

By Senator Evers

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1                                   A bill to be entitled  
2           An act relating to environmental permitting; amending  
3           s. 120.569, F.S.; authorizing the provision of certain  
4           notices under the Administrative Procedure Act via a  
5           link to a publicly available Internet website;  
6           providing that a nonapplicant who petitions to  
7           challenge an agency's issuance of a license or  
8           conceptual approval in certain circumstances has the  
9           burden of ultimate persuasion and the burden of going  
10          forward with evidence; amending s. 120.60, F.S.;  
11          requiring that an agency process a permit application  
12          notwithstanding an outstanding request for additional  
13          information from the applicant; revising the period  
14          for an agency to approve or deny an application for a  
15          license; creating s. 125.0112, F.S.; providing that  
16          the construction and operation of a biofuel processing  
17          facility or renewable energy generating facility and  
18          the cultivation of bioenergy by a local government is  
19          a valid and permitted land use; requiring expedited  
20          review of such facilities; providing that such  
21          facilities are eligible for the alternative state  
22          review process; amending s. 125.022, F.S.; prohibiting  
23          a county from requiring an applicant to obtain a  
24          permit or approval from another state or federal  
25          agency as a condition of approving a development  
26          permit; authorizing a county to attach certain  
27          disclaimers to the issuance of a development permit;  
28          creating s. 161.032, F.S.; requiring that the  
29          Department of Environmental Protection review an

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30 application for certain permits under the Beach and  
31 Shore Preservation Act and request additional  
32 information within a specified time; requiring that  
33 the department proceed to process the application if  
34 the applicant believes that a request for additional  
35 information is not authorized by law or rule;  
36 extending the period for an applicant to timely submit  
37 additional information, notwithstanding certain  
38 provisions of the Administrative Procedure Act;  
39 amending s. 163.3184, F.S.; redefining the term  
40 "affected person" for purposes of the adoption process  
41 for a comprehensive plan or plan amendments to include  
42 persons who can show that their substantial interest  
43 will be affected by the plan or amendment; amending s.  
44 163.3215, F.S.; redefining the term "aggrieved or  
45 adversely affected party" for purposes of standing to  
46 enforce local comprehensive plans; deleting a  
47 requirement that the adverse interest exceed in degree  
48 the general interest shared by all persons; amending  
49 s. 166.033, F.S.; prohibiting a municipality from  
50 requiring an applicant to obtain a permit or approval  
51 from another state or federal agency as a condition of  
52 approving a development permit; authorizing a county  
53 to attach certain disclaimers to the issuance of a  
54 development permit; creating s. 166.0447, F.S.;  
55 providing that the construction and operation of a  
56 biofuel processing facility or renewable energy  
57 generating facility and the cultivation of bioenergy  
58 is a valid and permitted land use within the

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59 unincorporated area of a municipality; prohibiting any  
60 requirement that the owner or operator of such a  
61 facility obtain comprehensive plan amendments, use  
62 permits, waivers, or variances, or pay any fee in  
63 excess of a specified amount; amending s. 373.026,  
64 F.S.; requiring the Department of Environmental  
65 Protection to expand its use of Internet-based self-  
66 certification services for exemptions and permits  
67 issued by the department and water management  
68 districts; amending s. 373.4141, F.S.; requiring that  
69 a request by the department or a water management  
70 district that an applicant provide additional  
71 information be accompanied by the signature of  
72 specified officials of the department or district;  
73 reducing the time within which the department or  
74 district must approve or deny a permit application;  
75 providing that an application for a permit that is  
76 required by a local government and that is not  
77 approved within a specified period is deemed approved  
78 by default; amending s. 373.4144, F.S.; providing  
79 legislative intent with respect to the coordination of  
80 regulatory duties among specified state and federal  
81 agencies; requiring that the department report  
82 annually to the Legislature on efforts to expand the  
83 state programmatic general permit or regional general  
84 permits; providing for a voluntary state programmatic  
85 general permit for certain dredge and fill activities;  
86 amending s. 373.441, F.S.; requiring that certain  
87 counties or municipalities apply by a specified date

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88 to the department or water management district for  
89 authority to require certain permits; providing that  
90 following such delegation, the department or district  
91 may not regulate activities that are subject to the  
92 delegation; amending s. 403.061, F.S., relating to the  
93 use of online self-certification; conforming  
94 provisions to changes made by the act; creating s.  
95 403.0874, F.S.; providing a short title; providing  
96 legislative findings and intent with respect to the  
97 consideration of the compliance history of a permit  
98 applicant; providing for applicability; specifying the  
99 period of compliance history to be considered is  
100 issuing or renewing a permit; providing criteria to be  
101 considered by the Department of Environmental  
102 Protection; authorizing expedited review of permit  
103 issuance, renewal, modification, and transfer;  
104 providing for a reduced number of inspections;  
105 providing for extended permit duration; authorizing  
106 the department to make additional incentives available  
107 under certain circumstances; providing for automatic  
108 permit renewal and reduced or waived fees under  
109 certain circumstances; requiring the department to  
110 adopt rules that are binding on a water management  
111 district or local government that has been delegated  
112 certain regulatory duties; amending ss. 161.041 and  
113 373.413, F.S.; specifying that s. 403.0874, F.S.,  
114 authorizing expedited permitting, applies to  
115 provisions governing beaches and shores and surface  
116 water management and storage; amending s. 403.087,

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117 F.S.; revising conditions under which the department  
118 is authorized to revoke a permit; amending s. 403.412,  
119 F.S.; eliminating a provision limiting a requirement  
120 for demonstrating injury in order to seek relief under  
121 the Environmental Protection Act; amending s. 403.814,  
122 F.S.; providing for issuance of general permits for  
123 the construction, alteration, and maintenance of  
124 certain surface water management systems without the  
125 action of the department or a water management  
126 district; specifying conditions for the general  
127 permits; amending s. 380.06, F.S.; exempting a  
128 proposed phosphate mine or a proposed addition or  
129 expansion of an existing phosphate mine from  
130 provisions governing developments of regional impact;  
131 providing certain exceptions; amending ss. 380.0657  
132 and 403.973, F.S.; authorizing expedited permitting  
133 for certain inland multimodal facilities and for  
134 commercial or industrial development projects that  
135 individually or collectively will create a minimum  
136 number of jobs; providing for a project-specific  
137 memorandum of agreement to apply to a project subject  
138 to expedited permitting; providing for review and  
139 certification of a business as eligible for expedited  
140 permitting by the Secretary of Environmental  
141 Protection rather than by the Office of Tourism,  
142 Trade, and Economic Development; amending s. 163.3180,  
143 F.S.; providing an exemption to the level-of-service  
144 standards adopted under the Strategic Intermodal  
145 System for certain inland multimodal facilities;

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146 specifying project criteria; amending s. 373.4137,  
147 F.S., relating to transportation projects; revising  
148 legislative findings with respect to the options for  
149 mitigation; revising certain requirements for  
150 determining the habitat impacts of transportation  
151 projects; providing for the release of certain  
152 mitigation funds held for the benefit of a water  
153 management district if a project is excluded from a  
154 mitigation plan; revising the procedure for excluding  
155 a project from a mitigation plan; providing an  
156 effective date.

