

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 state
8 programmatic general permit or regional general permits by
9 the department and water management districts for certain
10 dredge and fill activities; specifying conditions
11 applicable to such permit or permits; amending s.
12 373.4211, F.S.; revising the provisions concerning the
13 methodologies used to delineate the landward extent of
14 wetlands and surface waters; revising provisions
15 concerning the vegetative index used to delineate the
16 landward extent of wetlands and surface waters; providing
17 for permit modification under certain circumstances;
18 providing for certain declaratory statements from the
19 department; providing exemptions for certain permit
20 petitions and applications relating to specified
21 activities; amending ss. 161.041, 373.4141, and 403.087,
22 F.S.; requiring the department and water management
23 districts to provide applicants with written notice of
24 permit denial; providing criteria for such notice;
25 amending s. 373.441, F.S.; requiring local governments to
26 enact and enforce wetland regulatory programs through the
27 state environmental resource permit program; providing a

28 directive to the Division of Statutory Revision; providing
 29 an effective date.

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

32
 33 Section 1. Section 373.4144, Florida Statutes, is amended
 34 to read:

35 373.4144 Federal environmental permitting.--

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

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

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

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55 (c) Utilize the mechanism of such a state general permit
56 or such regional general permits to eliminate overlapping
57 federal and state regulations that seek to protect the same
58 resource and to avoid duplication of permitting between the
59 United States Army Corps of Engineers and the department for
60 minor work located in waters of the United States, including
61 navigable waters, thus eliminating, in appropriate cases, the
62 need for a separate individual approval from the United States
63 Army Corps of Engineers while ensuring the most stringent
64 protection of wetland resources.

65 (d) Direct the department not to seek issuance of or take
66 any action pursuant to any such permit or permits unless such
67 conditions are at least as protective of the environment and
68 natural resources as existing state law under this part and
69 federal law under the Clean Water Act and the Rivers and Harbors
70 Act of 1899.

71 (e) Add slash pine and gallberry to the state list of
72 facultative species as an incentive for and contingent upon the
73 alignment of federal and state wetland jurisdictional
74 delineation, so that the alignment, which seeks to delineate the
75 same wetland communities, eliminates an impediment to obtaining
76 authorization from the United States Army Corps of Engineers for
77 a state programmatic general permit or regional general permits.
78 The department shall report annually to the Legislature on
79 efforts to eliminate impediments to achieving greater
80 efficiencies through expansion of a state programmatic general
81 permit or regional general permits. The department is directed
82 to develop, on or before October 1, 2005, a mechanism or plan to

83 ~~consolidate, to the maximum extent practicable, the federal and~~
84 ~~state wetland permitting programs. It is the intent of the~~
85 ~~Legislature that all dredge and fill activities impacting 10~~
86 ~~acres or less of wetlands or waters, including navigable waters,~~
87 ~~be processed by the state as part of the environmental resource~~
88 ~~permitting program implemented by the department and the water~~
89 ~~management districts. The resulting mechanism or plan shall~~
90 ~~analyze and propose the development of an expanded state~~
91 ~~programmatic general permit program in conjunction with the~~
92 ~~United States Army Corps of Engineers pursuant to s. 404 of the~~
93 ~~Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss.~~
94 ~~1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899.~~
95 ~~Alternatively, or in combination with an expanded state~~
96 ~~programmatic general permit, the mechanism or plan may propose~~
97 ~~the creation of a series of regional general permits issued by~~
98 ~~the United States Army Corps of Engineers pursuant to the~~
99 ~~referenced statutes. All of the regional general permits must be~~
100 ~~administered by the department or the water management districts~~
101 ~~or their designees.~~

102 (2) In order to effectuate efficient wetland permitting
103 and avoid duplication, the department and water management
104 districts are authorized to implement a voluntary state
105 programmatic general permit for all dredge and fill activities
106 impacting 5 acres or less of wetlands or other surface waters,
107 including navigable waters, subject to agreement with the United
108 States Army Corps of Engineers, provided the general permit is
109 at least as protective of the environment and natural resources
110 as existing state law under this part and federal law under the

111 Clean Water Act and the Rivers and Harbors Act of 1899. ~~The~~
 112 ~~department is directed to file with the Speaker of the House of~~
 113 ~~Representatives and the President of the Senate a report~~
 114 ~~proposing any required federal and state statutory changes that~~
 115 ~~would be necessary to accomplish the directives listed in this~~
 116 ~~section and to coordinate with the Florida Congressional~~
 117 ~~Delegation on any necessary changes to federal law to implement~~
 118 ~~the directives.~~

119 (3) Nothing in this section shall be construed to preclude
 120 the department from pursuing a series of regional general
 121 permits for construction activities in wetlands or surface
 122 waters or complete assumption of federal permitting programs
 123 regulating the discharge of dredged or fill material pursuant to
 124 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,
 125 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors
 126 Act of 1899, so long as the assumption encompasses all dredge
 127 and fill activities in, on, or over jurisdictional wetlands or
 128 waters, including navigable waters, within the state.

