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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
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. Section 125.0112, Florida Statutes, is created
207 to read:

208 125.0112 Biofuels and renewable energy.—The construction
209 and operation of a biofuel processing facility or a renewable
210 energy generating facility, as defined in s. 366.91(2)(d), and
211 the cultivation and production of bioenergy, as defined in s.
212 570.957(1)(a), may be considered by a local government to be a
213 valid industrial, agricultural, and silvicultural use permitted
214 within those land use categories in the local comprehensive land



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215 use plan. If the local comprehensive plan does not specifically
216 allow for the construction of a biofuel processing facility or
217 renewable energy facility, the local government shall establish
218 a specific review process that may include expediting local
219 review of any necessary comprehensive plan amendment, zoning
220 change, use permit, waiver, variance, or special exemption.
221 Local expedited review of a proposed biofuel processing facility
222 or a renewable energy facility does not obligate a local
223 government to approved such proposed use. A comprehensive plan
224 amendment necessary to accommodate a biofuel processing facility
225 or renewable energy facility shall, if approved by the local
226 government, be eligible for the alternative state review process
227 in s. 163.32465. The construction and operation of a facility
228 and related improvements on a portion of a property under this
229 section may not affect the remainder of the property's
230 classification as agricultural under s. 193.461.

231 Section 4. Subsection (6) is added to section 373.236,
232 Florida Statutes, to read:

233 373.236 Duration of permits; compliance reports.-

234 (6) A permit that is approved for the use of water for a
235 renewable energy operating facility or for cultivating
236 agricultural products on lands consisting of 1,000 acres or more
237 for renewable energy, as defined in s. 366.91(2)(d), shall, upon
238 the applicant's request, be granted for a term of at least 25
239 years based on the anticipated life of the facility if there is
240 sufficient data to provide reasonable assurance that the
241 conditions for issuing a permit will be met for the duration of
242 the permit. However, a permit may be issued for a shorter
243 duration that reflects the longest period for which such



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244 reasonable assurances are provided. The permittee shall provide
245 a compliance report every 5 years during the term of the permit
246 as required under subsection (4).

247 Section 5. Subsection (4) of section 373.243, Florida
248 Statutes, is amended to read:

249 373.243 Revocation of permits.—The governing board or the
250 department may revoke a permit as follows:

251 (4) For nonuse of the water supply allowed by the permit
252 for a period of 2 years or more, the governing board or the
253 department may revoke the permit permanently and in whole unless
254 the user can prove that his or her nonuse was due to extreme
255 hardship caused by factors beyond the user's control. However,
256 for a permit with a duration determined under s. 373.236(6), the
257 governing board or the department may revoke the permit only if
258 the nonuse of the water supply allowed by the permit is for a
259 period of 4 years or more.

260 Section 6. Subsections (3), (4), (7), and (11), paragraph
261 (b) of subsection (13), paragraph (b) of subsection (14),
262 subsection (15), and paragraph (b) of subsection (19) of section
263 403.973, Florida Statutes, are amended to read:

264 403.973 Expedited permitting; comprehensive plan
265 amendments.—

266 (3) (a) The Governor, through the office, shall direct the
267 creation of regional permit action teams, for the purpose of
268 expediting review of permit applications and local comprehensive
269 plan amendments submitted by:

- 270 1. Businesses creating at least 100 jobs, or
271 2. Businesses creating at least 50 jobs if the project is
272 located in an enterprise zone, or in a county having a



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273 population of less than 75,000 or in a county having a
274 population of less than 100,000 which is contiguous to a county
275 having a population of less than 75,000, as determined by the
276 most recent decennial census, residing in incorporated and
277 unincorporated areas of the county. ~~or~~

278 (b) On a case-by-case basis and at the request of a county
279 or municipal government, the office may certify as eligible for
280 expedited review a project not meeting the minimum job creation
281 thresholds but creating a minimum of 10 jobs. The recommendation
282 from the governing body of the county or municipality in which
283 the project may be located is required in order for the office
284 to certify that any project is eligible for expedited review
285 under this paragraph. When considering projects that do not meet
286 the minimum job creation thresholds but that are recommended by
287 the governing body in which the project may be located, the
288 office shall consider economic impact factors that include, but
289 are not limited to:

- 290 1. The proposed wage and skill levels relative to those
291 existing in the area in which the project may be located;
292 2. The project's potential to diversify and strengthen the
293 area's economy;
294 3. The amount of capital investment; and
295 4. The number of jobs that will be made available for
296 persons served by the welfare transition program.

