

1 A bill to be entitled
2 An act relating to environmental regulation; amending s.
3 120.569, F.S.; providing that a nonapplicant who petitions
4 to challenge an agency's issuance of a license or
5 conceptual approval in certain circumstances has the
6 burden of ultimate persuasion and the burden of going
7 forward with evidence; creating s. 125.0112, F.S.;
8 providing that the construction and operation of a biofuel
9 processing facility or renewable energy generating
10 facility and the cultivation of bioenergy by a local
11 government is a valid and permitted land use; providing an
12 exception; requiring expedited review of such facilities;
13 providing that such facilities are eligible for the
14 alternative state review process; amending s. 125.022,
15 F.S.; prohibiting a county from requiring an applicant to
16 obtain a permit or approval from another state or federal
17 agency as a condition of processing a development permit
18 under certain conditions; authorizing a county to attach
19 certain disclaimers to the issuance of a development
20 permit; creating s. 161.032, F.S.; requiring that the
21 Department of Environmental Protection review an
22 application for certain permits under the Beach and Shore
23 Preservation Act and request additional information within
24 a specified time; requiring that the department proceed to
25 process the application if the applicant believes that a
26 request for additional information is not authorized by
27 law or rule; extending the period for an applicant to
28 timely submit additional information, notwithstanding

29 | certain provisions of the Administrative Procedure Act;
30 | amending s. 161.041, F.S.; specifying that s. 403.0874,
31 | F.S., authorizing expedited permitting, applies to
32 | provisions governing coastal construction; prohibiting the
33 | Department of Environmental Protection from requiring
34 | certain sediment quality specifications or turbidity
35 | standards as a permit condition; providing legislative
36 | intent with respect to permitting for beach renourishment
37 | projects; directing the department to amend specified
38 | rules relating to permitting for such projects; amending
39 | s. 163.3180, F.S.; providing an exemption to the level-of-
40 | service standards adopted under the Strategic Intermodal
41 | System for certain inland multimodal facilities;
42 | specifying project criteria; amending s. 166.033, F.S.;;
43 | prohibiting a municipality from requiring an applicant to
44 | obtain a permit or approval from another state or federal
45 | agency as a condition of processing a development permit
46 | under certain conditions; authorizing a county to attach
47 | certain disclaimers to the issuance of a development
48 | permit; creating s. 166.0447, F.S.; providing that the
49 | construction and operation of a biofuel processing
50 | facility or renewable energy generating facility and the
51 | cultivation of bioenergy is a valid and permitted land use
52 | within the incorporated area of a municipality; providing
53 | an exception; prohibiting any requirement that the owner
54 | or operator of such a facility obtain comprehensive plan
55 | amendments, use permits, waivers, or variances, or pay any
56 | fee in excess of a specified amount; amending s. 373.026,

57 F.S.; requiring the Department of Environmental Protection
58 to expand its use of Internet-based self-certification
59 services for exemptions and permits issued by the
60 department and water management districts; amending s.
61 373.413, F.S.; specifying that s. 403.0874, F.S.,
62 authorizing expedited permitting, applies to provisions
63 governing surface water management and storage; amending
64 s. 373.4137, F.S.; revising legislative findings with
65 respect to the options for mitigation relating to
66 transportation projects; revising certain requirements for
67 determining the habitat impacts of transportation
68 projects; requiring water management districts to purchase
69 credits from public or private mitigation banks under
70 certain conditions; providing for the release of certain
71 mitigation funds held for the benefit of a water
72 management district if a project is excluded from a
73 mitigation plan; requiring water management districts to
74 use private mitigation banks in developing plans for
75 complying with mitigation requirements; providing an
76 exception; revising the procedure for excluding a project
77 from a mitigation plan; amending s. 373.4141, F.S.;
78 providing a limitation for the request of additional
79 information from an applicant by the department; providing
80 that failure of an applicant to respond to such a request
81 within a specified time period constitutes withdrawal of
82 the application; reducing the time within which the
83 department or district must approve or deny a permit
84 application; prohibiting a state agency or an agency of