157

158 Be It Enacted by the Legislature of the State of Florida:

159

160 Section 1. Subsection (1) of section 120.569, Florida  
161 Statutes, is amended, and paragraph (p) is added to subsection  
162 (2) of that section, to read:

163 120.569 Decisions which affect substantial interests.—

164 (1) The provisions of this section apply in all proceedings  
165 in which the substantial interests of a party are determined by  
166 an agency, unless the parties are proceeding under s. 120.573 or  
167 s. 120.574. Unless waived by all parties, s. 120.57(1) applies  
168 whenever the proceeding involves a disputed issue of material  
169 fact. Unless otherwise agreed, s. 120.57(2) applies in all other  
170 cases. If a disputed issue of material fact arises during a  
171 proceeding under s. 120.57(2), ~~then,~~ unless waived by all  
172 parties, the proceeding under s. 120.57(2) shall be terminated  
173 and a proceeding under s. 120.57(1) shall be conducted. Parties  
174 shall be notified of any order, including a final order. Unless

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175 waived, a copy of the order shall be delivered or mailed to each  
176 party or the party's attorney of record at the address of  
177 record. Each notice shall inform the recipient of any  
178 administrative hearing or judicial review that is available  
179 under this section, s. 120.57, or s. 120.68; shall indicate the  
180 procedure which must be followed to obtain the hearing or  
181 judicial review; and shall state the time limits that ~~which~~  
182 apply. Notwithstanding any other provision of law, notice of the  
183 procedure to obtain an administrative hearing or judicial  
184 review, including any items required by the uniform rules  
185 adopted pursuant to s. 120.54(5), may be provided via a link to  
186 a publicly available Internet website.

187 (2)

188 (p) For any proceeding arising under chapter 373, chapter  
189 378, or chapter 403, if a nonapplicant petitions as a third  
190 party to challenge an agency's issuance of a license or  
191 conceptual approval, the petitioner initiating the action has  
192 the burden of ultimate persuasion and, in the first instance,  
193 has the burden of going forward with the evidence.

194 Notwithstanding subsection (1), this paragraph applies to  
195 proceedings under s. 120.574.

196 Section 2. Subsection (1) of section 120.60, Florida  
197 Statutes, as amended by chapter 2010-279, Laws of Florida, is  
198 amended to read:

199 120.60 Licensing.—

200 (1) Upon receipt of a license application, an agency shall  
201 examine the application and, within 30 days after such receipt,  
202 notify the applicant of any apparent errors or omissions and  
203 request any additional information the agency is permitted by

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204 law to require. If the applicant believes that the request for  
205 such additional information is not authorized by law or agency  
206 rule, the agency, at the applicant's request, shall proceed to  
207 process the permit application. An agency may not deny a license  
208 for failure to correct an error or omission or to supply  
209 additional information unless the agency timely notified the  
210 applicant within this 30-day period. The agency may establish by  
211 rule the time period for submitting any additional information  
212 requested by the agency. For good cause shown, the agency shall  
213 grant a request for an extension of time for submitting the  
214 additional information. If the applicant believes the agency's  
215 request for additional information is not authorized by law or  
216 rule, the agency, at the applicant's request, shall proceed to  
217 process the application. An application is complete upon receipt  
218 of all requested information and correction of any error or  
219 omission for which the applicant was timely notified or when the  
220 time for such notification has expired. An application for a  
221 license must be approved or denied within 60 ~~90~~ days after  
222 receipt of a completed application unless a shorter period of  
223 time for agency action is provided by law. The 60-day ~~90-day~~  
224 time period is tolled by the initiation of a proceeding under  
225 ss. 120.569 and 120.57. Any application for a license which is  
226 not approved or denied within the 60-day ~~90-day~~ or shorter time  
227 period, within 15 days after conclusion of a public hearing held  
228 on the application, or within 45 days after a recommended order  
229 is submitted to the agency and the parties, whichever action and  
230 timeframe is latest and applicable, is considered approved  
231 unless the recommended order recommends that the agency deny the  
232 license. Subject to the satisfactory completion of an



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233 examination if required as a prerequisite to licensure, any  
234 license that is considered approved shall be issued and may  
235 include such reasonable conditions as are authorized by law. Any  
236 applicant for licensure seeking to claim licensure by default  
237 under this subsection shall notify the agency clerk of the  
238 licensing agency, in writing, of the intent to rely upon the  
239 default license provision of this subsection, and may not take  
240 any action based upon the default license until after receipt of  
241 such notice by the agency clerk.

242 Section 3. Section 125.0112, Florida Statutes, is created  
243 to read:

244 125.0112 Biofuels and renewable energy.—The construction  
245 and operation of a biofuel processing facility or a renewable  
246 energy generating facility, as defined in s. 366.91(2)(d), and  
247 the cultivation and production of bioenergy, as defined pursuant  
248 to s. 163.3177, shall be considered by a local government to be  
249 a valid industrial, agricultural, and silvicultural use  
250 permitted within those land use categories in the local  
251 comprehensive land use plan. If the local comprehensive plan  
252 does not specifically allow for the construction of a biofuel  
253 processing facility or renewable energy facility, the local  
254 government shall establish a specific review process that may  
255 include expediting local review of any necessary comprehensive  
256 plan amendment, zoning change, use permit, waiver, variance, or  
257 special exemption. Local expedited review of a proposed biofuel  
258 processing facility or a renewable energy facility does not  
259 obligate a local government to approve such proposed use. A  
260 comprehensive plan amendment necessary to accommodate a biofuel  
261 processing facility or renewable energy facility shall, if

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262 approved by the local government, be eligible for the  
263 alternative state review process in s. 163.32465. The  
264 construction and operation of a facility and related  
265 improvements on a portion of a property under this section does  
266 not affect the remainder of the property's classification as  
267 agricultural under s. 193.461.

268 Section 4. Section 125.022, Florida Statutes, is amended to  
269 read:

270 125.022 Development permits.—When a county denies an  
271 application for a development permit, the county shall give  
272 written notice to the applicant. The notice must include a  
273 citation to the applicable portions of an ordinance, rule,  
274 statute, or other legal authority for the denial of the permit.  
275 As used in this section, the term "development permit" has the  
276 same meaning as in s. 163.3164. A county may not require as a  
277 condition of approval for a development permit that an applicant  
278 obtain a permit or approval from any other state or federal  
279 agency. Issuance of a development permit by a county does not in  
280 any way create any rights on the part of the applicant to obtain  
281 a permit from another state or federal agency and does not  
282 create any liability on the part of the county for issuance of  
283 the permit if the applicant fails to fulfill its legal  
284 obligations to obtain requisite approvals or fulfill the  
285 obligations imposed by another state or a federal agency. A  
286 county may attach such a disclaimer to the issuance of a  
287 development permit, and may include a permit condition that all  
288 other applicable state or federal permits be obtained before  
289 commencement of the development. This section does not prohibit  
290 a county from providing information to an applicant regarding

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291 what other state or federal permits may apply.

292 Section 5. Section 161.032, Florida Statutes, is created to  
293 read:

294 161.032 Application review; request for additional  
295 information.-

296 (1) Within 30 days after receipt of an application for a  
297 permit under this part, the department shall review the  
298 application and shall request submission of any additional  
299 information the department is permitted by law to require. If  
300 the applicant believes that a request for additional information  
301 is not authorized by law or rule, the applicant may request a  
302 hearing pursuant to s. 120.57. Within 30 days after receipt of  
303 such additional information, the department shall review such  
304 additional information and may request only that information  
305 needed to clarify such additional information or to answer new  
306 questions raised by or directly related to such additional  
307 information. If the applicant believes that the request for such  
308 additional information by the department is not authorized by  
309 law or rule, the department, at the applicant's request, shall  
310 proceed to process the permit application.

311 (2) Notwithstanding s. 120.60, an applicant for a permit  
312 under this part has 90 days after the date of a timely request  
313 for additional information to submit such information. If an  
314 applicant requires more than 90 days in order to respond to a  
315 request for additional information, the applicant must notify  
316 the agency processing the permit application in writing of the  
317 circumstances, at which time the application shall be held in  
318 active status for no more than one additional period of up to 90  
319 days. Additional extensions may be granted for good cause shown

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320 by the applicant. A showing that the applicant is making a  
321 diligent effort to obtain the requested additional information  
322 constitutes good cause. Failure of an applicant to provide the  
323 timely requested information by the applicable deadline shall  
324 result in denial of the application without prejudice.