297 (c) At the request of a county or municipal government, the
298 office or a Quick Permitting County may certify projects located
299 in counties where the ratio of new jobs per participant in the
300 welfare transition program, as determined by Workforce Florida,
301 Inc., is less than one or otherwise critical, as eligible for



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302 the expedited permitting process. Such projects must meet the
303 numerical job creation criteria of this subsection, but the jobs
304 created by the project do not have to be high-wage jobs that
305 diversify the state's economy.

306 (d) Projects located in a designated brownfield area are
307 eligible for the expedited permitting process.

308 (e) Projects that are part of the state-of-the-art
309 biomedical research institution and campus to be established in
310 this state by the grantee under s. 288.955 are eligible for the
311 expedited permitting process, if the projects are designated as
312 part of the institution or campus by the board of county
313 commissioners of the county in which the institution and campus
314 are established.

315 (f) Projects that result in the production of biofuels
316 cultivated on lands consisting of 1,000 acres or more, or in the
317 construction of a biofuel or biodiesel processing facility or
318 renewable energy generating facility as defined in s.
319 366.91(2)(d), are eligible for the expedited permitting process.

320 (4) The regional teams shall be established through the
321 execution of memoranda of agreement developed by the applicant
322 and between the office with input solicited from and the
323 respective heads of the Department of Environmental Protection,
324 the Department of Community Affairs, the Department of
325 Transportation and its district offices, the Department of
326 Agriculture and Consumer Services, the Fish and Wildlife
327 Conservation Commission, appropriate regional planning councils,
328 appropriate water management districts, and voluntarily
329 participating municipalities and counties. The memoranda of
330 agreement must ~~should also~~ accommodate participation in the this



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331 expedited process by other local governments and federal
332 agencies as circumstances warrant.

333 (7) An appeal ~~At the option of the participating local~~
334 ~~government, appeals of a local government's~~ its final approval
335 for a project must ~~may~~ be conducted pursuant to the summary
336 hearing provisions in ~~of~~ s. 120.574, pursuant to subsection
337 (14), and consolidated with the challenge of applicable state
338 agency actions, if any ~~or pursuant to other appellate processes~~
339 ~~available to the local government. The local government's~~
340 ~~decision to enter into a summary hearing must be made as~~
341 ~~provided in s. 120.574 or in the memorandum of agreement.~~

342 (11) The standard form memorandum ~~memoranda~~ of agreement
343 must ~~shall~~ include guidelines to be used in working with state,
344 regional, and local permitting authorities. Guidelines may
345 include, but are not limited to, the following:

346 (a) A central contact point for filing permit applications
347 and local comprehensive plan amendments and for obtaining
348 information on permit and local comprehensive plan amendment
349 requirements;

350 (b) Identification of the individual or individuals within
351 each respective agency who will be responsible for processing
352 the expedited permit application or local comprehensive plan
353 amendment for the ~~that~~ agency;

354 (c) A mandatory preapplication review process to reduce
355 permitting conflicts by providing guidance to applicants
356 regarding the permits needed from each agency and governmental
357 entity, site planning and development, site suitability and
358 limitations, facility design, and steps the applicant can take
359 to ensure expeditious permit application and local comprehensive



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360 plan amendment review. As a part of the ~~this~~ process, the first
361 interagency meeting to discuss a project shall be held within 14
362 days after the office's determination that the project is
363 eligible for expedited review. Subsequent interagency meetings
364 may be scheduled to accommodate the needs of participating local
365 governments that are unable to meet public notice requirements
366 for executing a memorandum of agreement within the ~~this~~
367 timeframe. Such ~~This~~ accommodation may not exceed 45 days from
368 the office's determination that the project is eligible for
369 expedited review;

370 (d) The preparation of a single coordinated project
371 description form and checklist and an agreement by state and
372 regional agencies to reduce the burden on an applicant to
373 provide duplicate information to multiple agencies;

374 (e) ~~Establishment of~~ A process for the adoption and review
375 of any comprehensive plan amendment needed by any certified
376 project within 90 days after the submission of an application
377 for a comprehensive plan amendment. However, the memorandum of
378 agreement may not prevent affected persons as defined in s.
379 163.3184 from appealing or participating in the ~~this~~ expedited
380 plan amendment process and any review or appeals of decisions
381 made under this paragraph; and

382 (f) Additional incentives for an applicant who proposes a
383 project that provides a net ecosystem benefit.