85 | the state from requiring additional permits or approval
86 | from a local, state, or federal agency without explicit
87 | authority; amending s. 373.4144, F.S.; providing
88 | legislative intent with respect to the coordination of
89 | regulatory duties among specified state and federal
90 | agencies; requiring that the department report annually to
91 | the Legislature on efforts to expand the state
92 | programmatic general permit or regional general permits;
93 | providing for a voluntary state programmatic general
94 | permit for certain dredge and fill activities; amending s.
95 | 373.41492, F.S.; authorizing the use of proceeds from the
96 | water treatment plant upgrade fee to pay for specified
97 | mitigation projects; requiring proceeds from the water
98 | treatment plant upgrade fee to be transferred by the
99 | Department of Revenue to the South Florida Water
100 | Management District and deposited into the Lake Belt
101 | Mitigation Trust Fund for a specified period of time;
102 | providing, after that period, for the proceeds of the
103 | water treatment plant upgrade fee to return to being
104 | transferred by the Department of Revenue to a trust fund
105 | established by Miami-Dade County for specified purposes;
106 | conforming a term; amending s. 373.441, F.S.; requiring
107 | that certain counties or municipalities apply by a
108 | specified date to the department or water management
109 | district for authority to require certain permits;
110 | providing that following such delegation, the department
111 | or district may not regulate activities that are subject
112 | to the delegation; clarifying the authority of local

113 governments to adopt pollution control programs under
114 certain conditions; amending s. 376.30715, F.S.; providing
115 that the transfer of a contaminated site from an owner to
116 a child of the owner or corporate entity does not
117 disqualify the site from the innocent victim petroleum
118 storage system restoration financial assistance program;
119 authorizing certain applicants to reapply for financial
120 assistance; amending s. 380.06, F.S.; exempting a proposed
121 solid mineral mine or a proposed addition or expansion of
122 an existing solid mineral mine from provisions governing
123 developments of regional impact; providing certain
124 exceptions; amending s. 380.0657, F.S.; authorizing
125 expedited permitting for certain inland multimodal
126 facilities that individually or collectively will create a
127 minimum number of jobs; amending s. 403.061, F.S.;
128 requiring the Department of Environmental Protection to
129 establish reasonable zones of mixing for discharges into
130 specified waters; providing that certain discharges do not
131 create liability for site cleanup; providing that
132 exceedance of soil cleanup target levels is not a basis
133 for enforcement or cleanup; amending s. 403.087, F.S.;
134 revising conditions under which the department is
135 authorized to revoke environmental resource permits;
136 creating s. 403.0874, F.S.; providing a short title;
137 providing legislative findings and intent with respect to
138 the consideration of the compliance history of a permit
139 applicant; providing for applicability; specifying the
140 period of compliance history to be considered is issuing

141 or renewing a permit; providing criteria to be considered
142 by the Department of Environmental Protection; authorizing
143 expedited review of permit issuance, renewal,
144 modification, and transfer; providing for a reduced number
145 of inspections; providing for extended permit duration;
146 authorizing the department to make additional incentives
147 available under certain circumstances; providing for
148 automatic permit renewal and reduced or waived fees under
149 certain circumstances; requiring the department to adopt
150 rules that are binding on a water management district or
151 local government that has been delegated certain
152 regulatory duties; amending s. 403.703, F.S.; revising the
153 term "solid waste" to exclude sludge from a waste
154 treatment works that is not discarded; amending s.
155 403.707, F.S.; revising provisions relating to disposal by
156 persons of solid waste resulting from their own activities
157 on their property; clarifying what constitutes "addressed
158 by a groundwater monitoring plan" with regard to certain
159 effects on groundwater and surface waters; authorizing the
160 disposal of solid waste over a zone of discharge;
161 providing that exceedance of soil cleanup target levels is
162 not a basis for enforcement or cleanup; providing that
163 certain disposal of solid waste does not create liability
164 for site cleanup; extending the duration of all permits
165 issued to solid waste management facilities that meet
166 specified criteria; providing an exception; providing for
167 prorated permit fees; providing applicability; amending s.
168 403.814, F.S.; providing for issuance of general permits

