

By the Committee on Community Affairs; and 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 requiring the Department of Environmental Protection
5 to pursue the issuance of a state programmatic permit
6 or regional general permits from the United States
7 Army Corps of Engineers; revising provisions requiring
8 the Department of Environmental Protection to develop
9 and use a mechanism consolidating federal and state
10 wetland permitting programs; authorizing
11 implementation of a state programmatic general permit
12 or regional general permits by the department and
13 water management districts for certain dredge and fill
14 activities; specifying conditions applicable to such
15 permits; amending s. 373.4211, F.S.; delaying the
16 effective date of a rule adding slash pine and
17 gallberry to the list of facultative plants; revising
18 provisions concerning the methodologies used to
19 delineate the landward extent of wetlands and surface
20 waters; revising provisions concerning the vegetative
21 index used to delineate the landward extent of
22 wetlands and surface waters; providing for permit
23 modification under certain circumstances; providing
24 for certain declaratory statements or formal
25 jurisdictional determinations from the department or a
26 water management district; providing exemptions for
27 certain permit petitions and applications relating to
28 specified activities; creating ss. 125.0112, F.S.;
29 providing that the construction and operation of a

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30 biofuel processing facility or a renewable energy
31 generating facility and the cultivation and production
32 of bioenergy may be considered a valid industrial,
33 agricultural, and silvicultural use for purposes of
34 any local comprehensive plan; providing for a local
35 government to establish an expedited review process
36 under certain circumstances; providing that local
37 expedited review does not obligate a local government
38 to approve proposed uses; providing for alternative
39 state review of certain plan amendments; providing the
40 construction and operation of certain facilities may
41 not affect classification of property for ad valorem
42 tax purposes; amending s. 373.236, F.S.; requiring
43 that a permit for the use of water for cultivating
44 agricultural products and renewable energy be granted
45 for a specified number of years if certain conditions
46 are met; providing requirements for permittees;
47 providing an exemption; amending s. 403.973, F.S.;;
48 providing for the expedited review of permit
49 applications for projects resulting in the production
50 of biofuels or in the construction of a biofuel or
51 biodiesel processing facility or renewable energy
52 generating facility; clarifying provisions relating to
53 memoranda of agreement which establish regional teams
54 for the expedited review of such applications;
55 providing an effective date.

56
57 Be It Enacted by the Legislature of the State of Florida:
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59 Section 1. Section 373.4144, Florida Statutes, is amended
60 to read:

61 373.4144 Federal environmental permitting.-

62 (1) The Legislature intends to facilitate coordination and
63 a more efficient process of implementing regulatory duties and
64 functions between the Department of Environmental Protection,
65 the water management districts, the United States Army Corps of
66 Engineers, the United States Fish and Wildlife Service, the
67 National Marine Fisheries Service, the United States
68 Environmental Protection Agency, the Fish and Wildlife
69 Conservation Commission, and other relevant federal and state
70 agencies. ~~The department is directed to develop, on or before~~
71 ~~October 1, 2005, a mechanism or plan to consolidate, to the~~
72 ~~maximum extent practicable, the federal and state wetland~~
73 ~~permitting programs. It is the intent of the Legislature that~~
74 ~~all dredge and fill activities impacting 10 acres or less of~~
75 ~~wetlands or waters, including navigable waters, be processed by~~
76 ~~the state as part of the environmental resource permitting~~
77 ~~program implemented by the department and the water management~~
78 ~~districts. The resulting mechanism or plan shall analyze and~~
79 ~~propose the development of an expanded state programmatic~~
80 ~~general permit program in conjunction with the United States~~
81 ~~Army Corps of Engineers pursuant to s. 404 of the Clean Water~~
82 ~~Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,~~
83 ~~and s. 10 of the Rivers and Harbors Act of 1899. Alternatively,~~
84 ~~or in combination with an expanded state programmatic general~~
85 ~~permit, the mechanism or plan may propose the creation of a~~
86 ~~series of regional general permits issued by the United States~~
87 ~~Army Corps of Engineers pursuant to the referenced statutes. All~~

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88 ~~of the regional general permits must be administered by the~~
89 ~~department or the water management districts or their designees.~~

90 (2) (a) The department shall pursue the issuance by the
91 United States Army Corps of Engineers, pursuant to state and
92 federal law and as set forth in this section, of an expanded
93 state programmatic general permit or a series of regional
94 general permits for categories of activities in waters of the
95 United States governed by the Clean Water Act and in navigable
96 waters under the Rivers and Harbors Act of 1899, which are
97 similar in nature, which will cause only minimal adverse
98 environmental effects when performed separately, and which will
99 have only minimal cumulative adverse effects on the environment.

