



921184

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/31/2009	.	
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The Committee on Environmental Preservation and Conservation
(Detert) recommended the following:

Senate Amendment

Delete lines 107 - 211
and insert:
Act of 1899. This subsection does not prevent the department or
water management districts from pursuing and implementing a
state programmatic permit for projects that have greater than 5
acres of wetlands or other surface waters. The department is
directed to file with the Speaker of the House of
Representatives and the President of the Senate a report
proposing any required federal and state statutory changes that



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12 ~~would be necessary to accomplish the directives listed in this~~
13 ~~section and to coordinate with the Florida Congressional~~
14 ~~Delegation on any necessary changes to federal law to implement~~
15 ~~the directives.~~

16 (3) ~~Nothing in~~ This section does not ~~shall be construed to~~
17 preclude the department from pursuing a series of regional
18 general permits for construction activities in wetlands or
19 surface waters or the complete assumption of federal permitting
20 programs regulating the discharge of dredged or fill material
21 pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500,
22 as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers
23 and Harbors Act of 1899, so long as the assumption encompasses
24 all dredge and fill activities in, on, or over jurisdictional
25 wetlands or waters, including navigable waters, within the
26 state.

27 (4) (a) In order to assist in facilitating the objectives of
28 this section and to promote consistency between federal and
29 state mitigation requirements, the department and water
30 management districts shall compare their rules regarding
31 mitigation for adverse impacts to the mitigation rules of the
32 United States Army Corps of Engineers and the Environmental
33 Protection Agency in 73 Federal Register, pages 19594-19705
34 (2008). The comparison shall be done in consultation with
35 appropriate representatives of the United States Army Corps of
36 Engineers and the Environmental Protection Agency. After
37 performing the comparison, the department and water management
38 districts shall:

39 1. Identify any inconsistent or contradictory provisions;
40 and



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41 2. Recommend appropriate revisions to the rules of the
42 department or water management districts to reduce inconsistent
43 or contradictory requirements in such a manner that will not
44 lessen environmental protection. The recommendations shall
45 include a consideration for increasing the geographic size of
46 drainage basins and regional watersheds to facilitate or reflect
47 a watershed approach to mitigation.

48 (b) The department and water management districts shall
49 submit a consolidated report regarding the requirements of this
50 subsection to the Governor, the Chair of the Senate
51 Environmental Preservation and Conservation Committee, and the
52 Chair of the House Agriculture and Natural Resources Policy
53 Committee by January 1, 2010. If the department and water
54 management districts believe any conflicting state law prevents
55 them from amending their rules to achieve the objectives of this
56 subsection, the report must identify such law and explain why it
57 prevents a rule amendment to achieve the objectives of this
58 subsection.

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

61 373.4211 Ratification of chapter 17-340, Florida
62 Administrative Code, on the delineation of the landward extent
63 of wetlands and surface waters.—Pursuant to s. 373.421, the
64 Legislature ratifies chapter 17-340, Florida Administrative
65 Code, approved on January 13, 1994, by the Environmental
66 Regulation Commission, with the following changes:

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

69 "Within Monroe County and the Key Largo portion of Miami-



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70 Dade County only, the following species shall be listed as
71 facultative: *Alternanthera paronychioides*, *Byrsonima lucida*,
72 *Ernodea littoralis*, *Guapira discolor*, *Marnilkara bahamensis*,
73 *Pisonis rotundata*, *Pithecellobium keyensis*, *Pithecellobium*
74 *unquis-cati*, *Randia aculeata*, *Reynosia septentrionalis*, and
75 *Thrinax radiata*."

76 (b) Pursuant to s. 373.421 and subject to the conditions
77 described in this paragraph, the Legislature ratifies the
78 changes to rule 62-340.450(3), Florida Administrative Code,
79 approved on February 23, 2006, by the Environmental Regulation
80 Commission which added slash pine (*pinus elliottii*) and
81 gallberry (*ilex glabra*) to the list of facultative plants.
82 However, this ratification and the rule revision will not take
83 effect until a voluntary state programmatic general permit for
84 all dredge and fill activities affecting up to 5 acres or more
85 of wetlands or other surface waters is implemented as provided
86 in s. 373.4144(2).

87 (c) Unless the holder of a valid permit elects to use the
88 delineation line as amended to add slash pine (*pinus elliottii*)
89 and gallberry (*ilex glabra*) to the list of facultative plants,
90 the surface water and wetland delineations identified and
91 approved by a permit issued under rules adopted under this part
92 before July 1, 2009, remain valid until expiration of the
93 permit, notwithstanding the changes to rule 62-340.450(3),
94 Florida Administrative Code, as described in this subsection.
95 For purposes of this paragraph, the term "identified and
96 approved" means:

97 1. The delineation was field-verified by the permitting
98 agency and such verification was surveyed as part of the



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99 application review process for the permit; or

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

102
103 Where surface water and wetland delineations were not identified
104 and approved pursuant to the permit issued under rules adopted
105 under this part, delineations within the geographical area to
106 which the permit applies shall be determined pursuant to the
107 rules applicable at the time the permit was issued,
108 notwithstanding the changes to rule 62-340.450(3), Florida
109 Administrative Code, as described in this subsection. This
110 paragraph also applies to any modification of the permit issued
111 under rules adopted pursuant to this part which does not
112 constitute a substantial modification within the geographical
113 area to which the permit applies.

114 (d) Unless the petitioner elects to use the delineation
115 line as amended to add slash pine (*pinus elliottii*) and
116 gallberry (*ilex glabra*) to the list of facultative plants, any
117 declaratory statement issued by the department