169 for the construction, alteration, and maintenance of
170 certain surface water management systems without the
171 action of the department or a water management district;
172 specifying conditions for the general permits; amending s.
173 403.973, F.S.; authorizing expedited permitting for
174 certain commercial or industrial development projects that
175 individually or collectively will create a minimum number
176 of jobs; providing for a project-specific memorandum of
177 agreement to apply to a project subject to expedited
178 permitting; clarifying the authority of the Department of
179 Environmental Protection to enter final orders for the
180 issuance of certain licenses; revising criteria for the
181 review of certain sites; amending s. 526.203, F.S.;
182 authorizing the sale of unblended fuels for certain uses;
183 amending s. 604.50, F.S.; exempting farm fences from the
184 Florida Building Code; revising the term "nonresidential
185 farm building"; exempting nonresidential farm buildings
186 and farm fences from county and municipal codes and fees;
187 specifying that the exemptions do not apply to code
188 provisions implementing certain floodplain regulations;
189 revising the deadline for completion of the installation
190 of fuel tank upgrades to secondary containment systems for
191 specified properties; revising rules of the Department of
192 Environmental Protection relating to the uniform
193 mitigation assessment method for activities in surface
194 waters and wetlands; directing the Department of
195 Environmental Protection to make additional changes to

196 conform; providing for reassessment of mitigation banks
 197 under certain conditions; providing an effective date.
 198

199 Be It Enacted by the Legislature of the State of Florida:
 200

201 Section 1. Paragraph (p) is added to subsection (2) of
 202 section 120.569, Florida Statutes, to read:

203 120.569 Decisions which affect substantial interests.—
 204 (2)

205 (p) For any proceeding arising under chapter 373, chapter
 206 378, or chapter 403, if a nonapplicant petitions as a third
 207 party to challenge an agency's issuance of a license or
 208 conceptual approval, the petitioner initiating the action has
 209 the burden of ultimate persuasion and, in the first instance,
 210 has the burden of going forward with the evidence.
 211 Notwithstanding subsection (1), this paragraph applies to
 212 proceedings under s. 120.574.

213 Section 2. Section 125.0112, Florida Statutes, is created
 214 to read:

215 125.0112 Biofuels and renewable energy.—The construction
 216 and operation of a biofuel processing facility or a renewable
 217 energy generating facility, as defined in s. 366.91(2)(d), and
 218 the cultivation and production of bioenergy, as defined pursuant
 219 to s. 163.3177, except where biomass material derived from
 220 municipal solid waste or landfill gases provides the renewable
 221 energy for such facilities, shall be considered by a local
 222 government to be a valid industrial, agricultural, and
 223 silvicultural use permitted within those land use categories in

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

241 Section 3. Section 125.022, Florida Statutes, is amended
242 to read:

243 125.022 Development permits.—When a county denies an
244 application for a development permit, the county shall give
245 written notice to the applicant. The notice must include a
246 citation to the applicable portions of an ordinance, rule,
247 statute, or other legal authority for the denial of the permit.
248 As used in this section, the term "development permit" has the
249 same meaning as in s. 163.3164. A county may not require as a
250 condition of processing a development permit that an applicant
251 obtain a permit or approval from any other state or federal

252 agency unless the agency has issued a notice of intent to deny
253 the federal or state permit before the county action on the
254 local development permit. Issuance of a development permit by a
255 county does not in any way create any rights on the part of the
256 applicant to obtain a permit from another state or federal
257 agency and does not create any liability on the part of the
258 county for issuance of the permit if the applicant fails to
259 fulfill its legal obligations to obtain requisite approvals or
260 fulfill the obligations imposed by another state or a federal
261 agency. A county may attach such a disclaimer to the issuance of
262 a development permit, and may include a permit condition that
263 all other applicable state or federal permits be obtained before
264 commencement of the development. This section does not prohibit
265 a county from providing information to an applicant regarding
266 what other state or federal permits may apply.