100 (b) The department is directed to:

101 1. Use the mechanism of a state general permit or regional
102 general permits to eliminate overlapping federal regulations and
103 state rules that seek to protect the same resource and to avoid
104 duplication of permitting between the United States Army Corps
105 of Engineers and the department for minor work located in waters
106 of the United States, including navigable waters, thus
107 eliminating, in appropriate cases, the need for a separate
108 individual approval from the United States Army Corps of
109 Engineers while ensuring the most stringent protection of
110 wetland resources; and

111 2. Not seek issuance of or take any action pursuant to any
112 such permits unless the conditions are at least as protective of
113 the environment and natural resources as existing state law
114 under this part and federal law under the Clean Water Act and
115 the Rivers and Harbors Act of 1899.

116 (c) The department shall report to the Legislature by

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117 January 15 of each year on efforts to eliminate impediments to
118 achieving greater efficiencies through expansion of a state
119 programmatic general permit or regional general permits.

120 (3)-(2) To effectuate efficient wetland permitting and avoid
121 duplication, the department and water management districts may
122 implement a voluntary state programmatic general permit for all
123 dredge and fill activities impacting 5 acres or less of wetlands
124 or other surface waters, including navigable waters, subject to
125 agreement with the United States Army Corps of Engineers, if the
126 general permit is at least as protective of the environment and
127 natural resources as existing state law under this part and
128 federal law under the Clean Water Act and the Rivers and Harbors
129 Act of 1899. This subsection does not prevent the department or
130 water management districts from pursuing and implementing a
131 state programmatic permit for projects impacting more than 5
132 acres of wetlands or other surface waters. The department is
133 directed to file with the Speaker of the House of
134 Representatives and the President of the Senate a report
135 proposing any required federal and state statutory changes that
136 would be necessary to accomplish the directives listed in this
137 section and to coordinate with the Florida Congressional
138 Delegation on any necessary changes to federal law to implement
139 the directives.

140 (4)-(3) Nothing in This section does not shall be construed
141 to preclude the department from pursuing a series of regional
142 general permits for construction activities in wetlands or
143 surface waters or the complete assumption of federal permitting
144 programs regulating the discharge of dredged or fill material
145 pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500,

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146 as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers
147 and Harbors Act of 1899, so long as the assumption encompasses
148 all dredge and fill activities in, on, or over jurisdictional
149 wetlands or waters, including navigable waters, within the
150 state.

151 (5) (a) In order to assist in facilitating the objectives of
152 this section and to promote consistency between federal and
153 state mitigation requirements, the department and water
154 management districts shall compare their rules regarding
155 mitigation for adverse impacts to the mitigation rules of the
156 United States Army Corps of Engineers and the United States
157 Environmental Protection Agency in 73 Federal Register, pages
158 19594-19705 (2008). The comparison shall be done in consultation
159 with appropriate representatives of the United States Army Corps
160 of Engineers and the United States Environmental Protection
161 Agency. After performing the comparison, the department and
162 water management districts shall:

163 1. Identify any inconsistent or contradictory provisions;
164 and

165 2. Recommend appropriate revisions to the rules of the
166 department or water management districts to reduce inconsistent
167 or contradictory requirements in such a manner that will not
168 lessen environmental protection. The recommendations shall
169 include a consideration for increasing the geographic size of
170 drainage basins and regional watersheds to facilitate or reflect
171 a watershed approach to mitigation.

172 (b) The department and water management districts shall
173 submit a consolidated report regarding the requirements of this
174 subsection to the Governor, the Chair of the Senate

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175 Environmental Preservation and Conservation Committee, and the
176 Chair of the House Agriculture and Natural Resources Policy
177 Committee by January 15, 2010. If the department and water
178 management districts believe any conflicting state law prevents
179 them from amending their rules to achieve the objectives of this
180 subsection, the report must identify such law and explain why it
181 prevents a rule amendment to achieve the objectives of this
182 subsection.

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

185 373.4211 Ratification of chapter 17-340, Florida
186 Administrative Code, on the delineation of the landward extent
187 of wetlands and surface waters.—Pursuant to s. 373.421, the
188 Legislature ratifies chapter 17-340, Florida Administrative
189 Code, approved on January 13, 1994, by the Environmental
190 Regulation Commission, with the following changes:

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

193 "Within Monroe County and the Key Largo portion of Miami-
194 Dade County only, the following species shall be listed as
195 facultative: *Alternanthera paronychioides*, *Byrsonima lucida*,
196 *Ernodea littoralis*, *Guapira discolor*, *Marnilkara bahamensis*,
197 *Pisonis rotundata*, *Pithecellobium keyensis*, *Pithecellobium*
198 *unquis-cati*, *Randia aculeata*, *Reynosia septentrionalis*, and
199 *Thrinax radiata*."