325 Section 6. Paragraph (a) of subsection (1) of section  
326 163.3184, Florida Statutes, is amended to read:

327 163.3184 Process for adoption of comprehensive plan or plan  
328 amendment.—

329 (1) DEFINITIONS.—As used in this section, the term:

330 (a) "Affected person" includes the affected local  
331 government; persons owning property, residing, or owning or  
332 operating a business within the boundaries of the local  
333 government whose plan is the subject of the review and who can  
334 demonstrate that their substantial interest will be affected by  
335 the plan or plan amendment; owners of real property abutting  
336 real property that is the subject of a proposed change to a  
337 future land use map; and adjoining local governments that can  
338 demonstrate that the plan or plan amendment will produce  
339 substantial impacts on the increased need for publicly funded  
340 infrastructure or substantial impacts on areas designated for  
341 protection or special treatment within their jurisdiction. Each  
342 person, other than an adjoining local government, in order to  
343 qualify under this definition, shall also have submitted oral or  
344 written comments, recommendations, or objections to the local  
345 government during the period of time beginning with the  
346 transmittal hearing for the plan or plan amendment and ending  
347 with the adoption of the plan or plan amendment.

348 Section 7. Subsection (2) of section 163.3215, Florida

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349 Statutes, is amended to read:

350 163.3215 Standing to enforce local comprehensive plans  
351 through development orders.-

352 (2) As used in this section, the term "aggrieved or  
353 adversely affected party" means any person or local government  
354 that can demonstrate that their substantial interest will be  
355 affected by a development order ~~will suffer an adverse effect to~~  
356 ~~an interest protected or furthered by the local government~~  
357 ~~comprehensive plan, including interests related to health and~~  
358 ~~safety, police and fire protection service systems, densities or~~  
359 ~~intensities of development, transportation facilities, health~~  
360 ~~care facilities, equipment or services, and environmental or~~  
361 ~~natural resources. The alleged adverse interest may be shared in~~  
362 ~~common with other members of the community at large but must~~  
363 ~~exceed in degree the general interest in community good shared~~  
364 ~~by all persons.~~ The term includes the owner, developer, or  
365 applicant for a development order.

366 Section 8. Section 166.033, Florida Statutes, is amended to  
367 read:

368 166.033 Development permits.-When a municipality denies an  
369 application for a development permit, the municipality shall  
370 give written notice to the applicant. The notice must include a  
371 citation to the applicable portions of an ordinance, rule,  
372 statute, or other legal authority for the denial of the permit.  
373 As used in this section, the term "development permit" has the  
374 same meaning as in s. 163.3164. A municipality may not require  
375 as a condition of approval for a development permit that an  
376 applicant obtain a permit or approval from any other state or  
377 federal agency. Issuance of a development permit by a

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378 municipality does not in any way create any right on the part of  
379 an applicant to obtain a permit from another state or federal  
380 agency and does not create any liability on the part of the  
381 municipality for issuance of the permit if the applicant fails  
382 to fulfill its legal obligations to obtain requisite approvals  
383 or fulfill the obligations imposed by another state or federal  
384 agency. A municipality may attach such a disclaimer to the  
385 issuance of development permits and may include a permit  
386 condition that all other applicable state or federal permits be  
387 obtained before commencement of the development. This section  
388 does not prohibit a municipality from providing information to  
389 an applicant regarding what other state or federal permits may  
390 apply.

391 Section 9. Section 166.0447, Florida Statutes, is created  
392 to read:

393 166.0447 Biofuels and renewable energy.—The construction  
394 and operation of a biofuel processing facility or a renewable  
395 energy generating facility, as defined in s. 366.91(2)(d), and  
396 the cultivation and production of bioenergy, as defined pursuant  
397 to s. 163.3177, are each a valid industrial, agricultural, and  
398 silvicultural use permitted within those land use categories in  
399 the local comprehensive land use plan and for purposes of any  
400 local zoning regulation within an unincorporated area of a  
401 municipality. Such comprehensive land use plans and local zoning  
402 regulations may not require the owner or operator of a biofuel  
403 processing facility or a renewable energy generating facility to  
404 obtain any comprehensive plan amendment, rezoning, special  
405 exemption, use permit, waiver, or variance, or to pay any  
406 special fee in excess of \$1,000 to operate in an area zoned for

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407 or categorized as industrial, agricultural, or silvicultural  
408 use. This section does not exempt biofuel processing facilities  
409 and renewable energy generating facilities from complying with  
410 building code requirements. The construction and operation of a  
411 facility and related improvements on a portion of a property  
412 pursuant to this section does not affect the remainder of that  
413 property's classification as agricultural pursuant to s.  
414 193.461.

415 Section 10. Subsection (10) is added to section 373.026,  
416 Florida Statutes, to read:

417 373.026 General powers and duties of the department.—The  
418 department, or its successor agency, shall be responsible for  
419 the administration of this chapter at the state level. However,  
420 it is the policy of the state that, to the greatest extent  
421 possible, the department may enter into interagency or  
422 interlocal agreements with any other state agency, any water  
423 management district, or any local government conducting programs  
424 related to or materially affecting the water resources of the  
425 state. All such agreements shall be subject to the provisions of  
426 s. 373.046. In addition to its other powers and duties, the  
427 department shall, to the greatest extent possible:

428 (10) Expand the use of Internet-based self-certification  
429 services for appropriate exemptions and general permits issued  
430 by the department and the water management districts, if such  
431 expansion is economically feasible. In addition to expanding the  
432 use of Internet-based self-certification services for  
433 appropriate exemptions and general permits, the department and  
434 water management districts shall identify and develop general  
435 permits for activities currently requiring individual review

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436 which could be expedited through the use of professional  
437 certification.

438 Section 11. Section 373.4141, Florida Statutes, is amended  
439 to read:

440 373.4141 Permits; processing.—

441 (1) Within 30 days after receipt of an application for a  
442 permit under this part, the department or the water management  
443 district shall review the application and shall request  
444 submittal of all additional information the department or the  
445 water management district is permitted by law to require. If the  
446 applicant believes any request for additional information is not  
447 authorized by law or rule, the applicant may request a hearing  
448 pursuant to s. 120.57. Within 30 days after receipt of such  
449 additional information, the department or water management  
450 district shall review it and may request only that information  
451 needed to clarify such additional information or to answer new  
452 questions raised by or directly related to such additional  
453 information. If the applicant believes the request of the  
454 department or water management district for such additional  
455 information is not authorized by law or rule, the department or  
456 water management district, at the applicant's request, shall  
457 proceed to process the permit application. In order to ensure  
458 the proper scope and necessity for the information requested, a  
459 second request for additional information, if any, must be  
460 signed by the supervisor of the project manager. A third request  
461 for additional information, if any, must be signed by the  
462 division director who oversees the program area. A fourth  
463 request for additional information, if any, must be signed by  
464 the assistant secretary of the department or the assistant



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465 executive director of the district. Any additional request for  
466 information must be signed by the secretary of the department or  
467 the executive director of the district.

468 (2) (a) A permit shall be approved or denied within 60 ~~90~~  
469 days after receipt of the original application, the last item of  
470 timely requested additional material, or the applicant's written  
471 request to begin processing the permit application.

472 (b) A permit required by a local government for an activity  
473 that also requires a state permit under this part shall be  
474 approved or denied within 60 days after receipt of the original  
475 application. An application for a local permit which is not  
476 approved or denied within 60 days is deemed approved by default.