267 Section 4. Section 161.032, Florida Statutes, is created
268 to read:

269 161.032 Application review; request for additional
270 information.—

271 (1) Within 30 days after receipt of an application for a
272 permit under this part, the department shall review the
273 application and shall request submission of any additional
274 information the department is permitted by law to require. If
275 the applicant believes that a request for additional information
276 is not authorized by law or rule, the applicant may request a
277 hearing pursuant to s. 120.57. Within 30 days after receipt of
278 such additional information, the department shall review such
279 additional information and may request only that information

280 needed to clarify such additional information or to answer new
281 questions raised by or directly related to such additional
282 information. If the applicant believes that the request for such
283 additional information by the department is not authorized by
284 law or rule, the department, at the applicant's request, shall
285 proceed to process the permit application.

286 (2) Notwithstanding s. 120.60, an applicant for a permit
287 under this part has 90 days after the date of a timely request
288 for additional information to submit such information. If an
289 applicant requires more than 90 days in order to respond to a
290 request for additional information, the applicant must notify
291 the agency processing the permit application in writing of the
292 circumstances, at which time the application shall be held in
293 active status for no more than one additional period of up to 90
294 days. Additional extensions may be granted for good cause shown
295 by the applicant. A showing that the applicant is making a
296 diligent effort to obtain the requested additional information
297 constitutes good cause. Failure of an applicant to provide the
298 timely requested information by the applicable deadline shall
299 result in denial of the application without prejudice.

300 Section 5. Subsections (5), (6), and (7) are added to
301 section 161.041, Florida Statutes, to read:

302 161.041 Permits required.-

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

306 (6) The department may not require as a permit condition
307 sediment quality specifications or turbidity standards more

CS/CS/HB 991

2011

308 stringent than those provided for in this chapter, chapter 373,
309 or the Florida Administrative Code. The department may not issue
310 guidelines that are enforceable as standards without going
311 through the rulemaking process pursuant to chapter 120.

312 (7) As an incentive for permit applicants, it is the
313 Legislature's intent to simplify the permitting for periodic
314 maintenance of beach renourishment projects previously permitted
315 and restored under the joint coastal permit process pursuant to
316 this section or part IV of chapter 373. The department shall
317 amend chapters 62B-41 and 62B-49 of the Florida Administrative
318 Code to streamline the permitting process for periodic
319 maintenance projects.

320 Section 6. Subsection (10) of section 163.3180, Florida
321 Statutes, is amended to read:

322 163.3180 Concurrency.—

323 (10) (a) Except in transportation concurrency exception
324 areas, with regard to roadway facilities on the Strategic
325 Intermodal System designated in accordance with s. 339.63, local
326 governments shall adopt the level-of-service standard
327 established by the Department of Transportation by rule.
328 However, if the Office of Tourism, Trade, and Economic
329 Development concurs in writing with the local government that
330 the proposed development is for a qualified job creation project
331 under s. 288.0656 or s. 403.973, the affected local government,
332 after consulting with the Department of Transportation, may
333 provide for a waiver of transportation concurrency for the
334 project. For all other roads on the State Highway System, local
335 governments shall establish an adequate level-of-service

336 standard that need not be consistent with any level-of-service
337 standard established by the Department of Transportation. In
338 establishing adequate level-of-service standards for any
339 arterial roads, or collector roads as appropriate, which
340 traverse multiple jurisdictions, local governments shall
341 consider compatibility with the roadway facility's adopted
342 level-of-service standards in adjacent jurisdictions. Each local
343 government within a county shall use a professionally accepted
344 methodology for measuring impacts on transportation facilities
345 for the purposes of implementing its concurrency management
346 system. Counties are encouraged to coordinate with adjacent
347 counties, and local governments within a county are encouraged
348 to coordinate, for the purpose of using common methodologies for
349 measuring impacts on transportation facilities for the purpose
350 of implementing their concurrency management systems.

