permit;
28 requiring that the department and the districts
29 equate certain organic matter and hydric soils
30 under specified circumstances; requiring the
31 department to provide training and guidance to

1 the staff of the department and the districts
2 concerning delineation of surface waters and
3 wetlands under the statewide programmatic
4 general permit; specifying conditions
5 applicable to such a permit; providing for the
6 pursuit by the department of certain permits
7 under specified federal laws; amending s.
8 373.4211, F.S.; revising legislative
9 ratification of a department rule to include
10 certain lands within areas that are not defined
11 as wetlands under the rule and to require the
12 department to provide certain guidance and
13 training; providing for legislative
14 ratification, contingent upon specified events,
15 of a rule approved by the Environmental
16 Regulation Commission concerning a list of
17 plants used to delineate wetlands; providing
18 for the application of specified wetland
19 delineation methods in various categories of
20 permits, declaratory statements, formal
21 determinations, mining reclamation plans, and
22 modifications to permits or mining reclamation
23 plans; providing an effective date.

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

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

29 373.4144 Federal environmental permitting.--
30 (1) It is the intent of the Legislature to:

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1 (a) Facilitate coordination and a more efficient
2 process of implementing regulatory duties and functions among
3 the Department of Environmental Protection, the water
4 management districts, the United States Army Corps of
5 Engineers, the United States Fish and Wildlife Service, the
6 National Marine Fisheries Service, the United States
7 Environmental Protection Agency, the Florida Fish and Wildlife
8 Conservation Commission, and other relevant federal and state
9 agencies.

10 (b) Authorize the Department of Environmental
11 Protection to obtain issuance by the United States Army Corps
12 of Engineers, under this section and other state and federal
13 laws, of an expanded state programmatic general permit, or a
14 series of regional permits:

15 1. For categories of activities that are similar in
16 nature and undertaken in waters of the United States governed
17 by the Clean Water Act or in navigable waters governed by the
18 Rivers and Harbors Act of 1899; and

19 2. That will cause only minimal adverse effects on the
20 environment when issued separately and, when issued
21 cumulatively, will have only minimal cumulative adverse
22 effects on the environment.

23 (c) Use the mechanism of such a general permit or
24 permits to eliminate overlapping federal regulations and state
25 rules that seek to protect the same resource and to avoid
26 duplication of permitting between the United States Army Corps
27 of Engineers and the department for minor work located in
28 waters of the United States, including navigable waters, so as
29 to eliminate an inappropriate need for a separate, individual
30 approval from the United States Army Corps of Engineers while
31 ensuring maximum protection of wetland resources.

1 (d) Prohibit the department from seeking issuance of
2 or taking any action under any such permit or permits unless
3 the conditions the permit or permits would impose protect the
4 environment and natural resources at least as much as the
5 provisions of this part, the Clean Water Act, and the Rivers
6 and Harbors Act.

7 (e) Add slash pine and gallberry, as facultative
8 species, to the list of plants that this state uses to
9 delineate jurisdictional wetland communities as an incentive
10 for and contingent upon aligning the method by which the
11 federal government and this state delineate jurisdictional
12 wetland communities so that federal and state methods
13 delineate the same communities and an impediment to the
14 authorization of a state programmatic general permit by the
15 United States Army Corps of Engineers is removed. The
16 department shall report annually to the Legislature on efforts
17 to eliminate impediments to achieving greater efficiencies
18 through expansion of a state programmatic general permit or
19 one or more regional general permits.

20 (2) In order to avoid duplication and effectuate
21 efficient permitting of activities that affect wetlands, the
22 department and water management districts shall, subject to
23 agreement of the United States Army Corps of Engineers,
24 implement a statewide programmatic general permit for all
25 dredge and fill activities affecting 5 acres or less of
26 wetlands or other surface waters, including navigable waters.
27 The permit must be voluntary and in accordance with the
28 following conditions:

29 (a) By seeking to use the statewide programmatic
30 general permit authorized by this subsection, an applicant
31 consents to the department or district applying the

1 landward-most delineation of wetlands or other surface waters
2 applicable under this part or the regulations implementing s.
3 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33
4 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors
5 Act of 1899. In implementing the 1987 Corps of Engineers
6 Wetlands Manual Technical Report (87-1), the department or
7 district shall equate high organic matter in the surface
8 horizon in accordance with the indications for hydric soils
9 issued by the Natural Resources Conservation Service and
10 approved for use in this state. The department shall ensure
11 statewide coordination and consistency in the delineation of
12 surface waters and wetlands, pursuant to the statewide
13 programmatic general permit authorized by this subsection, by
14 providing training and guidance to the department and
15 districts in implementing the permit.