200 (b) Pursuant to s. 373.421 and subject to the conditions
201 described in this paragraph, the Legislature ratifies the
202 changes to rule 62-340.450(3), Florida Administrative Code,
203 approved on February 23, 2006, by the Environmental Regulation

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204 Commission which added slash pine (*Pinus elliotii*) and
205 gallberry (*Ilex glabra*) to the list of facultative plants.
206 However, this ratification and the rule revision will not take
207 effect until a voluntary state programmatic general permit for
208 all dredge and fill activities affecting 5 acres or less of
209 wetlands or other surface waters is implemented as provided in
210 s. 373.4144(3).

211 (c) Unless the holder of a valid permit elects to use the
212 delineation line as amended to add slash pine (*Pinus elliotii*)
213 and gallberry (*Ilex glabra*) to the list of facultative plants,
214 the surface water and wetland delineations identified and
215 approved by a permit issued under rules adopted under this part
216 before July 1, 2009, remain valid until expiration of the
217 permit, notwithstanding the changes to rule 62-340.450(3),
218 Florida Administrative Code, as described in this subsection.
219 For purposes of this paragraph, the term "identified and
220 approved" means:

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

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

226
227 Where surface water and wetland delineations were not identified
228 and approved pursuant to the permit issued under rules adopted
229 under this part, delineations within the geographical area to
230 which the permit applies shall be determined pursuant to the
231 rules applicable at the time the permit was issued,
232 notwithstanding the changes to rule 62-340.450(3), Florida

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233 Administrative Code, as described in this subsection. This
234 paragraph also applies to any modification of the permit issued
235 under rules adopted pursuant to this part which does not
236 constitute a substantial modification within the geographical
237 area to which the permit applies.

238 (d) Unless the petitioner elects to use the delineation
239 line as amended to add slash pine (*Pinus elliottii*) and
240 gallberry (*Ilex glabra*) to the list of facultative plants, any
241 declaratory statement issued by the department under s. 403.914,
242 1984 Supplement to the Florida Statutes 1983 as amended,
243 pursuant to rules adopted thereunder, or formal determination
244 issued by the department or a water management district under s.
245 373.421, in response to a petition filed on or before July 1,
246 2009, shall continue to be valid for the duration of such
247 declaratory statement or formal determination. Any petition
248 pending on or before July 1, 2009, is exempt from the changes to
249 rule 62-340.450(3), Florida Administrative Code, as described in
250 this subsection, and is subject to the provisions of chapter 62-
251 340, Florida Administrative Code, in effect prior to such
252 change. Activities proposed within the boundaries of a valid
253 declaratory statement or formal determination issued pursuant to
254 a petition submitted to the department or the relevant water
255 management district on or before July 1, 2009, or within the
256 boundaries of a revalidated jurisdictional determination prior
257 to its expiration, shall continue to be exempt after July 1,
258 2009 from the changes to rule 62-340.450(3), Florida
259 Administrative Code, as described in this subsection.

260 Section 3. Section 125.0112, Florida Statutes, is created
261 to read:

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262 125.0112 Biofuels and renewable energy.—The construction
263 and operation of a biofuel processing facility or a renewable
264 energy generating facility, as defined in s. 366.91(2)(d), and
265 the cultivation and production of bioenergy, as defined in s.
266 570.957(1)(a), may be considered by a local government to be a
267 valid industrial, agricultural, and silvicultural use permitted
268 within those land use categories in the local comprehensive land
269 use plan. If the local comprehensive plan does not specifically
270 allow for the construction of a biofuel processing facility or
271 renewable energy facility, the local government shall establish
272 a specific review process that may include expediting local
273 review of any necessary comprehensive plan amendment, zoning
274 change, use permit, waiver, variance, or special exemption.
275 Local expedited review of a proposed biofuel processing facility
276 or a renewable energy facility does not obligate a local
277 government to approved such proposed use. A comprehensive plan
278 amendment necessary to accommodate a biofuel processing facility
279 or renewable energy facility shall, if approved by the local
280 government, be eligible for the alternative state review process
281 in s. 163.32465. The construction and operation of a facility
282 and related improvements on a portion of a property under this
283 section may not affect the remainder of the property's
284 classification as agricultural under s. 193.461.

