

1                   A bill to be entitled  
2           An act relating to environmental permitting; amending s.  
3           373.4144, F.S.; providing legislative intent; revising  
4           provisions requiring the Department of Environmental  
5           Protection to develop and utilize a mechanism  
6           consolidating federal and state wetland permitting  
7           programs; authorizing implementation of a statewide  
8           programmatic general permit by the department and water  
9           management districts for certain dredge and fill  
10          activities; specifying conditions applicable to such  
11          permit; authorizing the department to adopt rules and  
12          apply program criteria; providing for use of such general  
13          permit within the Northwest Florida Water Management  
14          District; amending s. 373.4211, F.S.; revising the  
15          provisions concerning the methodologies used to delineate  
16          the landward extent of wetlands and surface waters;  
17          requiring the department to ensure coordination and  
18          consistency in the delineation of wetlands and surface  
19          waters; specifying activities for such coordination and  
20          consistency; revising provisions concerning the vegetative  
21          index used to delineate the landward extent of wetlands  
22          and surface waters; providing for permit modification  
23          under certain circumstances; providing for certain  
24          declaratory statements from the department; providing  
25          exemptions for certain permit petitions and applications  
26          relating to specified activities; providing a directive to  
27          the Division of Statutory Revision; providing an effective  
28          date.

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

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, and the Florida Game and Fresh Water Fish Commission and other relevant federal and state agencies.

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

(c) Utilize the mechanism of such a general permit or permits to eliminate overlapping federal and state regulations that seek to protect the same resource and to avoid duplication

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57 of permitting between the United States Army Corps of Engineers  
58 and the department for minor work located in waters of the  
59 United States, including navigable waters, thus eliminating, in  
60 appropriate cases, the need for a separate individual approval  
61 from the United States Army Corps of Engineers while ensuring  
62 the most stringent protection of wetland resources.

63 (d) Direct the department not to seek issuance of or take  
64 any action pursuant to any such permit or permits unless such  
65 conditions are at least as protective of the environment and  
66 natural resources as existing state law under part IV of this  
67 chapter and federal law under the Clean Water Act and the Rivers  
68 and Harbors Act.

69 (e) Add slash pine and gallberry to the state list of  
70 facultative species as an incentive for and contingent upon the  
71 alignment of federal and state wetland jurisdictional  
72 delineation, so that the alignment, which seeks to delineate the  
73 same wetland communities, eliminates an impediment to obtaining  
74 authorization from the United States Army Corps of Engineers for  
75 a state programmatic general permit. The department shall report  
76 annually to the Legislature on efforts to eliminate impediments  
77 to achieving greater efficiencies through expansion of a state  
78 programmatic general permit or regional general permits. The  
79 ~~department is directed to develop, on or before October 1, 2005,~~  
80 ~~a mechanism or plan to consolidate, to the maximum extent~~  
81 ~~practicable, the federal and state wetland permitting programs.~~  
82 ~~It is the intent of the Legislature that all dredge and fill~~  
83 ~~activities impacting 10 acres or less of wetlands or waters,~~  
84 ~~including navigable waters, be processed by the state as part of~~

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85 ~~the environmental resource permitting program implemented by the~~  
86 ~~department and the water management districts. The resulting~~  
87 ~~mechanism or plan shall analyze and propose the development of~~  
88 ~~an expanded state programmatic general permit program in~~  
89 ~~conjunction with the United States Army Corps of Engineers~~  
90 ~~pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500,~~  
91 ~~as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers~~  
92 ~~and Harbors Act of 1899. Alternatively, or in combination with~~  
93 ~~an expanded state programmatic general permit, the mechanism or~~  
94 ~~plan may propose the creation of a series of regional general~~  
95 ~~permits issued by the United States Army Corps of Engineers~~  
96 ~~pursuant to the referenced statutes. All of the regional general~~  
97 ~~permits must be administered by the department or the water~~  
98 ~~management districts or their designees.~~