477 (3) Processing of applications for permits for affordable  
478 housing projects shall be expedited to a greater degree than  
479 other projects.

480 Section 12. Section 373.4144, Florida Statutes, is amended  
481 to read:

482 373.4144 Federal environmental permitting.—

483 (1) It is the intent of the Legislature to:

484 (a) Facilitate coordination and a more efficient process of  
485 implementing regulatory duties and functions between the  
486 Department of Environmental Protection, the water management  
487 districts, the United States Army Corps of Engineers, the United  
488 States Fish and Wildlife Service, the National Marine Fisheries  
489 Service, the United States Environmental Protection Agency, the  
490 Fish and Wildlife Conservation Commission, and other relevant  
491 federal and state agencies.

492 (b) Authorize the Department of Environmental Protection to  
493 obtain issuance by the United States Army Corps of Engineers,

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494 pursuant to state and federal law and as set forth in this  
495 section, of an expanded state programmatic general permit, or a  
496 series of regional general permits, for categories of activities  
497 in waters of the United States governed by the Clean Water Act  
498 and in navigable waters under the Rivers and Harbors Act of 1899  
499 which are similar in nature, which will cause only minimal  
500 adverse environmental effects when performed separately, and  
501 which will have only minimal cumulative adverse effects on the  
502 environment.

503 (c) Use the mechanism of such a state general permit or  
504 such regional general permits to eliminate overlapping federal  
505 regulations and state rules that seek to protect the same  
506 resource and to avoid duplication of permitting between the  
507 United States Army Corps of Engineers and the department for  
508 minor work located in waters of the United States, including  
509 navigable waters, thus eliminating, in appropriate cases, the  
510 need for a separate individual approval from the United States  
511 Army Corps of Engineers while ensuring the most stringent  
512 protection of wetland resources.

513 (d) Direct the department not to seek issuance of or take  
514 any action pursuant to any such permit or permits unless such  
515 conditions are at least as protective of the environment and  
516 natural resources as existing state law under this part and  
517 federal law under the Clean Water Act and the Rivers and Harbors  
518 Act of 1899. ~~The department is directed to develop, on or before~~  
519 ~~October 1, 2005, a mechanism or plan to consolidate, to the~~  
520 ~~maximum extent practicable, the federal and state wetland~~  
521 ~~permitting programs. It is the intent of the Legislature that~~  
522 ~~all dredge and fill activities impacting 10 acres or less of~~

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523 ~~wetlands or waters, including navigable waters, be processed by~~  
524 ~~the state as part of the environmental resource permitting~~  
525 ~~program implemented by the department and the water management~~  
526 ~~districts. The resulting mechanism or plan shall analyze and~~  
527 ~~propose the development of an expanded state programmatic~~  
528 ~~general permit program in conjunction with the United States~~  
529 ~~Army Corps of Engineers pursuant to s. 404 of the Clean Water~~  
530 ~~Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,~~  
531 ~~and s. 10 of the Rivers and Harbors Act of 1899. Alternatively,~~  
532 ~~or in combination with an expanded state programmatic general~~  
533 ~~permit, the mechanism or plan may propose the creation of a~~  
534 ~~series of regional general permits issued by the United States~~  
535 ~~Army Corps of Engineers pursuant to the referenced statutes. All~~  
536 ~~of the regional general permits must be administered by the~~  
537 ~~department or the water management districts or their designees.~~

538       (2) In order to effectuate efficient wetland permitting and  
539 avoid duplication, the department and water management districts  
540 are authorized to implement a voluntary state programmatic  
541 general permit for all dredge and fill activities impacting 3  
542 acres or less of wetlands or other surface waters, including  
543 navigable waters, subject to agreement with the United States  
544 Army Corps of Engineers, if the general permit is at least as  
545 protective of the environment and natural resources as existing  
546 state law under this part and federal law under the Clean Water  
547 Act and the Rivers and Harbors Act of 1899. The department is  
548 ~~directed to file with the Speaker of the House of~~  
549 ~~Representatives and the President of the Senate a report~~  
550 ~~proposing any required federal and state statutory changes that~~  
551 ~~would be necessary to accomplish the directives listed in this~~

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552 ~~section and to coordinate with the Florida Congressional~~  
553 ~~Delegation on any necessary changes to federal law to implement~~  
554 ~~the directives.~~

555 (3) Nothing in this section shall be construed to preclude  
556 the department from pursuing a series of regional general  
557 permits for construction activities in wetlands or surface  
558 waters or complete assumption of federal permitting programs  
559 regulating the discharge of dredged or fill material pursuant to  
560 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,  
561 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors  
562 Act of 1899, so long as the assumption encompasses all dredge  
563 and fill activities in, on, or over jurisdictional wetlands or  
564 waters, including navigable waters, within the state.

565 Section 13. Present subsections (3), (4), and (5) of  
566 section 373.441, Florida Statutes, are renumbered as subsections  
567 (5), (6), and (7), respectively, and new subsections (3) and (4)  
568 are added to that section, to read:

569 373.441 Role of counties, municipalities, and local  
570 pollution control programs in permit processing; delegation.—

571 (3) A county having a population of 75,000 or more or a  
572 municipality that has local pollution control programs serving  
573 populations of more than 50,000 must apply for delegation of  
574 authority on or before June 1, 2012. A county, municipality, or  
575 local pollution control programs that fails to apply for  
576 delegation of authority may not require permits that in part or  
577 in full are substantially similar to the requirements needed to  
578 obtain an environmental resource permit.

579 (4) Upon delegation to a qualified local government, the  
580 department and water management district may not regulate the

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581 activities subject to the delegation within that jurisdiction  
582 unless regulation is required pursuant to the terms of the  
583 delegation agreement.

584 Section 14. Subsection (41) of section 403.061, Florida  
585 Statutes, is amended to read:

586 403.061 Department; powers and duties.—The department shall  
587 have the power and the duty to control and prohibit pollution of  
588 air and water in accordance with the law and rules adopted and  
589 promulgated by it and, for this purpose, to:

590 (41) Expand the use of online self-certification for  
591 appropriate exemptions and general permits issued by the  
592 department or the water management districts if such expansion  
593 is economically feasible. ~~Notwithstanding any other provision of~~  
594 ~~law,~~ A local government may not specify the method or form for  
595 documenting that a project qualifies for an exemption or meets  
596 the requirements for a permit under chapter 161, chapter 253,  
597 chapter 373, or this chapter. This limitation of local  
598 government authority extends to Internet-based department  
599 programs that provide for self-certification.

600  
601 The department shall implement such programs in conjunction with  
602 its other powers and duties and shall place special emphasis on  
603 reducing and eliminating contamination that presents a threat to  
604 humans, animals or plants, or to the environment.

605 Section 15. Section 403.0874, Florida Statutes, is created  
606 to read:

607 403.0874 Incentive-based permitting program.—

608 (1) SHORT TITLE.—This section may be cited as the “Florida  
609 Incentive-based Permitting Act.”

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610       (2) FINDINGS AND INTENT.—The Legislature finds and declares  
611 that the department should consider compliance history when  
612 deciding whether to issue, renew, amend, or modify a permit by  
613 evaluating an applicant's site-specific and program-specific  
614 relevant aggregate compliance history. Persons having a history  
615 of complying with applicable permits or state environmental laws  
616 and rules are eligible for permitting benefits, including, but  
617 not limited to, expedited permit application reviews, longer-  
618 duration permit periods, decreased announced compliance  
619 inspections, and other similar regulatory and compliance  
620 incentives to encourage and reward such persons for their  
621 environmental performance.

622       (3) APPLICABILITY.—

623       (a) This section applies to all persons and regulated  
624 activities that are subject to the permitting requirements of  
625 chapter 161, chapter 373, or this chapter, and all other  
626 applicable state or federal laws that govern activities for the  
627 purpose of protecting the environment or the public health from  
628 pollution or contamination.

