

1 A bill to be entitled
2 An act relating to environmental permitting; amending s.
3 373.4132, F.S.; authorizing certain dry slip storage to be
4 constructed under specified conditions; amending s.
5 373.414, F.S.; providing that certain lands added to a
6 conceptual reclamation plan are exempt from specified
7 rules; providing that certain lands may not be removed
8 from a conceptual reclamation plan area; amending s.
9 373.4144, F.S.; providing legislative intent; revising
10 provisions requiring the Department of Environmental
11 Protection to develop and utilize a mechanism
12 consolidating federal and state wetland permitting
13 programs; authorizing implementation of a state
14 programmatic general permit or regional general permits by
15 the department and water management districts for certain
16 dredge and fill activities; specifying conditions
17 applicable to such permit or permits; amending s.
18 373.4211, F.S.; revising the provisions concerning the
19 methodologies used to delineate the landward extent of
20 wetlands and surface waters; revising provisions
21 concerning the vegetative index used to delineate the
22 landward extent of wetlands and surface waters; providing
23 for permit modification under certain circumstances;
24 providing for certain declaratory statements from the
25 department; providing exemptions for certain permit
26 petitions and applications relating to specified
27 activities; amending ss. 161.041, 373.4141, and 403.087,
28 F.S.; requiring the department and water management

29 districts to provide applicants with written notice of
30 permit denial; providing criteria for such notice;
31 providing a directive to the Division of Statutory
32 Revision; providing an effective date.

33
34 Be It Enacted by the Legislature of the State of Florida:

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36 Section 1. Section 373.4132, Florida Statutes, is amended
37 to read:

38 373.4132 Dry storage facility permitting.--The governing
39 board or the department shall require a permit under this part,
40 including s. 373.4145, for the construction, alteration,
41 operation, maintenance, abandonment, or removal of a dry storage
42 facility for 10 or more vessels that is functionally associated
43 with a boat launching area; however, a development of regional
44 impact for which a development order has been issued under
45 chapter 380, before July 1, 1995, authorizing dry slip storage
46 that has yet to be constructed, is entitled to the number of dry
47 slips approved under the development order subject to the
48 condition that no more than 15 percent of the watercraft from
49 the dry slip storage may access the water each day. As part of
50 an applicant's demonstration that such a facility will not be
51 harmful to the water resources and will not be inconsistent with
52 the overall objectives of the district, the governing board or
53 department shall require the applicant to provide reasonable
54 assurance that the secondary impacts from the facility will not
55 cause adverse impacts to the functions of wetlands and surface
56 waters, including violations of state water quality standards

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

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

65 373.414 Additional criteria for activities in surface
66 waters and wetlands.--

67 (15) Activities associated with mining operations as
68 defined by and subject to ss. 378.201-378.212 and 378.701-
69 378.703 and included in a conceptual reclamation plan or
70 modification application submitted prior to July 1, 1996, shall
71 continue to be reviewed under the rules of the department
72 adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the
73 Florida Statutes 1983, as amended, the rules of the water
74 management districts under this part, and interagency
75 agreements, in effect on January 1, 1993. Such activities are
76 ~~shall be~~ exempt from rules adopted under ~~pursuant to~~ subsection
77 (9) and the statewide methodology ratified under ~~pursuant to~~ s.
78 373.4211. As of January 1, 1994, such activities may be issued
79 permits authorizing construction for the life of the mine. Lands
80 added to a conceptual reclamation plan subject to this
81 subsection through a modification submitted after July 1, 1996,
82 which are contiguous to the conceptual reclamation plan area are
83 exempt from rules adopted under subsection (9) if the total
84 acreage of the conceptual reclamation plan is not increased

85 through the modification and the cumulative acreage added does
 86 not exceed 3 percent of the conceptual reclamation plan area.
 87 Lands that have been mined or disturbed by mining activities,
 88 lands subject to a conservation easement under which the grantee
 89 is a state or federal regulatory agency, and lands otherwise
 90 preserved as a part of a permitting review may not be removed
 91 from the conceptual reclamation plan area under this subsection.

92 Section 3. Section 373.4144, Florida Statutes, is amended
 93 to read:

94 373.4144 Federal environmental permitting.--

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

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

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

113 have only minimal cumulative adverse effects on the environment.

114 (c) Utilize the mechanism of such a state general permit
115 or such regional general permits to eliminate overlapping
116 federal and state regulations that seek to protect the same
117 resource and to avoid duplication of permitting between the
118 United States Army Corps of Engineers and the department for
119 minor work located in waters of the United States, including
120 navigable waters, thus eliminating, in appropriate cases, the
121 need for a separate individual approval from the United States
122 Army Corps of Engineers while ensuring the most stringent
123 protection of wetland resources.