99       (2) In order to effectuate efficient wetland permitting  
100 and avoid duplication, the department and water management  
101 districts are authorized to implement a voluntary statewide  
102 programmatic general permit for all dredge and fill activities  
103 impacting 5 acres or less of wetlands or other surface waters,  
104 including navigable waters, subject to agreement with the United  
105 States Army Corps of Engineers in accordance with the following  
106 conditions:

107       (a) By seeking to use the statewide programmatic general  
108 permit authorized by this section, an applicant consents to the  
109 department or district applying the landward-most delineation of  
110 wetlands or other surface waters applicable under this part or  
111 the regulations implementing s. 404 of the Clean Water Act, Pub.  
112 L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10

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113 of the Rivers and Harbors Act of 1899. In the implementation of  
114 the 1987 Corps of Engineers Wetlands Manual Technical Report  
115 (87-1), the department or district shall equate high organic  
116 matter in the surface horizon in accordance with the National  
117 Resource Conservation Service indications for hydric soils  
118 approved for use in this state. The department shall ensure  
119 statewide coordination and consistency in the delineation of  
120 surface waters and wetlands, pursuant to the statewide  
121 programmatic general permit authorized by this part, by  
122 providing training and guidance to the department and districts  
123 in the implementation of such permit.

124 (b) By seeking to use the statewide programmatic general  
125 permit authorized by this section, an applicant consents to  
126 applicable substantive federal wetland regulatory criteria that  
127 are not included under this part but that are authorized by the  
128 regulation implementing s. 404 of the Clean Water Act, Pub. L.  
129 No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of  
130 the Rivers and Harbors Act of 1899, as required by the United  
131 States Army Corps of Engineers, notwithstanding the provisions  
132 of s. 373.4145 and for the limited purposes of implementing the  
133 statewide programmatic general permit authorized by this  
134 ~~section. The department is directed to file with the Speaker of~~  
135 ~~the House of Representatives and the President of the Senate a~~  
136 ~~report proposing any required federal and state statutory~~  
137 ~~changes that would be necessary to accomplish the directives~~  
138 ~~listed in this section and to coordinate with the Florida~~  
139 ~~Congressional Delegation on any necessary changes to federal law~~  
140 ~~to implement the directives.~~

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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141 (3) Nothing in this section shall be construed to preclude  
 142 the department from pursuing a series of regional general  
 143 permits for construction activities in wetlands or surface  
 144 waters or complete assumption of federal permitting programs  
 145 regulating the discharge of dredged or fill material pursuant to  
 146 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,  
 147 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors  
 148 Act of 1899, so long as the assumption encompasses all dredge  
 149 and fill activities in, on, or over jurisdictional wetlands or  
 150 waters, including navigable waters, within the state.

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

153 373.4211 Ratification of chapter 17-340, Florida  
 154 Administrative Code, on the delineation of the landward extent  
 155 of wetlands and surface waters.--Pursuant to s. 373.421, the  
 156 Legislature ratifies chapter 17-340, Florida Administrative  
 157 Code, approved on January 13, 1994, by the Environmental  
 158 Regulation Commission, with the following changes:

159 (1) The last sentence of rule 62-340.100(1) ~~17-340.100(1)~~,  
 160 Florida Administrative Code, is changed to read: "The  
 161 methodology shall not be used to delineate areas which are not  
 162 wetlands as defined in subsection 62-340.200(19) ~~17-340.200(19)~~,  
 163 F.A.C., which include agricultural and silvicultural lands  
 164 resulting from conversion of non-wetland pine flatwoods as  
 165 defined in this rule, nor to delineate as wetlands or surface  
 166 waters areas exempted from delineation by statute or agency  
 167 rule." In addition, rule 62-340.100(2), Florida Administrative  
 168 Code, is changed to read: "The department shall be responsible

169 for ensuring statewide coordination and consistency in the  
 170 delineation of wetlands and surface waters pursuant to this rule  
 171 by providing training and guidance to the department, districts,  
 172 and local governments in implementing the methodology and  
 173 technical peer review of delineations of wetlands and surface  
 174 waters as may be requested."