629       (b) Notwithstanding paragraph (a), this section does not  
630 apply to certain permit actions or environmental permitting laws  
631 such as:

632       1. Environmental permitting or authorization laws that  
633 regulate activities for the purpose of zoning, growth  
634 management, or land use; or

635       2. Any federal law or program delegated or assumed by the  
636 state to the extent that implementation of this section, or any  
637 part of this section, would jeopardize the ability of the state  
638 to retain such delegation or assumption.

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639       (c) As used in this section, the term "regulated activity"  
640 means any activity, including, but not limited to, the  
641 construction or operation of a facility, installation, system,  
642 or project, for which a permit, certification, or authorization  
643 is required under chapter 161, chapter 373, or this chapter.

644       (4) COMPLIANCE HISTORY.—The compliance history period shall  
645 be the 5 years before the date any permit or renewal application  
646 is received by the department. Any person is entitled to the  
647 incentives under paragraph (5) (a) if:

648       (a)1. The applicant has conducted the regulated activity at  
649 the same site for which the permit or renewal is sought for at  
650 least 4 of the 5 years prior to the date the permit application  
651 is received by the department; or

652       2. The applicant has conducted the same regulated activity  
653 at a different site within the state for at least 4 of the 5  
654 years prior to the date the permit or renewal application is  
655 received by the department; and

656       (b) In the 5 years before the date the permit or renewal  
657 application is received by the department or water management  
658 district, the applicant has not been subject to a formal  
659 administrative or civil judgment or criminal conviction whereby  
660 an administrative law judge or civil or criminal court found the  
661 applicant knowingly violated the applicable law or rule and the  
662 violation was the proximate cause that resulted in significant  
663 harm to human health or the environment. Administrative  
664 settlement or consent orders, whether formal or informal, are  
665 not judgments for purposes of this section unless entered into  
666 as a result of significant harm to human health or the  
667 environment.

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668 (5) COMPLIANCE INCENTIVES.—

669 (a) An applicant shall request all applicable incentives at  
670 the time of application submittal. Unless otherwise prohibited  
671 by state or federal law, rule, or regulation, and if the  
672 applicant meets all other applicable criteria for the issuance  
673 of a permit or authorization, an applicant is entitled to the  
674 following incentives:

675 1. Expedited reviews on permit actions, including, but not  
676 limited to, initial permit issuance, renewal, modification, and  
677 transfer, if applicable. Expedited review means, at a minimum,  
678 that any request for additional information regarding a permit  
679 application shall be issued no later than 15 days after the  
680 application is filed, and final agency action shall be taken no  
681 later than 45 days after the application is deemed complete;

682 2. Priority review of permit application;

683 3. Reduced number of routine compliance inspections;

684 4. No more than two requests for additional information  
685 under s. 120.60; and

686 5. Longer permit period durations.

687 (b) The department shall identify and make available  
688 additional incentives to persons who demonstrate during a 10-  
689 year compliance history period the implementation of activities  
690 or practices that resulted in:

691 1. Reductions in actual or permitted discharges or  
692 emissions;

693 2. Reductions in the impacts of regulated activities on  
694 public lands or natural resources;

695 3. Implementation of voluntary environmental performance  
696 programs, such as environmental management systems; and



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697       4. In the 10 years before the date the renewal application  
698 is received by the department, the applicant having not been  
699 subject to a formal administrative or civil judgment or criminal  
700 conviction whereby an administrative law judge or civil or  
701 criminal court found the applicant knowingly violated the  
702 applicable law or rule and the violation was the proximate cause  
703 that resulted in significant harm to human health or the  
704 environment. Administrative settlement or consent orders,  
705 whether formal or informal, are not judgments for purposes of  
706 this section unless entered into as a result of significant harm  
707 to the human health or the environment.

708       (c) Any person meeting one of the criteria in subparagraph  
709 (b)1.-3., and the criteria in subparagraph (b)4., is entitled to  
710 the following incentives:

711           1. Automatic permit renewals if there are no substantial  
712 deviations or modifications in permitted activities or changed  
713 circumstances; and

714           2. Reduced or waived application fees.

715       (6) RULEMAKING.—The department shall implement rulemaking  
716 within 6 months after the effective date of this act. Such  
717 rulemaking may identify additional incentives and programs not  
718 expressly enumerated under this section, so long as each  
719 incentive is consistent with the Legislature's purpose and  
720 intent of this section. Any rule adopted by the department to  
721 administer this section shall be deemed an invalid exercise of  
722 delegated legislative authority if the department cannot  
723 demonstrate how such rules will produce the compliance  
724 incentives set forth in subsection (5). The department's rules  
725 adopted under this section are binding on the water management

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726 districts and any local government that has been delegated or  
 727 assumed a regulatory program to which this section applies.

728 Section 16. Subsection (5) is added to section 161.041,  
 729 Florida Statutes, to read:

730 161.041 Permits required.—

731 (5) The provisions of s. 403.0874, relating to the  
 732 incentive-based permitting program, apply to all permits issued  
 733 under this chapter.

734 Section 17. Subsection (6) is added to section 373.413,  
 735 Florida Statutes, to read:

736 373.413 Permits for construction or alteration.—

737 (6) The provisions of s. 403.0874, relating to the  
 738 incentive-based permitting program, apply to permits issued  
 739 under this section.

740 Section 18. Subsection (7) of section 403.087, Florida  
 741 Statutes, is amended to read:

742 403.087 Permits; general issuance; denial; revocation;  
 743 prohibition; penalty.—

744 (7) A permit issued pursuant to this section shall not  
 745 become a vested right in the permittee. The department may  
 746 revoke any permit issued by it if it finds that the permitholder  
 747 knowingly:

748 (a) ~~Has~~ Submitted false or inaccurate information in the  
 749 his or her application for such permit;

750 (b) ~~Has~~ Violated law, department orders, rules, ~~or~~  
 751 regulations, or permit conditions which directly relate to such  
 752 permit and has refused to correct or cure such violations when  
 753 requested to do so;

754 (c) ~~Has~~ Failed to submit operational reports or other

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755 information required by department rule which directly relate to  
756 such permit and has refused to correct or cure such violations  
757 when requested to do so ~~or regulation~~; or

758 (d) ~~Has~~ Refused lawful inspection under s. 403.091 at the  
759 facility authorized by such permit.

760 Section 19. Subsection (5) of section 403.412, Florida  
761 Statutes, is amended to read:

762 403.412 Environmental Protection Act.—

763 (5) In any administrative, licensing, or other proceedings  
764 authorized by law for the protection of the air, water, or other  
765 natural resources of the state from pollution, impairment, or  
766 destruction, the Department of Legal Affairs, a political  
767 subdivision or municipality of the state, or a citizen of the  
768 state shall have standing to intervene as a party on the filing  
769 of a verified pleading asserting that the activity, conduct, or  
770 product to be licensed or permitted has or will have the effect  
771 of impairing, polluting, or otherwise injuring the air, water,  
772 or other natural resources of the state. As used in this section  
773 and as it relates to citizens, the term "intervene" means to  
774 join an ongoing s. 120.569 or s. 120.57 proceeding; this section  
775 does not authorize a citizen to institute, initiate, petition  
776 for, or request a proceeding under s. 120.569 or s. 120.57.  
777 Nothing herein limits or prohibits a citizen whose substantial  
778 interests will be determined or affected by a proposed agency  
779 action from initiating a formal administrative proceeding under  
780 s. 120.569 or s. 120.57. A citizen's substantial interests will  
781 be considered to be determined or affected if the party  
782 demonstrates it may suffer an injury in fact which is of  
783 sufficient immediacy and is of the type and nature intended to

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784 be protected by this chapter. ~~No demonstration of special injury~~  
785 ~~different in kind from the general public at large is required.~~  
786 A sufficient demonstration of a substantial interest may be made  
787 by a petitioner who establishes that the proposed activity,  
788 conduct, or product to be licensed or permitted affects the  
789 petitioner's use or enjoyment of air, water, or natural  
790 resources protected by this chapter.