124 (d) Direct the department not to seek issuance of or take
125 any action pursuant to any such permit or permits unless such
126 conditions are at least as protective of the environment and
127 natural resources as existing state law under this part and
128 federal law under the Clean Water Act and the Rivers and Harbors
129 Act of 1899.

130 (e) Add slash pine and gallberry to the state list of
131 facultative species as an incentive for and contingent upon the
132 alignment of federal and state wetland jurisdictional
133 delineation, so that the alignment, which seeks to delineate the
134 same wetland communities, eliminates an impediment to obtaining
135 authorization from the United States Army Corps of Engineers for
136 a state programmatic general permit or regional general permits.
137 The department shall report annually to the Legislature on
138 efforts to eliminate impediments to achieving greater
139 efficiencies through expansion of a state programmatic general
140 permit or regional general permits. ~~The department is directed~~

141 ~~to develop, on or before October 1, 2005, a mechanism or plan to~~
142 ~~consolidate, to the maximum extent practicable, the federal and~~
143 ~~state wetland permitting programs. It is the intent of the~~
144 ~~Legislature that all dredge and fill activities impacting 10~~
145 ~~acres or less of wetlands or waters, including navigable waters,~~
146 ~~be processed by the state as part of the environmental resource~~
147 ~~permitting program implemented by the department and the water~~
148 ~~management districts. The resulting mechanism or plan shall~~
149 ~~analyze and propose the development of an expanded state~~
150 ~~programmatic general permit program in conjunction with the~~
151 ~~United States Army Corps of Engineers pursuant to s. 404 of the~~
152 ~~Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss.~~
153 ~~1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899.~~
154 ~~Alternatively, or in combination with an expanded state~~
155 ~~programmatic general permit, the mechanism or plan may propose~~
156 ~~the creation of a series of regional general permits issued by~~
157 ~~the United States Army Corps of Engineers pursuant to the~~
158 ~~referenced statutes. All of the regional general permits must be~~
159 ~~administered by the department or the water management districts~~
160 ~~or their designees.~~

161 (2) In order to effectuate efficient wetland permitting
162 and avoid duplication, the department and water management
163 districts are authorized to implement a voluntary state
164 programmatic general permit for all dredge and fill activities
165 impacting 5 acres or less of wetlands or other surface waters,
166 including navigable waters, subject to agreement with the United
167 States Army Corps of Engineers, provided the general permit is
168 at least as protective of the environment and natural resources

169 as existing state law under this part and federal law under the
170 Clean Water Act and the Rivers and Harbors Act of 1899. The
171 ~~department is directed to file with the Speaker of the House of~~
172 ~~Representatives and the President of the Senate a report~~
173 ~~proposing any required federal and state statutory changes that~~
174 ~~would be necessary to accomplish the directives listed in this~~
175 ~~section and to coordinate with the Florida Congressional~~
176 ~~Delegation on any necessary changes to federal law to implement~~
177 ~~the directives.~~

178 (3) Nothing in this section shall be construed to preclude
179 the department from pursuing a series of regional general
180 permits for construction activities in wetlands or surface
181 waters or complete assumption of federal permitting programs
182 regulating the discharge of dredged or fill material pursuant to
183 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,
184 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors
185 Act of 1899, so long as the assumption encompasses all dredge
186 and fill activities in, on, or over jurisdictional wetlands or
187 waters, including navigable waters, within the state.

188 Section 4. Subsection (19) of section 373.4211, Florida
189 Statutes, is amended to read:

190 373.4211 Ratification of chapter 17-340, Florida
191 Administrative Code, on the delineation of the landward extent
192 of wetlands and surface waters.--Pursuant to s. 373.421, the
193 Legislature ratifies chapter 17-340, Florida Administrative
194 Code, approved on January 13, 1994, by the Environmental
195 Regulation Commission, with the following changes:

196 (19) (a) Rule 17-340.450(3) is amended by adding, after the

197 species list, the following language:

198 "Within Monroe County and the Key Largo portion of Dade
 199 County only, the following species shall be listed as
 200 facultative: Alternanthera paronychioides, Byrsonima lucida,
 201 Ernodea littoralis, Guapira discolor, Marnilkara bahamensis,
 202 Pisonis rotundata, Pithecellobium keyensis, Pithecellobium
 203 unguis-cati, Randia aculeata, Reynosia septentrionalis, and
 204 Thrinax radiata."