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

287 373.236 Duration of permits; compliance reports.—

288 (6) A permit that is approved for the use of water for a
289 renewable energy operating facility or for cultivating
290 agricultural products on lands consisting of 1,000 acres or more

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291 for renewable energy, as defined in s. 366.91(2)(d), shall, upon
292 the applicant's request, be granted for a term of at least 25
293 years based on the anticipated life of the facility if there is
294 sufficient data to provide reasonable assurance that the
295 conditions for issuing a permit will be met for the duration of
296 the permit. However, a permit may be issued for a shorter
297 duration that reflects the longest period for which such
298 reasonable assurances are provided. The permittee shall provide
299 a compliance report every 5 years during the term of the permit
300 as required under subsection (4).

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

303 373.243 Revocation of permits.—The governing board or the
304 department may revoke a permit as follows:

305 (4) For nonuse of the water supply allowed by the permit
306 for a period of 2 years or more, the governing board or the
307 department may revoke the permit permanently and in whole unless
308 the user can prove that his or her nonuse was due to extreme
309 hardship caused by factors beyond the user's control. However,
310 for a permit with a duration determined under s. 373.236(6), the
311 governing board or the department may revoke the permit only if
312 the nonuse of the water supply allowed by the permit is for a
313 period of 4 years or more.

314 Section 6. Subsections (3), (4), (7), and (11), paragraph
315 (b) of subsection (13), paragraph (b) of subsection (14),
316 subsection (15), and paragraph (b) of subsection (19) of section
317 403.973, Florida Statutes, are amended to read:

318 403.973 Expedited permitting; comprehensive plan
319 amendments.—

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320 (3) (a) The Governor, through the office, shall direct the
321 creation of regional permit action teams, for the purpose of
322 expediting review of permit applications and local comprehensive
323 plan amendments submitted by:

- 324 1. Businesses creating at least 100 jobs, or
325 2. Businesses creating at least 50 jobs if the project is
326 located in an enterprise zone, or in a county having a
327 population of less than 75,000 or in a county having a
328 population of less than 100,000 which is contiguous to a county
329 having a population of less than 75,000, as determined by the
330 most recent decennial census, residing in incorporated and
331 unincorporated areas of the county. ~~or~~

332 (b) On a case-by-case basis and at the request of a county
333 or municipal government, the office may certify as eligible for
334 expedited review a project not meeting the minimum job creation
335 thresholds but creating a minimum of 10 jobs. The recommendation
336 from the governing body of the county or municipality in which
337 the project may be located is required in order for the office
338 to certify that any project is eligible for expedited review
339 under this paragraph. When considering projects that do not meet
340 the minimum job creation thresholds but that are recommended by
341 the governing body in which the project may be located, the
342 office shall consider economic impact factors that include, but
343 are not limited to:

- 344 1. The proposed wage and skill levels relative to those
345 existing in the area in which the project may be located;
346 2. The project's potential to diversify and strengthen the
347 area's economy;
348 3. The amount of capital investment; and

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349 4. The number of jobs that will be made available for
350 persons served by the welfare transition program.

351 (c) At the request of a county or municipal government, the
352 office or a Quick Permitting County may certify projects located
353 in counties where the ratio of new jobs per participant in the
354 welfare transition program, as determined by Workforce Florida,
355 Inc., is less than one or otherwise critical, as eligible for
356 the expedited permitting process. Such projects must meet the
357 numerical job creation criteria of this subsection, but the jobs
358 created by the project do not have to be high-wage jobs that
359 diversify the state's economy.

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

362 (e) Projects that are part of the state-of-the-art
363 biomedical research institution and campus to be established in
364 this state by the grantee under s. 288.955 are eligible for the
365 expedited permitting process, if the projects are designated as
366 part of the institution or campus by the board of county
367 commissioners of the county in which the institution and campus
368 are established.

369 (f) Projects that result in the production of biofuels
370 cultivated on lands consisting of 1,000 acres or more, or in the
371 construction of a biofuel or biodiesel processing facility or
372 renewable energy generating facility as defined in s.
373 366.91(2)(d), are eligible for the expedited permitting process.

374 (4) The regional teams shall be established through the
375 execution of memoranda of agreement developed by the applicant
376 and ~~between~~ the office with input solicited from ~~and~~ the
377 respective heads of the Department of Environmental Protection,

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378 the Department of Community Affairs, the Department of
379 Transportation and its district offices, the Department of
380 Agriculture and Consumer Services, the Fish and Wildlife
381 Conservation Commission, appropriate regional planning councils,
382 appropriate water management districts, and voluntarily
383 participating municipalities and counties. The memoranda of
384 agreement must ~~should also~~ accommodate participation in the ~~this~~
385 expedited process by other local governments and federal
386 agencies as circumstances warrant.