351 (b) There shall be a limited exemption from the Strategic
352 Intermodal System adopted level-of-service standards for new or
353 redevelopment projects consistent with the local comprehensive
354 plan as inland multimodal facilities receiving or sending cargo
355 for distribution and providing cargo storage, consolidation,
356 repackaging, and transfer of goods, and which may, if developed
357 as proposed, include other intermodal terminals, related
358 transportation facilities, warehousing and distribution
359 facilities, and associated office space, light industrial,
360 manufacturing, and assembly uses. The limited exemption applies
361 if the project meets all of the following criteria:

362 1. The project will not cause the adopted level-of-service
363 standards for the Strategic Intermodal System facilities to be

364 exceeded by more than 150 percent within the first 5 years of
 365 the project's development.

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

368 3. The project is compatible with existing and planned
 369 adjacent land uses.

370 4. The project is consistent with local and regional
 371 economic development goals or plans.

372 5. The project is proximate to regionally significant road
 373 and rail transportation facilities.

374 6. The project is proximate to a community having an
 375 unemployment rate, as of the date of the development order
 376 application, which is 10 percent or more above the statewide
 377 reported average.

378 Section 7. Section 166.033, Florida Statutes, is amended
 379 to read:

380 166.033 Development permits.—When a municipality denies an
 381 application for a development permit, the municipality shall
 382 give written notice to the applicant. The notice must include a
 383 citation to the applicable portions of an ordinance, rule,
 384 statute, or other legal authority for the denial of the permit.
 385 As used in this section, the term "development permit" has the
 386 same meaning as in s. 163.3164. A municipality may not require
 387 as a condition of processing a development permit that an
 388 applicant obtain a permit or approval from any other state or
 389 federal agency unless the agency has issued a notice of intent
 390 to deny the federal or state permit before the municipal action
 391 on the local development permit. Issuance of a development

CS/CS/HB 991

2011

392 permit by a municipality does not in any way create any right on
393 the part of an applicant to obtain a permit from another state
394 or federal agency and does not create any liability on the part
395 of the municipality for issuance of the permit if the applicant
396 fails to fulfill its legal obligations to obtain requisite
397 approvals or fulfill the obligations imposed by another state or
398 federal agency. A municipality may attach such a disclaimer to
399 the issuance of development permits and may include a permit
400 condition that all other applicable state or federal permits be
401 obtained before commencement of the development. This section
402 does not prohibit a municipality from providing information to
403 an applicant regarding what other state or federal permits may
404 apply.

405 Section 8. Section 166.0447, Florida Statutes, is created
406 to read:

407 166.0447 Biofuels and renewable energy.—The construction
408 and operation of a biofuel processing facility or a renewable
409 energy generating facility, as defined in s. 366.91(2)(d), and
410 the cultivation and production of bioenergy, as defined pursuant
411 to s. 163.3177, except where biomass material derived from
412 municipal solid waste or landfill gases provides the renewable
413 energy for such facilities, are each a valid industrial,
414 agricultural, and silvicultural use permitted within those land
415 use categories in the local comprehensive land use plan and for
416 purposes of any local zoning regulation within an incorporated
417 area of a municipality. Such comprehensive land use plans and
418 local zoning regulations may not require the owner or operator
419 of a biofuel processing facility or a renewable energy

CS/CS/HB 991

2011

420 generating facility to obtain any comprehensive plan amendment,
421 rezoning, special exemption, use permit, waiver, or variance, or
422 to pay any special fee in excess of \$1,000 to operate in an area
423 zoned for or categorized as industrial, agricultural, or
424 silvicultural use. This section does not exempt biofuel
425 processing facilities and renewable energy generating facilities
426 from complying with building code requirements. The construction
427 and operation of a facility and related improvements on a
428 portion of a property pursuant to this section does not affect
429 the remainder of that property's classification as agricultural
430 pursuant to s. 193.461.

