

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 formal determinations
20 and declaratory statements from the department; providing
21 exemptions for certain permit petitions and applications
22 relating to specified activities; providing an effective
23 date.

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

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

CS/CS/HB 1123

2009

29 | 373.4144 Federal environmental permitting.--

30 | (1) The Legislature intends to:

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

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

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

57 need for a separate individual approval from the United States
58 Army Corps of Engineers while ensuring the most stringent
59 protection of wetland resources.

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

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

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

97 (2) To effectuate efficient wetland permitting and avoid
98 duplication, the department and water management districts may
99 implement a voluntary state programmatic general permit for all
100 dredge and fill activities impacting 5 acres or less of wetlands
101 or other surface waters, including navigable waters, subject to
102 agreement with the United States Army Corps of Engineers, if the
103 general permit is at least as protective of the environment and
104 natural resources as existing state law under this part and
105 federal law under the Clean Water Act and the Rivers and Harbors
106 Act of 1899. This subsection does not prevent the department and
107 water management districts from pursuing and implementing a
108 state programmatic permit for projects impacting more than 5
109 acres of wetlands or other surface waters. ~~The department is~~
110 ~~directed to file with the Speaker of the House of~~
111 ~~Representatives and the President of the Senate a report~~
112 ~~proposing any required federal and state statutory changes that~~

CS/CS/HB 1123

2009

113 ~~would be necessary to accomplish the directives listed in this~~
114 ~~section and to coordinate with the Florida Congressional~~
115 ~~Delegation on any necessary changes to federal law to implement~~
116 ~~the directives.~~

117 (3) ~~Nothing in This section does not shall be construed to~~
118 ~~preclude the department from pursuing a series of regional~~
119 ~~general permits for construction activities in wetlands or~~
120 ~~surface waters or the complete assumption of federal permitting~~
121 ~~programs regulating the discharge of dredged or fill material~~
122 ~~pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500,~~
123 ~~as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers~~
124 ~~and Harbors Act of 1899, so long as the assumption encompasses~~
125 ~~all dredge and fill activities in, on, or over jurisdictional~~
126 ~~wetlands or waters, including navigable waters, within the~~
127 ~~state.~~

128 (4) (a) In order to assist in facilitating the objectives
129 of this section and to promote consistency between federal and
130 state mitigation requirements, the department and water
131 management districts shall compare their rules regarding
132 mitigation for adverse impacts to the mitigation rules of the
133 United States Army Corps of Engineers and the Environmental
134 Protection Agency in 73 Federal Register, pages 19594-19705
135 (2008). The comparison shall be done in consultation with
136 appropriate representatives of the United States Army Corps of
137 Engineers and the Environmental Protection Agency. After
138 performing the comparison, the department and water management
139 districts shall:

140 1. Identify any inconsistent or contradictory provisions.

141 2. Recommend appropriate revisions to the rules of the
142 department or water management district to reduce inconsistent
143 or contradictory provisions in a manner that will not lessen
144 environmental protection, including consideration of increasing
145 the geographic size of the drainage basins and regional
146 watersheds to facilitate or reflect a watershed approach to
147 mitigation.

148 (b) 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 elliotii*) 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 a voluntary state programmatic general permit for
184 all dredge and fill activities impacting 5 acres or less of
185 wetlands or other surface waters is implemented as provided in
186 s. 373.4144(2).

187 (c) Unless the holder of a valid permit elects to use the
188 delineation line as amended to add slash pine (*Pinus elliotii*)
189 and gallberry (*Ilex glabra*) to the list of facultative plants,
190 the surface water and wetland delineations identified and
191 approved by a permit issued under rules adopted under this part
192 before July 1, 2009, shall remain valid until expiration of the
193 permit, notwithstanding the changes to rule 62-340.450(3),
194 Florida Administrative Code, as described in this subsection.
195 For purposes of this paragraph, the term "identified and
196 approved" means:

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

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

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

214 (d) Unless the petitioner elects to use the delineation
 215 line as amended to add slash pine (Pinus elliottii) and
 216 gallberry (Ilex glabra) to the list of facultative plants, any
 217 formal determination or declaratory statement issued by the
 218 department under former s. 403.914, pursuant to rules adopted
 219 thereunder, or by the department or a water management district
 220 under s. 373.421, in response to a petition filed on or before
 221 July 1, 2009, shall continue to be valid for the duration of
 222 such formal determination or declaratory statement. Any petition
 223 pending on or before July 1, 2009, is exempt from the changes to
 224 rule 62-340.450(3), Florida Administrative Code, as described in

CS/CS/HB 1123

2009

225 this subsection, and is subject to the provisions of chapter 62-
226 340, Florida Administrative Code, in effect prior to such
227 change. Activities proposed within the boundaries of a valid
228 formal determination or declaratory statement issued pursuant to
229 a petition submitted to the department or the relevant water
230 management district on or before July 1, 2009, or a revalidated
231 jurisdictional determination prior to its expiration, shall
232 continue thereafter to be exempt from the changes to rule 62-
233 340.450(3), Florida Administrative Code, as described in this
234 subsection.

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