

By the Committee on General Government Appropriations; and  
 Senator Bennett

601-2687-07

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

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

7  
8 Be It Enacted by the Legislature of the State of Florida:

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

12 373.4132 Dry storage facility permitting.--The  
13 governing board or the department shall require a permit under  
14 this part, including s. 373.4145, for the construction,  
15 alteration, operation, maintenance, abandonment, or removal of  
16 a dry storage facility for 10 or more vessels that is  
17 functionally associated with a boat launching area; however,  
18 developments of regional impact for which a development order  
19 has been issued under chapter 380, before July 1,1995,  
20 authorizing a dry slip storage that has yet to be constructed,  
21 is entitled to the number of dry slips approved under the  
22 development order subject to the condition that no more than  
23 15 percent of the watercraft from the dry slip storage may  
24 access the water each day. As part of an applicant's  
25 demonstration that such a facility will not be harmful to the  
26 water resources and will not be inconsistent with the overall  
27 objectives of the district, the governing board or department  
28 shall require the applicant to provide reasonable assurance  
29 that the secondary impacts from the facility will not cause  
30 adverse impacts to the functions of wetlands and surface  
31 waters, including violations of state water quality standards

1 applicable to waters as defined in s. 403.031(13), and will  
2 meet the public interest test of s. 373.414(1)(a), including  
3 the potential adverse impacts to manatees. ~~Nothing in This~~  
4 section does not shall affect the authority of the governing  
5 board or the department to regulate such secondary impacts  
6 under this part for other regulated activities.

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

9 373.414 Additional criteria for activities in surface  
10 waters and wetlands.--

11 (15) Activities associated with mining operations as  
12 defined by and subject to ss. 378.201-378.212 and  
13 378.701-378.703 and included in a conceptual reclamation plan  
14 or modification application submitted prior to July 1, 1996,  
15 shall continue to be reviewed under the rules of the  
16 department adopted pursuant to ss. 403.91-403.929, 1984  
17 Supplement to the Florida Statutes 1983, as amended, the rules  
18 of the water management districts under this part, and  
19 interagency agreements, in effect on January 1, 1993. Such  
20 activities are shall be exempt from rules adopted under  
21 ~~pursuant to~~ subsection (9) and the statewide methodology  
22 ratified under pursuant to s. 373.4211. As of January 1, 1994,  
23 such activities may be issued permits authorizing construction  
24 for the life of the mine. Lands added to a conceptual  
25 reclamation plan subject to this subsection through a  
26 modification submitted after July 1, 1996, which are  
27 contiguous to the conceptual reclamation plan area are exempt  
28 from rules adopted under subsection (9) if the total acreage  
29 of the conceptual reclamation plan is not increased through  
30 the modification and the cumulative acreage added does not  
31 exceed 3 percent of the conceptual reclamation plan area.

1 Lands that have been mined or disturbed by mining activities,  
2 lands subject to a conservation easement under which the  
3 grantee is a state or federal regulatory agency, and lands  
4 otherwise preserved as a part of a permitting review may not  
5 be removed from the conceptual reclamation plan area under  
6 this subsection.

7 Section 3. Section 373.4144, Florida Statutes, is  
8 amended to read:

9 373.4144 Federal environmental permitting.--

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

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

20 (b) Authorize the Department of Environmental  
21 Protection to obtain from the United States Army Corps of  
22 Engineers, under state and federal law and as set forth in  
23 this section, an expanded state programmatic general permit,  
24 or a series of regional general permits, for categories of  
25 activities conducted in waters of the United States governed  
26 by the Clean Water Act and in navigable waters under the  
27 Rivers and Harbors Act of 1899 which are similar in nature,  
28 which will cause only minimal adverse environmental effects  
29 when performed separately, and which will have only minimal  
30 cumulative adverse effects on the environment.

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

10       (d) Direct the department to not seek issuance of or  
11 take any action pursuant to obtaining a general permit or  
12 regional general permits unless conditions are at least as  
13 protective of the environment and natural resources as  
14 existing state law under this part and federal law under the  
15 Clean Water Act and the Rivers and Harbors Act of 1899.

16       (e) Add slash pine and gallberry to the state list of  
17 facultative species as an incentive for and contingent upon  
18 the alignment of federal and state wetland jurisdictional  
19 delineation, so that the alignment eliminates an impediment to  
20 obtaining authorization from the United States Army Corps of  
21 Engineers for a state programmatic general permit or regional  
22 general permits. ~~The department is directed to develop, on or~~  
23 ~~before October 1, 2005, a mechanism or plan to consolidate, to~~  
24 ~~the maximum extent practicable, the federal and state wetland~~  
25 ~~permitting programs. It is the intent of the Legislature that~~  
26 ~~all dredge and fill activities impacting 10 acres or less of~~  
27 ~~wetlands or waters, including navigable waters, be processed~~  
28 ~~by the state as part of the environmental resource permitting~~  
29 ~~program implemented by the department and the water management~~  
30 ~~districts. The resulting mechanism or plan shall analyze and~~  
31 ~~propose the development of an expanded state programmatic~~

