

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:

35

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 3 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.