16 (b) By seeking to use the statewide programmatic
17 general permit authorized by this subsection, an applicant
18 consents to applicable substantive federal wetland regulatory
19 criteria, which are not included under this part but which are
20 authorized by the regulation implementing s. 404 of the Clean
21 Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251
22 et seq., and s. 10 of the Rivers and Harbors Act of 1899, as
23 required by the United States Army Corps of Engineers,
24 notwithstanding s. 373.4145 and for the limited purposes of
25 implementing the statewide programmatic general permit
26 authorized by this section.

27 ~~(1) The department is directed to develop, on or~~
28 ~~before October 1, 2005, a mechanism or plan to consolidate, to~~
29 ~~the maximum extent practicable, the federal and state wetland~~
30 ~~permitting programs. It is the intent of the Legislature that~~
31 ~~all dredge and fill activities impacting 10 acres or less of~~

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

17 ~~(2) The department is directed to file with the~~
18 ~~Speaker of the House of Representatives and the President of~~
19 ~~the Senate a report proposing any required federal and state~~
20 ~~statutory changes that would be necessary to accomplish the~~
21 ~~directives listed in this section and to coordinate with the~~
22 ~~Florida Congressional Delegation on any necessary changes to~~
23 ~~federal law to implement the directives.~~

24 ~~(3) Nothing in This section does not shall be~~
25 ~~construed to preclude the department from pursuing a series of~~
26 ~~regional general permits for construction activities in~~
27 ~~wetlands and surface waters or complete assumption of federal~~
28 ~~permitting programs regulating the discharge of dredged or~~
29 ~~fill material pursuant to s. 404 of the Clean Water Act, Pub.~~
30 ~~L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s.~~
31 ~~10 of the Rivers and Harbors Act of 1899, so long as the~~

1 assumption encompasses all dredge and fill activities in, on,
2 or over jurisdictional wetlands or waters, including navigable
3 waters, within the state.

4 Section 2. Subsections (1) and (19) of section
5 373.4211, Florida Statutes, are amended to read:

6 373.4211 Ratification of chapter 17-340, Florida
7 Administrative Code, on the delineation of the landward extent
8 of wetlands and surface waters.--Pursuant to s. 373.421, the
9 Legislature ratifies chapter 17-340, Florida Administrative
10 Code, approved on January 13, 1994, by the Environmental
11 Regulation Commission, with the following changes:

12 (1) The last sentence of rule 17-340.100(1), Florida
13 Administrative Code, is changed to read: "The methodology
14 shall not be used to delineate areas ~~that~~ ~~which~~ are not
15 wetlands as defined in subsection 17-340.200(19), F.A.C.,
16 which include agricultural and silvicultural lands resulting
17 from conversion of nonwetland pine flatwoods as defined in
18 this rule, or ~~not~~ to delineate as wetlands or surface waters
19 areas exempted from delineation by statute or agency rule." In
20 addition, rule 17-340.100(2), Florida Administrative Code, is
21 amended to read: "To ensure statewide coordination and
22 consistency in the delineation of surface waters and wetlands
23 under this rule the department shall provide the staff of the
24 department, water management districts, and local governments
25 with training and guidance in implementing the requirements
26 under this rule concerning methodology and technical peer
27 review of the delineations that may be requested."

28 (19)(a) Rule 17-340.450(3) is amended by adding, after
29 the species list, the following language:

30 "Within Monroe County and the Key Largo portion of Dade
31 County only, the following species shall be listed as

1 facultative: Alternanthera paronychioides, Byrsonima lucida,
2 Ernodea littoralis, Guapira discolor, Marnilkara bahamensis,
3 Pisonis rotundata, Pithecellobium keyensis, Pithecellobium
4 unquis-cati, Randia aculeata, Reynosia septentrionalis, and
5 Thrinax radiata."

6 (b) The Legislature recognizes that rule 62-340.450,
7 Florida Administrative Code, was formerly known as rule
8 17-340.450. Pursuant to s. 373.421 and subject to the
9 conditions in this paragraph the Legislature ratifies the
10 changes to rule 62-340.450(3), Florida Administrative Code,
11 approved on February 23, 2006, by the Environmental Regulation
12 Commission, which add slash pine (Pinus elliottii) and
13 gallberry (Ilex glabra) to the list of facultative plants.
14 However, this ratification does not take effect unless the
15 state and federal methods to delineate wetland communities for
16 the purpose of wetland permitting jurisdiction are aligned as
17 specified in s. 373.4144.