387 (7) An appeal ~~At the option of the participating local~~
388 ~~government, appeals of a local government's~~ its final approval
389 for a project must ~~may~~ be conducted pursuant to the summary
390 hearing provisions in ~~of~~ s. 120.574, pursuant to subsection
391 (14), and consolidated with the challenge of applicable state
392 agency actions, if any ~~or pursuant to other appellate processes~~
393 ~~available to the local government. The local government's~~
394 ~~decision to enter into a summary hearing must be made as~~
395 ~~provided in s. 120.574 or in the memorandum of agreement.~~

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

400 (a) A central contact point for filing permit applications
401 and local comprehensive plan amendments and for obtaining
402 information on permit and local comprehensive plan amendment
403 requirements;

404 (b) Identification of the individual or individuals within
405 each respective agency who will be responsible for processing
406 the expedited permit application or local comprehensive plan

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407 amendment for the ~~that~~ agency;

408 (c) A mandatory preapplication review process to reduce
409 permitting conflicts by providing guidance to applicants
410 regarding the permits needed from each agency and governmental
411 entity, site planning and development, site suitability and
412 limitations, facility design, and steps the applicant can take
413 to ensure expeditious permit application and local comprehensive
414 plan amendment review. As a part of the ~~this~~ process, the first
415 interagency meeting to discuss a project shall be held within 14
416 days after the office's determination that the project is
417 eligible for expedited review. Subsequent interagency meetings
418 may be scheduled to accommodate the needs of participating local
419 governments that are unable to meet public notice requirements
420 for executing a memorandum of agreement within the ~~this~~
421 timeframe. Such ~~This~~ accommodation may not exceed 45 days from
422 the office's determination that the project is eligible for
423 expedited review;

424 (d) The preparation of a single coordinated project
425 description form and checklist and an agreement by state and
426 regional agencies to reduce the burden on an applicant to
427 provide duplicate information to multiple agencies;

428 (e) ~~Establishment of~~ A process for the adoption and review
429 of any comprehensive plan amendment needed by any certified
430 project within 90 days after the submission of an application
431 for a comprehensive plan amendment. However, the memorandum of
432 agreement may not prevent affected persons as defined in s.
433 163.3184 from appealing or participating in the ~~this~~ expedited
434 plan amendment process and any review or appeals of decisions
435 made under this paragraph; and

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

438 (13) Notwithstanding any other provisions of law:

439 (b) Projects that are qualified under this section are not
440 subject to interstate highway level-of-service standards adopted
441 by the Department of Transportation for concurrency purposes.
442 The memorandum of agreement specified in subsection (5) must
443 include a process by which the applicant will be assessed a fair
444 share of the cost of mitigating the project's significant
445 traffic impacts, as defined in chapter 380 and related rules.
446 The agreement must also specify whether the significant traffic
447 impacts on the interstate system will be mitigated through the
448 implementation of a project or payment of funds to the
449 Department of Transportation. If ~~Where~~ funds are paid, the
450 Department of Transportation must include in the 5-year work
451 program transportation projects or project phases, in an amount
452 equal to the funds received, to mitigate the traffic impacts
453 associated with the proposed project.

454 (14)

455 (b) Challenges to state agency action in the expedited
456 permitting process for establishment of a state-of-the-art
457 biomedical research institution and campus in the ~~this~~ state by
458 the grantee under s. 288.955 or a project identified in
459 paragraph (3)(f) are subject to the same requirements as
460 challenges brought under paragraph (a), except that,
461 notwithstanding s. 120.574, summary proceedings must be
462 conducted within 30 days after a party files the motion for
463 summary hearing, regardless of whether the parties agree to the
464 summary proceeding.

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465 (15) The office, working with the agencies that provide
466 input to ~~participating in~~ the memoranda of agreement, shall
467 review sites proposed for the location of facilities eligible
468 for the Innovation Incentive Program under s. 288.1089. Within
469 20 days after the request for the review by the office, the
470 agencies shall provide to the office a statement as to each
471 site's necessary permits under local, state, and federal law and
472 an identification of significant permitting issues, which if
473 unresolved, may result in the denial of an agency permit or
474 approval or any significant delay caused by the permitting
475 process.

476 (19) The following projects are ineligible for review under
477 this part:

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

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

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

485 3. Extract natural resources.

486 4. Produce oil.

487 5. Construct, maintain, or operate an oil, petroleum,
488 natural gas, or sewage pipeline.

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