

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 use a mechanism consolidating
 6 federal and state wetland permitting programs; authorizing
 7 implementation of a state programmatic general permit or
 8 regional general permits by the department and water
 9 management districts for certain dredge and fill
 10 activities; specifying conditions applicable to such
 11 permits; amending s. 373.4211, F.S.; delaying the
 12 effective date of a rule adding slash pine and gallberry
 13 to the list of facultative plants; revising provisions
 14 concerning the methodologies used to delineate the
 15 landward extent of wetlands and surface waters; revising
 16 provisions concerning the vegetative index used to
 17 delineate the landward extent of wetlands and surface
 18 waters; providing for permit modification under certain
 19 circumstances; providing for certain declaratory
 20 statements from the department; providing exemptions for
 21 certain permit petitions and applications relating to
 22 specified activities; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Section 373.4144, Florida Statutes, is amended
 27 to read:

28 373.4144 Federal environmental permitting.--

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29 (1) The Legislature intends to:

30 (a) Facilitate coordination and a more efficient process
31 of implementing regulatory duties and functions between the
32 Department of Environmental Protection, the water management
33 districts, the United States Army Corps of Engineers, the United
34 States Fish and Wildlife Service, the National Marine Fisheries
35 Service, the United States Environmental Protection Agency, the
36 Fish and Wildlife Conservation Commission, and other relevant
37 federal and state agencies.

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

49 (c) Use the mechanism of a state general permit or
50 regional general permits to eliminate overlapping federal
51 regulations and state rules that seek to protect the same
52 resource and to avoid duplication of permitting between the
53 United States Army Corps of Engineers and the department for
54 minor work located in waters of the United States, including
55 navigable waters, thus eliminating, in appropriate cases, the
56 need for a separate individual approval from the United States

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57 Army Corps of Engineers while ensuring the most stringent
58 protection of wetland resources.

59 (d) Direct the department to not seek issuance of or take
60 any action pursuant to any such permits unless the conditions
61 are at least as protective of the environment and natural
62 resources as existing state law under this part and federal law
63 under the Clean Water Act and the Rivers and Harbors Act of
64 1899.

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

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

96 (2) To effectuate efficient wetland permitting and avoid
97 duplication, the department and water management districts may
98 implement a voluntary state programmatic general permit for all
99 dredge and fill activities impacting 5 acres or less of wetlands
100 or other surface waters, including navigable waters, subject to
101 agreement with the United States Army Corps of Engineers, if the
102 general permit is at least as protective of the environment and
103 natural resources as existing state law under this part and
104 federal law under the Clean Water Act and the Rivers and Harbors
105 Act of 1899. ~~The department is directed to file with the Speaker~~
106 ~~of the House of Representatives and the President of the Senate~~
107 ~~a report proposing any required federal and state statutory~~
108 ~~changes that would be necessary to accomplish the directives~~
109 ~~listed in this section and to coordinate with the Florida~~
110 ~~Congressional Delegation on any necessary changes to federal law~~
111 ~~to implement the directives.~~

112 (3) ~~Nothing in This section~~ does not ~~shall be construed to~~

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113 preclude the department from pursuing a series of regional
114 general permits for construction activities in wetlands or
115 surface waters or the complete assumption of federal permitting
116 programs regulating the discharge of dredged or fill material
117 pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500,
118 as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers
119 and Harbors Act of 1899, so long as the assumption encompasses
120 all dredge and fill activities in, on, or over jurisdictional
121 wetlands or waters, including navigable waters, within the
122 state.

123 (4) (a) In order to assist in facilitating the objectives
124 of this section and to promote consistency between federal and
125 state mitigation requirements, the department and water
126 management districts shall compare their rules regarding
127 mitigation for adverse impacts to the mitigation rules of the
128 United States Army Corps of Engineers and the Environmental
129 Protection Agency in 73 Federal Register, pages 19594-19705
130 (2008). The comparison shall be done in consultation with
131 appropriate representatives of the United States Army Corps of
132 Engineers and the Environmental Protection Agency. After
133 performing the comparison, the department and water management
134 districts shall:

- 135 1. Identify any inconsistent or contradictory provisions;
- 136 2. Recommend revisions to the rules of the department or
137 water management district to reduce redundant or duplicative
138 requirements; and
- 139 3. Recommend ways of increasing geographic size of the
140 drainage basins and regional watersheds to better facilitate or

141 reflect a watershed approach to mitigation.