129 Section 2. Subsection (19) of section 373.4211, Florida
 130 Statutes, is amended to read:

131 373.4211 Ratification of chapter 17-340, Florida
 132 Administrative Code, on the delineation of the landward extent
 133 of wetlands and surface waters.--Pursuant to s. 373.421, the
 134 Legislature ratifies chapter 17-340, Florida Administrative
 135 Code, approved on January 13, 1994, by the Environmental
 136 Regulation Commission, with the following changes:

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

139 "Within Monroe County and the Key Largo portion of Dade
140 County only, the following species shall be listed as
141 facultative: *Alternanthera paronychioides*, *Byrsonima lucida*,
142 *Ernodea littoralis*, *Guapira discolor*, *Marnilkara bahamensis*,
143 *Pisonis rotundata*, *Pithecellobium keyensis*, *Pithecellobium*
144 *unquis-cati*, *Randia aculeata*, *Reynosa septentrionalis*, and
145 *Thrinax radiata*."

146 (b) Pursuant to s. 373.421 and subject to the conditions
147 described in this paragraph, the Legislature ratifies the
148 changes to rule 62-340.450(3), Florida Administrative Code,
149 approved on February 23, 2006, by the Environmental Regulation
150 Commission that add slash pine (*pinus elliotti*) and gallberry
151 (*flex glabral*) to the list of facultative plants. However, this
152 ratification and the rule revision shall not take effect until
153 state and federal wetland jurisdictional delineation
154 methodologies are aligned.

155 (c) Surface water and wetland delineations identified and
156 approved by a permit issued under rules adopted under this part
157 prior to the effective date of this act shall remain valid until
158 expiration of such permit, notwithstanding the changes to rule
159 62-340.450(3), Florida Administrative Code, as described in this
160 subsection. For purposes of this paragraph, the term "identified
161 and approved" means:

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

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

167
168 Where surface water and wetland delineations were not identified
169 and approved pursuant to the permit issued under rules adopted
170 under this part, delineations within the geographical area to
171 which such permit applies shall be determined pursuant to the
172 rules applicable at the time the permit was issued,
173 notwithstanding the changes to rule 62-340.450(3), Florida
174 Administrative Code, as described in this subsection. This
175 paragraph shall also apply to any modification of the permit
176 issued under rules adopted pursuant to this part that does not
177 constitute a substantial modification within the geographical
178 area to which the permit applies.

179 (d) Any declaratory statement issued by the department
180 under s. 403.914, 1984 Supplement to the Florida Statutes 1983,
181 as amended, pursuant to rules adopted thereunder, or by the
182 department or a water management district under s. 373.421, in
183 response to a petition filed on or before the effective date of
184 this act, shall continue to be valid for the duration of such
185 declaratory statement. Any such petition pending on or before
186 the effective date of this act shall be exempt from the changes
187 to rule 62-340.450(3), Florida Administrative Code, as described
188 in this subsection, and shall be subject to the provisions of
189 chapter 62-340, Florida Administrative Code, in effect prior to
190 such change. Activities proposed within the boundaries of a
191 valid declaratory statement issued pursuant to a petition
192 submitted to either the department or the relevant water
193 management district on or before the effective date of this act,
194 or a revalidated jurisdictional determination prior to its

195 expiration, shall continue thereafter to be exempt from the
 196 changes to rule 62-340.450(3), Florida Administrative Code, as
 197 described in this subsection.

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

203 (f) Activities associated with mining operations as
 204 defined by and subject to ss. 378.201-378.212 and 378.701-
 205 378.703 and included in a conceptual reclamation plan or
 206 modification application submitted on or before the effective
 207 date of this act shall be exempt from changes to rule 62-
 208 340.450(3), Florida Administrative Code, as described in this
 209 subsection.

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

212 161.041 Permits required.--

213 (5) When the department denies an application for a
 214 permit, the department shall provide written notice to the
 215 applicant. The notice shall include legal authority for the
 216 denial of the permit and a citation to the applicable portions
 217 of an ordinance, rule, or statute.

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

220 373.4141 Permits; processing.--

221 (2) A permit shall be approved or denied within 90 days
 222 after receipt of the original application, the last item of

223 timely requested additional material, or the applicant's written
 224 request to begin processing the permit application. When the
 225 department or the district denies an application for a permit,
 226 the department or the district shall provide written notice to
 227 the applicant. The notice shall include legal authority for the
 228 denial of the permit and a citation to the applicable portions
 229 of an ordinance, rule, or statute.

230 Section 5. Subsection (2) of section 403.087, Florida
 231 Statutes, is amended to read:

232 403.087 Permits; general issuance; denial; revocation;
 233 prohibition; penalty.--

234 (2) The department shall adopt, and may amend or repeal,
 235 rules for the issuance, denial, modification, and revocation of
 236 permits under this section. When the department denies an
 237 application for a permit, the department shall provide written
 238 notice to the applicant. The notice shall include legal
 239 authority for the denial of the permit and a citation to the
 240 applicable portions of an ordinance, rule, or statute.

241 Section 6. Subsection (4) is added to section 373.441,
 242 Florida Statutes, to read:

243 373.441 Role of counties, municipalities, and local
 244 pollution control programs in permit processing.--

245 (4) In order to avoid duplication and inefficiency, no
 246 local government shall enact or enforce a wetland regulatory
 247 program except through delegation of the state environmental
 248 resource permit program pursuant to s. 403.182.

249 Section 7. The Division of Statutory Revision is directed
 250 to substitute the date on which this act takes effect for the

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251 phrase "the effective date of this act" wherever it occurs in
252 provisions of s. 373.4211, Florida Statutes, as amended by this
253 act, when preparing that section for publication in the next
254 edition of the Florida Statutes.

255 Section 8. This act shall take effect upon becoming a law.