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

177 "Within Monroe County and the Key Largo portion of Dade  
 178 County only, the following species shall be listed as  
 179 facultative: *Alternanthera paronychioides*, *Byrsonima lucida*,  
 180 *Ernodea littoralis*, *Guapira discolor*, *Marnilkara bahamensis*,  
 181 *Pisonis rotundata*, *Pithecellobium keyensis*, *Pithecellobium*  
 182 *unquis-cati*, *Randia aculeata*, *Reynosia septentrionalis*, and  
 183 *Thrinax radiata*."

184 (b) Pursuant to s. 373.421 and subject to the conditions  
 185 described in this paragraph, the Legislature ratifies the  
 186 changes to rule 62-340.450(3), Florida Administrative Code,  
 187 approved on February 23, 2006, by the Environmental Regulation  
 188 Commission that add slash pine (*pinus elliotti*) and gallberry  
 189 (*flex glabral*) to the list of facultative plants. However, this  
 190 ratification and the rule revision shall not take effect until  
 191 state and federal wetland jurisdictional delineation  
 192 methodologies are aligned.

193 (c) Surface water and wetland delineations identified and  
 194 approved by a permit issued under rules adopted under this part  
 195 prior to the effective date of this act shall remain valid until  
 196 expiration of such permit, notwithstanding the changes to rule

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197 62-340.450(3), Florida Administrative Code, as described in this  
198 subsection. For purposes of this paragraph, the term "identified  
199 and approved" means:

200 1. The delineation was field verified by the permitting  
201 agency and such verification was surveyed as part of the  
202 application review process for the permit; or

203 2. The delineation was field verified by the permitting  
204 agency and approved pursuant to the permit.

205  
206 Where surface water and wetland delineations were not identified  
207 and approved pursuant to the permit issued under rules adopted  
208 under this part, delineations within the geographical area to  
209 which such permit applies shall be determined pursuant to the  
210 rules applicable at the time the permit was issued,  
211 notwithstanding the changes to rule 62-340.450(3), Florida  
212 Administrative Code, as described in this subsection. This  
213 paragraph shall also apply to any modification of the permit  
214 issued under rules adopted pursuant to this part that does not  
215 constitute a substantial modification within the geographical  
216 area to which the permit applies.

217 (d) Any declaratory statement issued by the department  
218 under s. 403.914, 1984 Supplement to the Florida Statutes 1983,  
219 as amended, pursuant to rules adopted thereunder, or by the  
220 department or a water management district under s. 373.421, in  
221 response to a petition filed on or before the effective date of  
222 this act, shall continue to be valid for the duration of such  
223 declaratory statement. Any such petition pending on or before  
224 the effective date of this act shall be exempt from the changes



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225 to rule 62-340.450(3), Florida Administrative Code, as described  
226 in this subsection, and shall be subject to the provisions of  
227 chapter 62-340, Florida Administrative Code, in effect prior to  
228 such change. Activities proposed within the boundaries of a  
229 valid declaratory statement issued pursuant to a petition  
230 submitted to either the department or the relevant water  
231 management district on or before the effective date of this act,  
232 or a revalidated jurisdictional determination prior to its  
233 expiration, shall continue thereafter to be exempt from the  
234 changes to rule 62-340.450(3), Florida Administrative Code, as  
235 described in this subsection.

236 (e) A permit application under this part for dredging and  
237 filling or other activity that is pending on or before the  
238 effective date of this act shall be exempt from the changes to  
239 rule 62-340.450(3), Florida Administrative Code, as described in  
240 this subsection.

241 (f) Activities associated with mining operations as  
242 defined by and subject to ss. 378.201-378.212 and 378.701-  
243 378.703 and included in a conceptual reclamation plan or  
244 modification application submitted on or before the effective  
245 date of this act shall be exempt from changes to rule 62-  
246 340.450(3), Florida Administrative Code, as described in this  
247 subsection.

248 Section 3. The Division of Statutory Revision is directed  
249 to substitute the date on which this act takes effect for the  
250 phrase "the effective date of this act" wherever it occurs in  
251 provisions of s. 373.4211, Florida Statutes, as amended by this

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252 | act, when preparing that section for publication in the next  
253 | edition of the Florida Statutes.

254 | Section 4. This act shall take effect upon becoming a law.