

By Senator Bennett

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1 A bill to be entitled
2 An act relating to environmental permitting; amending
3 s. 373.4144, F.S.; providing legislative intent;
4 revising provisions requiring the Department of
5 Environmental Protection to develop and use a
6 mechanism consolidating federal and state wetland
7 permitting programs; authorizing implementation of a
8 state programmatic general permit or regional general
9 permits by the department and water management
10 districts for certain dredge and fill activities;
11 specifying conditions applicable to such permits;
12 amending s. 373.4211, F.S.; delaying the effective
13 date of a rule adding slash pine and gallberry to the
14 list of facultative plants; revising provisions
15 concerning the methodologies used to delineate the
16 landward extent of wetlands and surface waters;
17 revising provisions concerning the vegetative index
18 used to delineate the landward extent of wetlands and
19 surface waters; providing for permit modification
20 under certain circumstances; providing for certain
21 declaratory statements from the department; providing
22 exemptions for certain permit petitions and
23 applications relating to specified activities;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

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

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30 373.4144 Federal environmental permitting.-

31 (1) The Legislature intends to:

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

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

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

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59 Engineers while ensuring the most stringent protection of
60 wetland resources.

61 (d) Direct the department to not seek issuance of or take
62 any action pursuant to any such permits unless the conditions
63 are at least as protective of the environment and natural
64 resources as existing state law under this part and federal law
65 under the Clean Water Act and the Rivers and Harbors Act of
66 1899.

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

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

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

114 (3) ~~Nothing in This section does not shall be construed to~~
115 ~~preclude the department from pursuing a series of regional~~
116 ~~general permits for construction activities in wetlands or~~

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117 surface waters or the complete assumption of federal permitting
118 programs regulating the discharge of dredged or fill material
119 pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500,
120 as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers
121 and Harbors Act of 1899, so long as the assumption encompasses
122 all dredge and fill activities in, on, or over jurisdictional
123 wetlands or waters, including navigable waters, within the
124 state.

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

137 1. Identify any inconsistent or contradictory provisions;
138 2. Recommend revisions to the rules of the department or
139 water management district to reduce redundant or duplicative
140 requirements; and

141 3. Recommend ways of increasing geographic size of the
142 drainage basins and regional watersheds to better facilitate or
143 reflect a watershed approach to mitigation.

144 (b) Unless directed otherwise by state law, the department
145 and each water management district shall amend their respective

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146 rules to eliminate inconsistent or contradictory provisions,
147 reduce redundant or duplicative requirements, and increase the
148 geographic size of drainage basins and regional watersheds to
149 facilitate or reflect a watershed approach to mitigation.

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

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

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

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

171 "Within Monroe County and the Key Largo portion of Miami-
172 Dade County only, the following species shall be listed as
173 facultative: *Alternanthera paronychioides*, *Byrsonima lucida*,
174 *Ernodea littoralis*, *Guapira discolor*, *Marnilkara bahamensis*,

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175 *Pisonis rotundata, Pithecellobium keyensis, Pithecellobium*
176 *unquis-cati, Randia aculeata, Reynosia septentrionalis, and*
177 *Thrinax radiata."*

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

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

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

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

199
200 Where surface water and wetland delineations were not identified
201 and approved pursuant to the permit issued under rules adopted
202 under this part, delineations within the geographical area to
203 which the permit applies shall be determined pursuant to the

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204 rules applicable at the time the permit was issued,
205 notwithstanding the changes to rule 62-340.450(3), Florida
206 Administrative Code, as described in this subsection. This
207 paragraph also applies to any modification of the permit issued
208 under rules adopted pursuant to this part which does not
209 constitute a substantial modification within the geographical
210 area to which the permit applies.

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

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