431 Section 9. Subsection (10) is added to section 373.026,
432 Florida Statutes, to read:

433 373.026 General powers and duties of the department.—The
434 department, or its successor agency, shall be responsible for
435 the administration of this chapter at the state level. However,
436 it is the policy of the state that, to the greatest extent
437 possible, the department may enter into interagency or
438 interlocal agreements with any other state agency, any water
439 management district, or any local government conducting programs
440 related to or materially affecting the water resources of the
441 state. All such agreements shall be subject to the provisions of
442 s. 373.046. In addition to its other powers and duties, the
443 department shall, to the greatest extent possible:

444 (10) Expand the use of Internet-based self-certification
445 services for appropriate exemptions and general permits issued
446 by the department and the water management districts, if such
447 expansion is economically feasible. In addition to expanding the

448 use of Internet-based self-certification services for
 449 appropriate exemptions and general permits, the department and
 450 water management districts shall identify and develop general
 451 permits for appropriate activities currently requiring
 452 individual review which could be expedited through the use of
 453 applicable professional certification.

454 Section 10. Subsection (6) is added to section 373.413,
 455 Florida Statutes, to read:

456 373.413 Permits for construction or alteration.—

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

460 Section 11. Subsections (1) and (2), paragraph (c) of
 461 subsection (3), and subsection (4) of section 373.4137, Florida
 462 Statutes, are amended to read:

463 373.4137 Mitigation requirements for specified
 464 transportation projects.—

465 (1) The Legislature finds that environmental mitigation
 466 for the impact of transportation projects proposed by the
 467 Department of Transportation or a transportation authority
 468 established pursuant to chapter 348 or chapter 349 can be more
 469 effectively achieved by regional, long-range mitigation planning
 470 rather than on a project-by-project basis. It is the intent of
 471 the Legislature that mitigation to offset the adverse effects of
 472 these transportation projects be funded by the Department of
 473 Transportation and be carried out by the water management
 474 districts, through ~~including~~ the use of private mitigation banks
 475 if available or, if a private mitigation bank is not available,

476 through any other mitigation options that satisfy state and
477 federal requirements ~~established pursuant to this part.~~

478 (2) Environmental impact inventories for transportation
479 projects proposed by the Department of Transportation or a
480 transportation authority established pursuant to chapter 348 or
481 chapter 349 shall be developed as follows:

482 (a) By July 1 of each year, the Department of
483 Transportation or a transportation authority established
484 pursuant to chapter 348 or chapter 349 which chooses to
485 participate in this program shall submit to the water management
486 districts a list ~~copy~~ of its projects in the adopted work
487 program and an environmental impact inventory of habitats
488 addressed in the rules adopted pursuant to this part and s. 404
489 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted
490 by its plan of construction for transportation projects in the
491 next 3 years of the tentative work program. The Department of
492 Transportation or a transportation authority established
493 pursuant to chapter 348 or chapter 349 may also include in its
494 environmental impact inventory the habitat impacts of any future
495 transportation project. The Department of Transportation and
496 each transportation authority established pursuant to chapter
497 348 or chapter 349 may fund any mitigation activities for future
498 projects using current year funds.

499 (b) The environmental impact inventory shall include a
500 description of these habitat impacts, including their location,
501 acreage, and type; state water quality classification of
502 impacted wetlands and other surface waters; any other state or
503 regional designations for these habitats; and a list ~~survey~~ of

504 threatened species, endangered species, and species of special
 505 concern affected by the proposed project.

