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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2009	.	
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The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

373.4144 Federal environmental permitting.-

(1) The Legislature intends to facilitate coordination and a more efficient process of implementing regulatory duties and functions between the Department of Environmental Protection, the water management districts, the United States Army Corps of



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12 Engineers, the United States Fish and Wildlife Service, the
13 National Marine Fisheries Service, the United States
14 Environmental Protection Agency, the Fish and Wildlife
15 Conservation Commission, and other relevant federal and state
16 agencies. The department is directed to develop, on or before
17 October 1, 2005, a mechanism or plan to consolidate, to the
18 maximum extent practicable, the federal and state wetland
19 permitting programs. It is the intent of the Legislature that
20 all dredge and fill activities impacting 10 acres or less of
21 wetlands or waters, including navigable waters, be processed by
22 the state as part of the environmental resource permitting
23 program implemented by the department and the water management
24 districts. The resulting mechanism or plan shall analyze and
25 propose the development of an expanded state programmatic
26 general permit program in conjunction with the United States
27 Army Corps of Engineers pursuant to s. 404 of the Clean Water
28 Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,
29 and s. 10 of the Rivers and Harbors Act of 1899. Alternatively,
30 or in combination with an expanded state programmatic general
31 permit, the mechanism or plan may propose the creation of a
32 series of regional general permits issued by the United States
33 Army Corps of Engineers pursuant to the referenced statutes. All
34 of the regional general permits must be administered by the
35 department or the water management districts or their designees.

36 (2) (a) The department shall pursue the issuance by the
37 United States Army Corps of Engineers, pursuant to state and
38 federal law and as set forth in this section, of an expanded
39 state programmatic general permit or a series of regional
40 general permits for categories of activities in waters of the



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41 United States governed by the Clean Water Act and in navigable
42 waters under the Rivers and Harbors Act of 1899, which are
43 similar in nature, which will cause only minimal adverse
44 environmental effects when performed separately, and which will
45 have only minimal cumulative adverse effects on the environment.

46 (b) The department is directed to:

47 1. Use the mechanism of a state general permit or regional
48 general permits to eliminate overlapping federal regulations and
49 state rules that seek to protect the same resource and to avoid
50 duplication of permitting between the United States Army Corps
51 of Engineers and the department for minor work located in waters
52 of the United States, including navigable waters, thus
53 eliminating, in appropriate cases, the need for a separate
54 individual approval from the United States Army Corps of
55 Engineers while ensuring the most stringent protection of
56 wetland resources; and

57 2. Not seek issuance of or take any action pursuant to any
58 such permits unless the conditions are at least as protective of
59 the environment and natural resources as existing state law
60 under this part and federal law under the Clean Water Act and
61 the Rivers and Harbors Act of 1899.

62 (c) The department shall report to the Legislature by
63 January 15 of each year on efforts to eliminate impediments to
64 achieving greater efficiencies through expansion of a state
65 programmatic general permit or regional general permits.

66 (3) ~~(2)~~ To effectuate efficient wetland permitting and avoid
67 duplication, the department and water management districts may
68 implement a voluntary state programmatic general permit for all
69 dredge and fill activities impacting 5 acres or less of wetlands



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70 or other surface waters, including navigable waters, subject to
71 agreement with the United States Army Corps of Engineers, if the
72 general permit is at least as protective of the environment and
73 natural resources as existing state law under this part and
74 federal law under the Clean Water Act and the Rivers and Harbors
75 Act of 1899. This subsection does not prevent the department or
76 water management districts from pursuing and implementing a
77 state programmatic permit for projects impacting more than 5
78 acres of wetlands or other surface waters. ~~The department is~~
79 ~~directed to file with the Speaker of the House of~~
80 ~~Representatives and the President of the Senate a report~~
81 ~~proposing any required federal and state statutory changes that~~
82 ~~would be necessary to accomplish the directives listed in this~~
83 ~~section and to coordinate with the Florida Congressional~~
84 ~~Delegation on any necessary changes to federal law to implement~~
85 ~~the directives.~~

86 (4)(3) Nothing in This section does not shall be construed
87 to preclude the department from pursuing a series of regional
88 general permits for construction activities in wetlands or
89 surface waters or the complete assumption of federal permitting
90 programs regulating the discharge of dredged or fill material
91 pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500,
92 as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers
93 and Harbors Act of 1899, so long as the assumption encompasses
94 all dredge and fill activities in, on, or over jurisdictional
95 wetlands or waters, including navigable waters, within the
96 state.