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

12       (2) In order to effectuate efficient wetland  
13 permitting and avoid duplication, the department and water  
14 management districts are authorized to implement a voluntary  
15 state programmatic general permit for all dredge and fill  
16 activities impacting 5 acres or less of wetlands or other  
17 surface waters, including navigable waters, subject to  
18 agreement with the United States Army Corps of Engineers, if  
19 the general permit is at least as protective of the  
20 environment and natural resources as existing state law under  
21 this part and federal law under the Clean Water Act and the  
22 Rivers and Harbors Act of 1899. ~~The department is directed to~~  
23 ~~file with the Speaker of the House of Representatives and the~~  
24 ~~President of the Senate a report proposing any required~~  
25 ~~federal and state statutory changes that would be necessary to~~  
26 ~~accomplish the directives listed in this section and to~~  
27 ~~coordinate with the Florida Congressional Delegation on any~~  
28 ~~necessary changes to federal law to implement the directives.~~

29       (3) ~~Nothing in This section does not shall be~~  
30 ~~construed to preclude the department from pursuing a series of~~  
31 regional general permits for construction activities in

1 wetlands or surface waters or complete assumption of federal  
2 permitting programs regulating the discharge of dredged or  
3 fill material pursuant to s. 404 of the Clean Water Act, Pub.  
4 L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s.  
5 10 of the Rivers and Harbors Act of 1899., ~~so long as~~ The  
6 assumption of federal permitting programs must encompass  
7 ~~encompasses~~ all dredge and fill activities in, on, or over  
8 jurisdictional wetlands or waters, including navigable waters,  
9 within the state.

10 (4) The department shall report annually to the  
11 Legislature on its efforts to eliminate impediments to  
12 achieving greater efficiencies through expansion of a state  
13 programmatic general permit or of regional general permits.

14 Section 4. Section 373.4212, Florida Statutes, is  
15 created to read:

16 373.4212 Ratification of department rule; facultative  
17 plants.--Pursuant to s. 373.421 and subject to the conditions  
18 described in this section, the Legislature ratifies the change  
19 to rule 62-340.450(3), Florida Administrative Code, approved  
20 on February 23, 2006, by the Environmental Regulation  
21 Commission which adds Pinus elliottii, and Ilex glabra to the  
22 list of facultative plants. This ratification and the rule  
23 revision may not take effect until state and federal wetland  
24 jurisdictional delineation methodologies are aligned.

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

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

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

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

16           (3) Any declaratory statement issued by the department  
17 under s. 403.914, 1984 Supplement to the Florida Statutes  
18 1983, as amended, pursuant to rules adopted thereunder, or by  
19 the department or a water management district under s.  
20 373.421, in response to a petition filed on or before the  
21 effective date of this act shall continue to be valid for the  
22 duration of such declaratory statement. Any petition pending  
23 on or before the effective date of this act shall be exempt  
24 from the change to rule 62-340.450(3) and shall be subject to  
25 the provisions of chapter 62-340, Florida Administrative Code,  
26 in effect prior to such change. Activities proposed within the  
27 boundaries of a valid declaratory statement issued pursuant to  
28 a petition submitted to either the department or the relevant  
29 water management district on or before the effective date of  
30 this act, or are validated jurisdictional determination prior  
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1 to its expiration, shall continue thereafter to be exempt from  
2 the change to rule 62-340.450(3).

3 (4) A permit application under this part for dredging  
4 and filling or other activity that is pending on or before the  
5 effective date of this act is exempt from the change to rule  
6 62-340.450(3).

7 (5) Activities associated with mining operations as  
8 defined by and subject to ss. 378.201-378.212 and  
9 378.701-378.703 and included in a conceptual reclamation plan  
10 or modification application submitted on or before the  
11 effective date of this act is exempt from change to rule  
12 62-340.450(3).

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

15 161.041 Permits required.--

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

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

23 373.4141 Permits; processing.--

24 (2) A permit shall be approved or denied within 90  
25 days after receipt of the original application, the last item  
26 of timely requested additional material, or the applicant's  
27 written request to begin processing the permit application.  
28 When the department or the district denies an application for  
29 a permit, the department or the district shall provide written  
30 notice to the applicant. The notice must include legal

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1 authority for the denial of the permit and a citation to the  
2 applicable portions of an ordinance, rule, or statute.

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

6 403.087 Permits; general issuance; denial; revocation;  
7 prohibition; penalty.--

8 (9) When the department denies an application for a  
9 permit, the department shall provide written notice to the  
10 applicant. The notice must include legal authority for the  
11 denial of the permit and a citation to the applicable portions  
12 of an ordinance, rule, or statute.

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

19 Section 9. This act shall take effect upon becoming a  
20 law.

21  
22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
23 COMMITTEE SUBSTITUTE FOR  
24 Senate Bill 2082

25 Amends s. 373.4132, F.S., to allow a dry slip storage facility  
26 whose development order was issued prior to July 1, 1995, to  
be built with certain restrictions.

27 Amends s. 373.414, F.S., to allow phosphate mining operations  
28 to complete reclamation activities under a life-of-the-mine  
permit, based on specific criteria.

29 Requires the Department of Environmental Protection to provide  
30 notice when an applicant is denied a permit.

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