506 (3)

507 (c) Except for current mitigation projects in the
 508 monitoring and maintenance phase and except as allowed by
 509 paragraph (d), the water management districts may request a
 510 transfer of funds from an escrow account no sooner than 30 days
 511 prior to the date the funds are needed to pay for activities
 512 associated with development or implementation of the approved
 513 mitigation plan described in subsection (4) for the current
 514 fiscal year, including, but not limited to, design, engineering,
 515 production, and staff support. Actual conceptual plan
 516 preparation costs incurred before plan approval may be submitted
 517 to the Department of Transportation or the appropriate
 518 transportation authority each year with the plan. The conceptual
 519 plan preparation costs of each water management district will be
 520 paid from mitigation funds associated with the environmental
 521 impact inventory for the current year. The amount transferred to
 522 the escrow accounts each year by the Department of
 523 Transportation and participating transportation authorities
 524 established pursuant to chapter 348 or chapter 349 shall
 525 correspond to a cost per acre of \$75,000 multiplied by the
 526 projected acres of impact identified in the environmental impact
 527 inventory described in subsection (2). However, the \$75,000 cost
 528 per acre does not constitute an admission against interest by
 529 the state or its subdivisions nor is the cost admissible as
 530 evidence of full compensation for any property acquired by
 531 eminent domain or through inverse condemnation. Each July 1, the

CS/CS/HB 991

2011

532 cost per acre shall be adjusted by the percentage change in the
533 average of the Consumer Price Index issued by the United States
534 Department of Labor for the most recent 12-month period ending
535 September 30, compared to the base year average, which is the
536 average for the 12-month period ending September 30, 1996. Each
537 quarter, the projected acreage of impact shall be reconciled
538 with the acreage of impact of projects as permitted, including
539 permit modifications, pursuant to this part and s. 404 of the
540 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer
541 of funds shall be adjusted accordingly to reflect the acreage of
542 impacts as permitted. The Department of Transportation and
543 participating transportation authorities established pursuant to
544 chapter 348 or chapter 349 are authorized to transfer such funds
545 from the escrow accounts to the water management districts to
546 carry out the mitigation programs. Environmental mitigation
547 funds that are identified or maintained in an escrow account for
548 the benefit of a water management district may be released if
549 the associated transportation project is excluded in whole or
550 part from the mitigation plan. For a mitigation project that is
551 in the maintenance and monitoring phase, the water management
552 district may request and receive a one-time payment based on the
553 project's expected future maintenance and monitoring costs. Upon
554 disbursement of the final maintenance and monitoring payment,
555 the department or the participating transportation authorities'
556 obligation will be satisfied, the water management district will
557 have continuing responsibility for the mitigation project, and
558 the escrow account for the project established by the Department
559 of Transportation or the participating transportation authority

560 may be closed. Any interest earned on these disbursed funds
561 shall remain with the water management district and must be used
562 as authorized under this section.

563 (4) Prior to March 1 of each year, each water management
564 district, in consultation with the Department of Environmental
565 Protection, the United States Army Corps of Engineers, the
566 Department of Transportation, participating transportation
567 authorities established pursuant to chapter 348 or chapter 349,
568 and other appropriate federal, state, and local governments, and
569 other interested parties, including entities operating
570 mitigation banks, shall develop a plan for the primary purpose
571 of complying with the mitigation requirements adopted pursuant
572 to this part and 33 U.S.C. s. 1344. In developing such plans,
573 private mitigation banks shall be used if available or, if a
574 private mitigation bank is not available, the districts shall
575 use ~~utilize~~ sound ecosystem management practices to address
576 significant water resource needs and shall focus on activities
577 of the Department of Environmental Protection and the water
578 management districts, such as surface water improvement and
579 management (SWIM) projects and lands identified for potential
580 acquisition for preservation, restoration or enhancement, and
581 the control of invasive and exotic plants in wetlands and other
582 surface waters, to the extent that such activities comply with
583 the mitigation requirements adopted under this part and 33
584 U.S.C. s. 1344. In determining the activities to be included in
585 such plans, the districts shall ~~also consider the purchase of~~
586 credits from public or private mitigation banks permitted under
587 s. 373.4136 and associated federal authorization and shall