384 (13) Notwithstanding any other provisions of law:

385 (b) Projects that are qualified under this section are not
386 subject to interstate highway level-of-service standards adopted
387 by the Department of Transportation for concurrency purposes.
388 The memorandum of agreement specified in subsection (5) must



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389 include a process by which the applicant will be assessed a fair
390 share of the cost of mitigating the project's significant
391 traffic impacts, as defined in chapter 380 and related rules.
392 The agreement must also specify whether the significant traffic
393 impacts on the interstate system will be mitigated through the
394 implementation of a project or payment of funds to the
395 Department of Transportation. If ~~where~~ funds are paid, the
396 Department of Transportation must include in the 5-year work
397 program transportation projects or project phases, in an amount
398 equal to the funds received, to mitigate the traffic impacts
399 associated with the proposed project.

400 (14)

401 (b) Challenges to state agency action in the expedited
402 permitting process for establishment of a state-of-the-art
403 biomedical research institution and campus in the ~~this~~ state by
404 the grantee under s. 288.955 or a project identified in
405 paragraph (3) (f) are subject to the same requirements as
406 challenges brought under paragraph (a), except that,
407 notwithstanding s. 120.574, summary proceedings must be
408 conducted within 30 days after a party files the motion for
409 summary hearing, regardless of whether the parties agree to the
410 summary proceeding.

411 (15) The office, working with the agencies that provide
412 input to ~~participating in~~ the memoranda of agreement, shall
413 review sites proposed for the location of facilities eligible
414 for the Innovation Incentive Program under s. 288.1089. Within
415 20 days after the request for the review by the office, the
416 agencies shall provide to the office a statement as to each
417 site's necessary permits under local, state, and federal law and



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418 an identification of significant permitting issues, which if
419 unresolved, may result in the denial of an agency permit or
420 approval or any significant delay caused by the permitting
421 process.

422 (19) The following projects are ineligible for review under
423 this part:

424 (b) A project, the primary purpose of which is to:

425 1. Effect the final disposal of solid waste, biomedical
426 waste, or hazardous waste in this state.

427 2. Produce electrical power, unless the production of
428 electricity is incidental and not the primary function of the
429 project or the electrical power is derived from a renewable
430 energy fuel source as defined in s. 366.91(2)(d).

431 3. Extract natural resources.

432 4. Produce oil.

433 5. Construct, maintain, or operate an oil, petroleum,
434 natural gas, or sewage pipeline.

435 Section 7. This act shall take effect July 1, 2009.

436

437 ===== T I T L E A M E N D M E N T =====

438 And the title is amended as follows:

439 Delete everything before the enacting clause
440 and insert:

441 A bill to be entitled

442 An act relating to environmental permitting; amending
443 s. 373.4144, F.S.; providing legislative intent;
444 requiring the Department of Environmental Protection
445 to pursue the issuance of a state programmatic permit
446 or regional general permits from the United States



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447 Army Corps of Engineers; revising provisions requiring
448 the Department of Environmental Protection to develop
449 and use a mechanism consolidating federal and state
450 wetland permitting programs; authorizing
451 implementation of a state programmatic general permit
452 or regional general permits by the department and
453 water management districts for certain dredge and fill
454 activities; specifying conditions applicable to such
455 permits; amending s. 373.4211, F.S.; delaying the
456 effective date of a rule adding slash pine and
457 gallberry to the list of facultative plants; revising
458 provisions concerning the methodologies used to
459 delineate the landward extent of wetlands and surface
460 waters; revising provisions concerning the vegetative
461 index used to delineate the landward extent of
462 wetlands and surface waters; providing for permit
463 modification under certain circumstances; providing
464 for certain declaratory statements or formal
465 jurisdictional determinations from the department or a
466 water management district; providing exemptions for
467 certain permit petitions and applications relating to
468 specified activities; creating ss. 125.0112, F.S.;
469 providing that the construction and operation of a
470 biofuel processing facility or a renewable energy
471 generating facility and the cultivation and production
472 of bioenergy may be considered a valid industrial,
473 agricultural, and silvicultural use for purposes of
474 any local comprehensive plan; providing for a local
475 government to establish an expedited review process



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476 under certain circumstances; providing that local
477 expedited review does not obligate a local government
478 to approve proposed uses; providing for alternative
479 state review of certain plan amendments; providing the
480 construction and operation of certain facilities may
481 not affect classification of property for ad valorem
482 tax purposes; amending s. 373.236, F.S.; requiring
483 that a permit for the use of water for cultivating
484 agricultural products and renewable energy be granted
485 for a specified number of years if certain conditions
486 are met; providing requirements for permittees;
487 providing an exemption; amending s. 403.973, F.S.;
488 providing for the expedited review of permit
489 applications for projects resulting in the production
490 of biofuels or in the construction of a biofuel or
491 biodiesel processing facility or renewable energy
492 generating facility; clarifying provisions relating to
493 memoranda of agreement which establish regional teams
494 for the expedited review of such applications;
495 providing an effective date.