142 (b) Unless directed otherwise by state law, the department
 143 and each water management district shall amend their respective
 144 rules to eliminate inconsistent or contradictory provisions,
 145 reduce redundant or duplicative requirements, and increase the
 146 geographic size of drainage basins and regional watersheds to
 147 facilitate or reflect a watershed approach to mitigation.

148 (c) The department and water management districts shall
 149 submit a consolidated report regarding the requirements of this
 150 subsection to the Governor, the Chair of the Senate
 151 Environmental Preservation and Conservation Committee, and the
 152 Chair of the House Agriculture and Natural Resources Policy
 153 Committee by January 1, 2010. If the department and water
 154 management districts believe any conflicting state law prevents
 155 them from amending their rules to achieve the objectives of this
 156 subsection, the report shall identify such law and explain why
 157 it prevents a rule amendment to achieve the objectives of this
 158 subsection.

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

161 373.4211 Ratification of chapter 17-340, Florida
 162 Administrative Code, on the delineation of the landward extent
 163 of wetlands and surface waters.--Pursuant to s. 373.421, the
 164 Legislature ratifies chapter 17-340, Florida Administrative
 165 Code, approved on January 13, 1994, by the Environmental
 166 Regulation Commission, with the following changes:

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

169 "Within Monroe County and the Key Largo portion of Miami-
 170 Dade County only, the following species shall be listed as
 171 facultative: Alternanthera paronychioides, Byrsonima lucida,
 172 Ernodea littoralis, Guapira discolor, Marnilkara bahamensis,
 173 Pisonis rotundata, Pithecellobium keyensis, Pithecellobium
 174 unquis-cati, Randia aculeata, Reynosia septentrionalis, and
 175 Thrinax radiata."

176 (b) Pursuant to s. 373.421 and subject to the conditions
 177 described in this paragraph, the Legislature ratifies the
 178 changes to rule 62-340.450(3), Florida Administrative Code,
 179 approved on February 23, 2006, by the Environmental Regulation
 180 Commission which added slash pine (pinus elliottii) and
 181 gallberry (ilex glabra) to the list of facultative plants.
 182 However, this ratification and the rule revision shall not take
 183 effect until state and federal wetland jurisdictional
 184 delineation methodologies are aligned.

185 (c) Surface water and wetland delineations identified and
 186 approved by a permit issued under rules adopted under this part
 187 before July 1, 2009, shall remain valid until expiration of the
 188 permit, notwithstanding the changes to rule 62-340.450(3),
 189 Florida Administrative Code, as described in this subsection.
 190 For purposes of this paragraph, the term "identified and
 191 approved" means:

192 1. The delineation was field-verified by the permitting
 193 agency and such verification was surveyed as part of the
 194 application review process for the permit; or

195 2. The delineation was field-verified by the permitting
 196 agency and approved pursuant to the permit.

197
198 Where surface water and wetland delineations were not identified
199 and approved pursuant to the permit issued under rules adopted
200 under this part, delineations within the geographical area to
201 which the permit applies shall be determined pursuant to the
202 rules applicable at the time the permit was issued,
203 notwithstanding the changes to rule 62-340.450(3), Florida
204 Administrative Code, as described in this subsection. This
205 paragraph also applies to any modification of the permit issued
206 under rules adopted pursuant to this part which does not
207 constitute a substantial modification within the geographical
208 area to which the permit applies.

209 (d) Any declaratory statement issued by the department
210 under s. 403.9144, pursuant to rules adopted thereunder, or by
211 the department or a water management district under s. 373.421,
212 in response to a petition filed on or before July 1, 2009, shall
213 continue to be valid for the duration of such declaratory
214 statement. Any petition pending on or before July 1, 2009, is
215 exempt from the changes to rule 62-340.450(3), Florida
216 Administrative Code, as described in this subsection, and is
217 subject to the provisions of chapter 62-340, Florida
218 Administrative Code, in effect prior to such change. Activities
219 proposed within the boundaries of a valid declaratory statement
220 issued pursuant to a petition submitted to the department or the
221 relevant water management district on or before July 1, 2009, or
222 a revalidated jurisdictional determination prior to its
223 expiration, shall continue thereafter to be exempt from the
224 changes to rule 62-340.450(3), Florida Administrative Code, as

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225 | described in this subsection.

226 | Section 3. This act shall take effect July 1, 2009.