18 (c) Notwithstanding any changes to rule 62-340.450(3),
19 Florida Administrative Code, under paragraph (b), a surface
20 water and wetland delineation that was:

21 1. Identified and approved in a:

22 a. Permit issued under rule 62-340.450(3) before July
23 1, 2007, is effective for the term of the permit; and

24 b. Modification to a permit which is not substantial
25 and was issued under rule 62-340.450(3), Florida
26 Administrative Code, before July 1, 2007, is effective for the
27 term of the permit as modified.

28 2. Not identified and approved in a:

29 a. Permit issued under rule 62-340.450(3), Florida
30 Administrative Code, before July 1, 2007, must be determined
31 under the rules applicable when the permit was issued.

1 b. Modification to a permit which is not substantial
2 and was issued under rule 62-340.450(3), Florida
3 Administrative Code, before July 1, 2007, must be determined
4 under the rules applicable when the modification was granted.

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6 The term "identified and approved" means subjected to a
7 field-verification by the permitting agency which verification
8 was surveyed as part of the process to review the application
9 for the permit or modification or formed the basis for
10 issuance of the permit or modification.

11 (d) Notwithstanding any changes to rule 62-340.450(3),
12 Florida Administrative Code, under paragraph (b), a
13 declaratory statement issued by the department under s.
14 403.914, 1984 Supplement to Florida Statutes 1983, or a formal
15 determination issued by the department or a water management
16 district under s. 373.421 in response to a petition that was
17 filed on or before July 1, 2007, is valid for the duration of
18 the statement or determination.

19 (e) A petition for a declaratory statement by the
20 department under s. 403.914 or for a formal determination by
21 the department or a water management district under s. 373.421
22 which is pending on or before July 1, 2007, is exempt from any
23 changes to rule 62-340.450(3), Florida Administrative Code,
24 under paragraph (b) and subject to the provisions of rule
25 62-340.450(3), Florida Administrative Code, which were
26 approved by the Environmental Regulation Commission on
27 February 23, 2006.

28 (f) Any changes to rule 62-340.450(3), Florida
29 Administrative Code, under paragraph (b) do not apply to
30 evaluation of an:

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1 1. Activity that is proposed within the boundary of a
2 declaratory statement deemed valid under paragraph (d) or
3 issued in accordance with the exemption granted under
4 paragraph (e).

5 2. Application under this part for a permit to conduct
6 dredge and fill activities which is pending on or before July
7 1, 2007.

8 3. Activity that is associated with a mining operation
9 under ss. 378.201-378.212 and ss. 378.701-378.703 and included
10 in an application to approve or modify a conceptual
11 reclamation plan submitted on or before July 1, 2007.

12 Section 3. This act shall take effect July 1, 2007.
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SENATE SUMMARY

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3 Provides for the Department of Environmental Protection
4 to undertake and report on efforts to coordinate wetland
5 permitting of the department, water management districts,
6 and the federal government by securing issuance of a
7 state programmatic permit or a series of regional
8 programmatic permits by the United States Army Corps of
9 Engineers. Specifies conditions applicable to such a
10 permit. Requires the department and the water management
11 districts to implement, subject to approval by the United
12 States Army Corps of Engineers, a statewide programmatic
13 general permit for dredge and fill activities impacting
14 certain wetlands or surface waters which is voluntary.
15 Specifies conditions applicable to such a permit.
16 Requires that the department and the districts equate
17 certain organic matter and hydric soils under specified
18 circumstances. Requires the department to provide
19 training and guidance concerning delineation of surface
20 waters and wetlands under the statewide programmatic
21 general permit. Specifies conditions applicable to that
22 permit. Provides for the pursuit by the department of
23 permits under specified federal laws. Revises legislative
24 ratification of a department rule concerning delineation
25 of wetlands to include certain lands within areas that
26 are not defined as wetlands under the rule and to require
27 the department to provide guidance and training
28 concerning wetland delineation. Provides legislative
29 ratification, contingent upon specified events, of a rule
30 approved by the Environmental Regulation Commission which
31 concerns a list of plants used for delineation of
wetlands. Provides for the application of specified
wetland delineation methods in the evaluation of various
categories of permits, declaratory statements, formal
determinations, mining reclamation plans, or
modifications to permits or mining reclamation plans.