205 (b) Pursuant to s. 373.421 and subject to the conditions
 206 described in this paragraph, the Legislature ratifies the
 207 changes to rule 62-340.450(3), Florida Administrative Code,
 208 approved on February 23, 2006, by the Environmental Regulation
 209 Commission that add slash pine (pinus elliotti) and gallberry
 210 (flex glabral) to the list of facultative plants. However, this
 211 ratification and the rule revision shall not take effect until
 212 state and federal wetland jurisdictional delineation
 213 methodologies are aligned.

214 (c) Surface water and wetland delineations identified and
 215 approved by a permit issued under rules adopted under this part
 216 prior to the effective date of this act shall remain valid until
 217 expiration of such permit, notwithstanding the changes to rule
 218 62-340.450(3), Florida Administrative Code, as described in this
 219 subsection. For purposes of this paragraph, the term "identified
 220 and approved" means:

- 221 1. The delineation was field verified by the permitting
 222 agency and such verification was surveyed as part of the
 223 application review process for the permit; or
- 224 2. The delineation was field verified by the permitting

225 agency and approved pursuant to the permit.

226

227 Where surface water and wetland delineations were not identified
228 and approved pursuant to the permit issued under rules adopted
229 under this part, delineations within the geographical area to
230 which such permit applies shall be determined pursuant to the
231 rules applicable at the time the permit was issued,
232 notwithstanding the changes to rule 62-340.450(3), Florida
233 Administrative Code, as described in this subsection. This
234 paragraph shall also apply to any modification of the permit
235 issued under rules adopted pursuant to this part that does not
236 constitute a substantial modification within the geographical
237 area to which the permit applies.

238 (d) Any declaratory statement issued by the department
239 under s. 403.914, 1984 Supplement to the Florida Statutes 1983,
240 as amended, pursuant to rules adopted thereunder, or by the
241 department or a water management district under s. 373.421, in
242 response to a petition filed on or before the effective date of
243 this act, shall continue to be valid for the duration of such
244 declaratory statement. Any such petition pending on or before
245 the effective date of this act shall be exempt from the changes
246 to rule 62-340.450(3), Florida Administrative Code, as described
247 in this subsection, and shall be subject to the provisions of
248 chapter 62-340, Florida Administrative Code, in effect prior to
249 such change. Activities proposed within the boundaries of a
250 valid declaratory statement issued pursuant to a petition
251 submitted to either the department or the relevant water
252 management district on or before the effective date of this act,

253 or a revalidated jurisdictional determination prior to its
 254 expiration, shall continue thereafter to be exempt from the
 255 changes to rule 62-340.450(3), Florida Administrative Code, as
 256 described in this subsection.

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

262 (f) Activities associated with mining operations as
 263 defined by and subject to ss. 378.201-378.212 and 378.701-
 264 378.703 and included in a conceptual reclamation plan or
 265 modification application submitted on or before the effective
 266 date of this act shall be exempt from changes to rule 62-
 267 340.450(3), Florida Administrative Code, as described in this
 268 subsection.

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

271 161.041 Permits required.--

272 (5) When the department denies an application for a
 273 permit, the department shall provide written notice to the
 274 applicant. The notice shall include legal authority for the
 275 denial of the permit and a citation to the applicable portions
 276 of an ordinance, rule, or statute.

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

279 373.4141 Permits; processing.--

280 (2) A permit shall be approved or denied within 90 days
 281 after receipt of the original application, the last item of
 282 timely requested additional material, or the applicant's written
 283 request to begin processing the permit application. When the
 284 department or the district denies an application for a permit,
 285 the department or the district shall provide written notice to
 286 the applicant. The notice shall include legal authority for the
 287 denial of the permit and a citation to the applicable portions
 288 of an ordinance, rule, or statute.

289 Section 7. Subsection (2) of section 403.087, Florida
 290 Statutes, is amended to read:

291 403.087 Permits; general issuance; denial; revocation;
 292 prohibition; penalty.--

293 (2) The department shall adopt, and may amend or repeal,
 294 rules for the issuance, denial, modification, and revocation of
 295 permits under this section. When the department denies an
 296 application for a permit, the department shall provide written
 297 notice to the applicant. The notice shall include legal
 298 authority for the denial of the permit and a citation to the
 299 applicable portions of an ordinance, rule, or statute.

300 Section 8. The Division of Statutory Revision is directed
 301 to substitute the date on which this act takes effect for the
 302 phrase "the effective date of this act" wherever it occurs in
 303 provisions of s. 373.4211, Florida Statutes, as amended by this
 304 act, when preparing that section for publication in the next
 305 edition of the Florida Statutes.

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