97 (5)(a) In order to assist in facilitating the objectives of
98 this section and to promote consistency between federal and



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99 state mitigation requirements, the department and water
100 management districts shall compare their rules regarding
101 mitigation for adverse impacts to the mitigation rules of the
102 United States Army Corps of Engineers and the United States
103 Environmental Protection Agency in 73 Federal Register, pages
104 19594-19705 (2008). The comparison shall be done in consultation
105 with appropriate representatives of the United States Army Corps
106 of Engineers and the United States Environmental Protection
107 Agency. After performing the comparison, the department and
108 water management districts shall:

109 1. Identify any inconsistent or contradictory provisions;

110 and

111 2. Recommend appropriate revisions to the rules of the
112 department or water management districts to reduce inconsistent
113 or contradictory requirements in such a manner that will not
114 lessen environmental protection. The recommendations shall
115 include a consideration for increasing the geographic size of
116 drainage basins and regional watersheds to facilitate or reflect
117 a watershed approach to mitigation.

118 (b) The department and water management districts shall
119 submit a consolidated report regarding the requirements of this
120 subsection to the Governor, the Chair of the Senate
121 Environmental Preservation and Conservation Committee, and the
122 Chair of the House Agriculture and Natural Resources Policy
123 Committee by January 15, 2010. If the department and water
124 management districts believe any conflicting state law prevents
125 them from amending their rules to achieve the objectives of this
126 subsection, the report must identify such law and explain why it
127 prevents a rule amendment to achieve the objectives of this



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128 subsection.

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 Miami-
140 Dade 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*, *Reynosia 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 which added slash pine (*Pinus elliottii*) and
151 gallberry (*Ilex glabra*) to the list of facultative plants.
152 However, this ratification and the rule revision will not take
153 effect until a voluntary state programmatic general permit for
154 all dredge and fill activities affecting up to 5 acres or more
155 of wetlands or other surface waters is implemented as provided
156 in s. 373.4144(2).



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157 (c) Unless the holder of a valid permit elects to use the
158 delineation line as amended to add slash pine (*Pinus elliotii*)
159 and gallberry (*Ilex glabra*) to the list of facultative plants,
160 the surface water and wetland delineations identified and
161 approved by a permit issued under rules adopted under this part
162 before July 1, 2009, remain valid until expiration of the
163 permit, notwithstanding the changes to rule 62-340.450(3),
164 Florida Administrative Code, as described in this subsection.
165 For purposes of this paragraph, the term "identified and
166 approved" means:

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

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

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

184 (d) Unless the petitioner elects to use the delineation
185 line as amended to add slash pine (*Pinus elliotii*) and



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186 gallberry (*Ilex glabra*) to the list of facultative plants, any
187 declaratory statement issued by the department under s. 403.914,
188 1984 Supplement to the Florida Statutes 1983 as amended,
189 pursuant to rules adopted thereunder, or formal determination
190 issued by the department or a water management district under s.
191 373.421, in response to a petition filed on or before July 1,
192 2009, shall continue to be valid for the duration of such
193 declaratory statement or formal determination. Any petition
194 pending on or before July 1, 2009, is exempt from the changes to
195 rule 62-340.450(3), Florida Administrative Code, as described in
196 this subsection, and is subject to the provisions of chapter 62-
197 340, Florida Administrative Code, in effect prior to such
198 change. Activities proposed within the boundaries of a valid
199 declaratory statement or formal determination issued pursuant to
200 a petition submitted to the department or the relevant water
201 management district on or before July 1, 2009, or within the
202 boundaries of a revalidated jurisdictional determination prior
203 to its expiration, shall continue to be exempt after July 1,
204 2009 from the changes to rule 62-340.450(3), Florida
205 Administrative Code, as described in this subsection.

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

207
208 ===== T I T L E A M E N D M E N T =====

209 And the title is amended as follows:

210 Delete everything before the enacting clause
211 and insert:

212 A bill to be entitled
213 An act relating to environmental permitting; amending
214 s. 373.4144, F.S.; providing legislative intent;



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215 requiring the Department of Environmental Protection
216 to pursue the issuance of a state programmatic permit
217 or regional general permits from the United States
218 Army Corps of Engineers; revising provisions requiring
219 the Department of Environmental Protection to develop
220 and use a mechanism consolidating federal and state
221 wetland permitting programs; authorizing
222 implementation of a state programmatic general permit
223 or regional general permits by the department and
224 water management districts for certain dredge and fill
225 activities; specifying conditions applicable to such
226 permits; amending s. 373.4211, F.S.; delaying the
227 effective date of a rule adding slash pine and
228 gallberry to the list of facultative plants; revising
229 provisions concerning the methodologies used to
230 delineate the landward extent of wetlands and surface
231 waters; revising provisions concerning the vegetative
232 index used to delineate the landward extent of
233 wetlands and surface waters; providing for permit
234 modification under certain circumstances; providing
235 for certain declaratory statements or formal
236 jurisdictional determinations from the department or a
237 water management district; providing exemptions for
238 certain permit petitions and applications relating to
239 specified activities; providing an effective date.