791 Section 20. Subsections (12) and (13) are added to section  
792 403.814, Florida Statutes, to read:

793 403.814 General permits; delegation.—

794 (12) A general permit may be granted for the construction,  
795 alteration, and maintenance of a surface water management system  
796 serving a total project area of up to 40 acres. The construction  
797 of such a system may proceed without any agency action by the  
798 department or water management district if:

799 (a) The surface water management system design plans and  
800 calculations are signed and sealed by a professional engineer  
801 licensed under chapter 471;

802 (b) The system will not be located in surface waters or  
803 wetlands, as delineated in s. 373.421(1);

804 (c) The system will not cause adverse water quantity  
805 impacts to receiving waters and adjacent lands, as provided by  
806 department or district rule;

807 (d) The system will not cause adverse flooding to onsite or  
808 off-site property, as provided by department or district rule;

809 (e) The system will not cause adverse impacts to existing  
810 surface water storage and conveyance capabilities, as provided  
811 by department or district rule;

812 (f) The system will not adversely affect the quality of

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813 receiving waters such that the standards applicable to waters as  
814 defined in s. 403.031(13), including any special standards for  
815 Outstanding Florida Waters, will be violated, as provided by  
816 department or district rule;

817 (g) The system will not adversely impact the maintenance of  
818 surface or ground water levels or surface water flows  
819 established pursuant to s. 373.042, as provided by department or  
820 district rule;

821 (h) The system will not cause adverse impacts to a work of  
822 the district established pursuant to s. 373.086, as provided by  
823 department or district rule;

824 (i) The system will not be part of a larger plan of  
825 development or sale;

826 (j) The system will comply with all applicable requirements  
827 of the National Pollutant Discharge Elimination System, as  
828 implemented by department or district rule; and

829 (k) Within 10 days after the commencement of construction  
830 of the surface water management system, the professional  
831 engineer who is responsible for the design provides written  
832 notice of the commencement of construction to the department or  
833 district.

834 (13) A general permit shall be granted for the  
835 construction, alteration, and maintenance of a surface water  
836 management system serving a total project area of up to 10  
837 acres. The construction of such a system may proceed without any  
838 agency action by the department or water management district if:

839 (a) The total project area is less than 10 acres;

840 (b) The total project area involves less than 2 acres of  
841 impervious surface;

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842 (c) No activities will impact wetlands or other surface  
843 waters;

844 (d) No activities are conducted in, on, or over wetlands or  
845 other surface waters;

846 (e) Drainage facilities will not include pipes having  
847 diameters greater than 24 inches, or the hydraulic equivalent,  
848 and will not use pumps in any manner; and

849 (f) The project is not part of a larger common plan of  
850 development or sale.

851 Section 21. Paragraph (u) is added to subsection (24) of  
852 section 380.06, Florida Statutes, to read:

853 380.06 Developments of regional impact.—

854 (24) STATUTORY EXEMPTIONS.—

855 (u) Any proposed phosphate mine and any proposed addition  
856 to, expansion of, or change to an existing phosphate mine is  
857 exempt from the provisions of this section. Proposed changes to  
858 any previously approved solid mineral mine development-of-  
859 regional-impact development orders having vested rights is not  
860 subject to further review or approval as a development of  
861 regional impact or notice of proposed change review or approval  
862 pursuant to subsection (19), except for those applications  
863 pending as of July 1, 2011, which shall be governed by s.  
864 380.115(2). Notwithstanding the foregoing, however, pursuant to  
865 s. 380.115(1), previously approved solid mineral mine  
866 development-of-regional-impact development orders shall continue  
867 to enjoy vested rights and continue to be effective unless  
868 rescinded by the developer.

869

870 If a use is exempt from review as a development of regional

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871 impact under paragraphs (a)-(s), but will be part of a larger  
872 project that is subject to review as a development of regional  
873 impact, the impact of the exempt use must be included in the  
874 review of the larger project, unless such exempt use involves a  
875 development of regional impact that includes a landowner,  
876 tenant, or user that has entered into a funding agreement with  
877 the Office of Tourism, Trade, and Economic Development under the  
878 Innovation Incentive Program and the agreement contemplates a  
879 state award of at least \$50 million.

880 Section 22. Subsection (1) of section 380.0657, Florida  
881 Statutes, is amended to read:

882 380.0657 Expedited permitting process for economic  
883 development projects.—

884 (1) The Department of Environmental Protection and, as  
885 appropriate, the water management districts created under  
886 chapter 373 shall adopt programs to expedite the processing of  
887 wetland resource and environmental resource permits for economic  
888 development projects that have been identified by a municipality  
889 or county as meeting the definition of target industry  
890 businesses under s. 288.106, or any inland multimodal facility,  
891 receiving or sending cargo to or from Florida ports, with the  
892 exception of those projects requiring approval by the Board of  
893 Trustees of the Internal Improvement Trust Fund.

894 Section 23. Paragraph (a) of subsection (3) and subsections  
895 (4), (5), (10), (11), (15), (17), and (18) of section 403.973,  
896 Florida Statutes, are amended to read:

897 403.973 Expedited permitting; amendments to comprehensive  
898 plans.—

899 (3) (a) The secretary shall direct the creation of regional

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900 permit action teams for the purpose of expediting review of  
901 permit applications and local comprehensive plan amendments  
902 submitted by:

903 1. Businesses creating at least 50 jobs or a commercial or  
904 industrial development project that will be occupied by  
905 businesses that would individually or collectively create at  
906 least 50 jobs; or

907 2. Businesses creating at least 25 jobs if the project is  
908 located in an enterprise zone, or in a county having a  
909 population of fewer than 75,000 or in a county having a  
910 population of fewer than 125,000 which is contiguous to a county  
911 having a population of fewer than 75,000, as determined by the  
912 most recent decennial census, residing in incorporated and  
913 unincorporated areas of the county.

914 (4) The regional teams shall be established through the  
915 execution of a project-specific memoranda of agreement developed  
916 and executed by the applicant and the secretary, with input  
917 solicited from ~~the office and~~ the respective heads of the  
918 Department of Community Affairs, the Department of  
919 Transportation and its district offices, the Department of  
920 Agriculture and Consumer Services, the Fish and Wildlife  
921 Conservation Commission, appropriate regional planning councils,  
922 appropriate water management districts, and voluntarily  
923 participating municipalities and counties. The memoranda of  
924 agreement should also accommodate participation in this  
925 expedited process by other local governments and federal  
926 agencies as circumstances warrant.

927 (5) In order to facilitate local government's option to  
928 participate in this expedited review process, the secretary



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929 shall, in cooperation with local governments and participating  
930 state agencies, create a standard form memorandum of agreement.  
931 The standard form of the memorandum of agreement shall be used  
932 only if the local government participates in the expedited  
933 review process. In the absence of local government  
934 participation, only the project-specific memorandum of agreement  
935 executed pursuant to subsection (4) applies. A local government  
936 shall hold a duly noticed public workshop to review and explain  
937 to the public the expedited permitting process and the terms and  
938 conditions of the standard form memorandum of agreement.

939 (10) The memoranda of agreement may provide for the waiver  
940 or modification of procedural rules prescribing forms, fees,  
941 procedures, or time limits for the review or processing of  
942 permit applications under the jurisdiction of those agencies  
943 that are members of the regional permit action team ~~party to the~~  
944 ~~memoranda of agreement~~. Notwithstanding any other provision of  
945 law to the contrary, a memorandum of agreement must to the  
946 extent feasible provide for proceedings and hearings otherwise  
947 held separately ~~by the parties to the memorandum of agreement~~ to  
948 be combined into one proceeding or held jointly and at one  
949 location. Such waivers or modifications shall not be available  
950 for permit applications governed by federally delegated or  
951 approved permitting programs, the requirements of which would  
952 prohibit, or be inconsistent with, such a waiver or  
953 modification.

954 (11) The ~~standard form for~~ memoranda of agreement shall  
955 include guidelines to be used in working with state, regional,  
956 and local permitting authorities. Guidelines may include, but  
957 are not limited to, the following:

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958 (a) A central contact point for filing permit applications  
959 and local comprehensive plan amendments and for obtaining  
960 information on permit and local comprehensive plan amendment  
961 requirements;

962 (b) Identification of the individual or individuals within  
963 each respective agency who will be responsible for processing  
964 the expedited permit application or local comprehensive plan  
965 amendment for that agency;

966 (c) A mandatory preapplication review process to reduce  
967 permitting conflicts by providing guidance to applicants  
968 regarding the permits needed from each agency and governmental  
969 entity, site planning and development, site suitability and  
970 limitations, facility design, and steps the applicant can take  
971 to ensure expeditious permit application and local comprehensive  
972 plan amendment review. As a part of this process, the first  
973 interagency meeting to discuss a project shall be held within 14  
974 days after the secretary's determination that the project is  
975 eligible for expedited review. Subsequent interagency meetings  
976 may be scheduled to accommodate the needs of participating local  
977 governments that are unable to meet public notice requirements  
978 for executing a memorandum of agreement within this timeframe.  
979 This accommodation may not exceed 45 days from the secretary's  
980 determination that the project is eligible for expedited review;

981 (d) The preparation of a single coordinated project  
982 description form and checklist and an agreement by state and  
983 regional agencies to reduce the burden on an applicant to  
984 provide duplicate information to multiple agencies;

985 (e) Establishment of a process for the adoption and review  
986 of any comprehensive plan amendment needed by any certified

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987 project within 90 days after the submission of an application  
988 for a comprehensive plan amendment. However, the memorandum of  
989 agreement may not prevent affected persons as defined in s.  
990 163.3184 from appealing or participating in this expedited plan  
991 amendment process and any review or appeals of decisions made  
992 under this paragraph; and

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

995 (15) The secretary ~~office~~, working with the agencies  
996 providing cooperative assistance and input regarding the  
997 memoranda of agreement, shall review sites proposed for the  
998 location of facilities eligible for the Innovation Incentive  
999 Program under s. 288.1089. Within 20 days after the request for  
1000 the review by the secretary ~~office~~, the agencies shall provide  
1001 to the secretary ~~office~~ a statement as to each site's necessary  
1002 permits under local, state, and federal law and an  
1003 identification of significant permitting issues, which if  
1004 unresolved, may result in the denial of an agency permit or  
1005 approval or any significant delay caused by the permitting  
1006 process.

1007 (17) The secretary ~~office~~ shall be responsible for  
1008 certifying a business as eligible for undergoing expedited  
1009 review under this section. Enterprise Florida, Inc., a county or  
1010 municipal government, or the Rural Economic Development  
1011 Initiative may recommend to the secretary ~~Office of Tourism,~~  
1012 ~~Trade, and Economic Development~~ that a project meeting the  
1013 minimum job creation threshold undergo expedited review.

1014 (18) The secretary ~~office~~, working with the Rural Economic  
1015 Development Initiative and the regional permit action team

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1016 ~~agencies participating in the memoranda of agreement,~~ shall  
1017 provide technical assistance in preparing permit applications  
1018 and local comprehensive plan amendments for counties having a  
1019 population of fewer than 75,000 residents, or counties having  
1020 fewer than 125,000 residents which are contiguous to counties  
1021 having fewer than 75,000 residents. Additional assistance may  
1022 include, but not be limited to, guidance in land development  
1023 regulations and permitting processes, working cooperatively with  
1024 state, regional, and local entities to identify areas within  
1025 these counties which may be suitable or adaptable for  
1026 preclearance review of specified types of land uses and other  
1027 activities requiring permits.

1028 Section 24. Subsection (10) of section 163.3180, Florida  
1029 Statutes, is amended to read:

1030 163.3180 Concurrency.—

1031 (10) (a) Except in transportation concurrency exception  
1032 areas, with regard to roadway facilities on the Strategic  
1033 Intermodal System designated in accordance with s. 339.63, local  
1034 governments shall adopt the level-of-service standard  
1035 established by the Department of Transportation by rule.  
1036 However, if the Office of Tourism, Trade, and Economic  
1037 Development concurs in writing with the local government that  
1038 the proposed development is for a qualified job creation project  
1039 under s. 288.0656 or s. 403.973, the affected local government,  
1040 after consulting with the Department of Transportation, may  
1041 provide for a waiver of transportation concurrency for the  
1042 project. For all other roads on the State Highway System, local  
1043 governments shall establish an adequate level-of-service  
1044 standard that need not be consistent with any level-of-service

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1045 standard established by the Department of Transportation. In  
1046 establishing adequate level-of-service standards for any  
1047 arterial roads, or collector roads as appropriate, which  
1048 traverse multiple jurisdictions, local governments shall  
1049 consider compatibility with the roadway facility's adopted  
1050 level-of-service standards in adjacent jurisdictions. Each local  
1051 government within a county shall use a professionally accepted  
1052 methodology for measuring impacts on transportation facilities  
1053 for the purposes of implementing its concurrency management  
1054 system. Counties are encouraged to coordinate with adjacent  
1055 counties, and local governments within a county are encouraged  
1056 to coordinate, for the purpose of using common methodologies for  
1057 measuring impacts on transportation facilities for the purpose  
1058 of implementing their concurrency management systems.

1059 (b) There shall be a limited exemption from Strategic  
1060 Intermodal System adopted level-of-service standards for new or  
1061 redevelopment projects consistent with the local comprehensive  
1062 plan as inland multimodal facilities receiving or sending cargo  
1063 for distribution and providing cargo storage, consolidation,  
1064 repackaging, and transfer of goods, and which may, if developed  
1065 as proposed, include other intermodal terminals, related  
1066 transportation facilities, warehousing and distribution  
1067 facilities, and associated office space, light industrial,  
1068 manufacturing, and assembly uses. The limited exemption applies  
1069 if the project meets all of the following criteria:

1070 1. The project will not cause the adopted level-of-service  
1071 standards for the Strategic Intermodal System facilities to be  
1072 exceeded by more than 150 percent within the first 5 years of  
1073 the project's development.

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1074 2. The project, upon completion, would result in the  
1075 creation of at least 50 full-time jobs.

1076 3. The project is compatible with existing and planned  
1077 adjacent land uses.

1078 4. The project is consistent with local and regional  
1079 economic development goals or plans.

1080 5. The project is proximate to regionally significant road  
1081 and rail transportation facilities.

1082 6. The project is proximate to a community having an  
1083 unemployment rate, as of the date of the development order  
1084 application, which is 10 percent or more above the statewide  
1085 reported average.

1086 Section 25. Subsections (1) and (2), paragraph (c) of  
1087 subsection (3), and subsection (4) of section 373.4137, Florida  
1088 Statutes, are amended to read:

1089 373.4137 Mitigation requirements for specified  
1090 transportation projects.—

1091 (1) The Legislature finds that environmental mitigation for  
1092 the impact of transportation projects proposed by the Department  
1093 of Transportation or a transportation authority established  
1094 pursuant to chapter 348 or chapter 349 can be more effectively  
1095 achieved by regional, long-range mitigation planning rather than  
1096 on a project-by-project basis. It is the intent of the  
1097 Legislature that mitigation to offset the adverse effects of  
1098 these transportation projects be funded by the Department of  
1099 Transportation and be carried out by the water management  
1100 districts, including the use of mitigation banks and any other  
1101 mitigation options that satisfy state and federal requirements,  
1102 including, but not limited to, 33 U.S.C. s. 332.3(b) established

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1103 ~~pursuant to this part.~~

1104 (2) Environmental impact inventories for transportation  
1105 projects proposed by the Department of Transportation or a  
1106 transportation authority established pursuant to chapter 348 or  
1107 chapter 349 shall be developed as follows:

1108 (a) By July 1 of each year, the Department of  
1109 Transportation or a transportation authority established  
1110 pursuant to chapter 348 or chapter 349 which chooses to  
1111 participate in this program shall submit to the water management  
1112 districts a list ~~copy~~ of its projects in the adopted work  
1113 program and an environmental impact inventory of habitats  
1114 addressed in the rules adopted pursuant to this part and s. 404  
1115 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted  
1116 by its plan of construction for transportation projects in the  
1117 next 3 years of the tentative work program. The Department of  
1118 Transportation or a transportation authority established  
1119 pursuant to chapter 348 or chapter 349 may also include in its  
1120 environmental impact inventory the habitat impacts of any future  
1121 transportation project. The Department of Transportation and  
1122 each transportation authority established pursuant to chapter  
1123 348 or chapter 349 may fund any mitigation activities for future  
1124 projects using current year funds.

1125 (b) The environmental impact inventory shall include a  
1126 description of these habitat impacts, including their location,  
1127 acreage, and type; state water quality classification of  
1128 impacted wetlands and other surface waters; any other state or  
1129 regional designations for these habitats; and a list ~~survey~~ of  
1130 threatened species, endangered species, and species of special  
1131 concern affected by the proposed project.

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1132 (3)

1133 (c) Except for current mitigation projects in the

1134 monitoring and maintenance phase and except as allowed by

1135 paragraph (d), the water management districts may request a

1136 transfer of funds from an escrow account no sooner than 30 days

1137 prior to the date the funds are needed to pay for activities

1138 associated with development or implementation of the approved

1139 mitigation plan described in subsection (4) for the current

1140 fiscal year, including, but not limited to, design, engineering,

1141 production, and staff support. Actual conceptual plan

1142 preparation costs incurred before plan approval may be submitted

1143 to the Department of Transportation or the appropriate

1144 transportation authority each year with the plan. The conceptual

1145 plan preparation costs of each water management district will be

1146 paid from mitigation funds associated with the environmental

1147 impact inventory for the current year. The amount transferred to

1148 the escrow accounts each year by the Department of

1149 Transportation and participating transportation authorities

1150 established pursuant to chapter 348 or chapter 349 shall

1151 correspond to a cost per acre of \$75,000 multiplied by the

1152 projected acres of impact identified in the environmental impact

1153 inventory described in subsection (2). However, the \$75,000 cost

1154 per acre does not constitute an admission against interest by

1155 the state or its subdivisions nor is the cost admissible as

1156 evidence of full compensation for any property acquired by

1157 eminent domain or through inverse condemnation. Each July 1, the

1158 cost per acre shall be adjusted by the percentage change in the

1159 average of the Consumer Price Index issued by the United States

1160 Department of Labor for the most recent 12-month period ending



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1161 September 30, compared to the base year average, which is the  
1162 average for the 12-month period ending September 30, 1996. Each  
1163 quarter, the projected acreage of impact shall be reconciled  
1164 with the acreage of impact of projects as permitted, including  
1165 permit modifications, pursuant to this part and s. 404 of the  
1166 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer  
1167 of funds shall be adjusted accordingly to reflect the acreage of  
1168 impacts as permitted. The Department of Transportation and  
1169 participating transportation authorities established pursuant to  
1170 chapter 348 or chapter 349 are authorized to transfer such funds  
1171 from the escrow accounts to the water management districts to  
1172 carry out the mitigation programs. Environmental mitigation  
1173 funds that are identified or maintained in an escrow account for  
1174 the benefit of a water management district may be released if  
1175 the associated transportation project is excluded in whole or  
1176 part from the mitigation plan. For a mitigation project that is  
1177 in the maintenance and monitoring phase, the water management  
1178 district may request and receive a one-time payment based on the  
1179 project's expected future maintenance and monitoring costs. Upon  
1180 disbursement of the final maintenance and monitoring payment,  
1181 the department or the participating transportation authorities'  
1182 obligation will be satisfied, the water management district will  
1183 have continuing responsibility for the mitigation project, and  
1184 the escrow account for the project established by the Department  
1185 of Transportation or the participating transportation authority  
1186 may be closed. Any interest earned on these disbursed funds  
1187 shall remain with the water management district and must be used  
1188 as authorized under this section.

1189 (4) Prior to March 1 of each year, each water management

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1190 district, in consultation with the Department of Environmental  
1191 Protection, the United States Army Corps of Engineers, the  
1192 Department of Transportation, participating transportation  
1193 authorities established pursuant to chapter 348 or chapter 349,  
1194 and other appropriate federal, state, and local governments, and  
1195 other interested parties, including entities operating  
1196 mitigation banks, shall develop a plan for the primary purpose  
1197 of complying with the mitigation requirements adopted pursuant  
1198 to this part and 33 U.S.C. s. 1344. In developing such plans,  
1199 the districts shall utilize sound ecosystem management practices  
1200 to address significant water resource needs and shall focus on  
1201 activities of the Department of Environmental Protection and the  
1202 water management districts, such as surface water improvement  
1203 and management (SWIM) projects and lands identified for  
1204 potential acquisition for preservation, restoration or  
1205 enhancement, and the control of invasive and exotic plants in  
1206 wetlands and other surface waters, to the extent that such  
1207 activities comply with the mitigation requirements adopted under  
1208 this part and 33 U.S.C. s. 1344. In determining the activities  
1209 to be included in such plans, the districts shall also consider  
1210 the purchase of credits from public or private mitigation banks  
1211 permitted under s. 373.4136 and associated federal authorization  
1212 and shall include such purchase as a part of the mitigation plan  
1213 when such purchase would offset the impact of the transportation  
1214 project, provide equal benefits to the water resources than  
1215 other mitigation options being considered, and provide the most  
1216 cost-effective mitigation option. The mitigation plan shall be  
1217 submitted to the water management district governing board, or  
1218 its designee, for review and approval. At least 14 days prior to

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1219 approval, the water management district shall provide a copy of  
1220 the draft mitigation plan to any person who has requested a  
1221 copy.

1222 (a) For each transportation project with a funding request  
1223 for the next fiscal year, the mitigation plan must include a  
1224 brief explanation of why a mitigation bank was or was not chosen  
1225 as a mitigation option, including an estimation of identifiable  
1226 costs of the mitigation bank and nonbank options to the extent  
1227 practicable.

1228 (b) Specific projects may be excluded from the mitigation  
1229 plan, in whole or in part, and shall not be subject to this  
1230 section upon the election agreement of the Department of  
1231 Transportation, ~~or~~ a transportation authority if applicable, or  
1232 ~~and~~ the appropriate water management district ~~that the inclusion~~  
1233 ~~of such projects would hamper the efficiency or timeliness of~~  
1234 ~~the mitigation planning and permitting process. The water~~  
1235 ~~management district may choose to exclude a project in whole or~~  
1236 ~~in part if the district is unable to identify mitigation that~~  
1237 ~~would offset impacts of the project.~~

1238 Section 26. This act shall take effect upon becoming a law.