CS/CS/HB 991

2011

588 include such purchase as a part of the mitigation plan when such
589 purchase would offset the impact of the transportation project,
590 ~~provide equal benefits to the water resources than other~~
591 ~~mitigation options being considered, and provide the most cost-~~
592 ~~effective mitigation option.~~ The mitigation plan shall be
593 submitted to the water management district governing board, or
594 its designee, for review and approval. At least 14 days prior to
595 approval, the water management district shall provide a copy of
596 the draft mitigation plan to any person who has requested a
597 copy.

598 (a) For each transportation project with a funding request
599 for the next fiscal year, the mitigation plan must include a
600 brief explanation of why a mitigation bank was or was not chosen
601 as a mitigation option, including an estimation of identifiable
602 costs of the mitigation bank and nonbank options to the extent
603 practicable.

604 (b) Specific projects may be excluded from the mitigation
605 plan, in whole or in part, and shall not be subject to this
606 section upon the election agreement of the Department of
607 Transportation, ~~or~~ a transportation authority if applicable, or
608 ~~and~~ the appropriate water management district ~~that the inclusion~~
609 ~~of such projects would hamper the efficiency or timeliness of~~
610 ~~the mitigation planning and permitting process.~~ The water
611 ~~management district may choose to exclude a project in whole or~~
612 ~~in part if the district is unable to identify mitigation that~~
613 ~~would offset impacts of the project.~~

614 Section 12. Section 373.4141, Florida Statutes, is amended
615 to read:

616 373.4141 Permits; processing.—

617 (1) Within 30 days after receipt of an application for a
 618 permit under this part, the department or the water management
 619 district shall review the application and shall request
 620 submittal of all additional information the department or the
 621 water management district is permitted by law to require. If the
 622 applicant believes any request for additional information is not
 623 authorized by law or rule, the applicant may request a hearing
 624 pursuant to s. 120.57. Within 30 days after receipt of such
 625 additional information, the department or water management
 626 district shall review it and may request only that information
 627 needed to clarify such additional information or to answer new
 628 questions raised by or directly related to such additional
 629 information. If the applicant believes the request of the
 630 department or water management district for such additional
 631 information is not authorized by law or rule, the department or
 632 water management district, at the applicant's request, shall
 633 proceed to process the permit application. The department or
 634 water management district may request additional information no
 635 more than twice unless the applicant waives this limitation in
 636 writing. If the applicant does not provide a written response to
 637 the second request for additional information within 90 days or
 638 another time period mutually agreed upon between the applicant
 639 and the department or water management district, the application
 640 shall be considered withdrawn.

641 (2) A permit shall be approved or denied within 60 ~~90~~ days
 642 after receipt of the original application, the last item of
 643 timely requested additional material, or the applicant's written

CS/CS/HB 991

2011

644 request to begin processing the permit application.

645 (3) Processing of applications for permits for affordable
646 housing projects shall be expedited to a greater degree than
647 other projects.

648 (4) A state agency or an agency of the state may not
649 require as a condition of approval for a permit or as an item to
650 complete a pending permit application that an applicant obtain a
651 permit or approval from any other local, state, or federal
652 agency without explicit statutory authority to require such
653 permit or approval.

654 Section 13. Section 373.4144, Florida Statutes, is amended
655 to read:

656 373.4144 Federal environmental permitting.—

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

658 (a) Facilitate coordination and a more efficient process
659 of implementing regulatory duties and functions between the
660 Department of Environmental Protection, the water management
661 districts, the United States Army Corps of Engineers, the United
662 States Fish and Wildlife Service, the National Marine Fisheries
663 Service, the United States Environmental Protection Agency, the
664 Fish and Wildlife Conservation Commission, and other relevant
665 federal and state agencies.

666 (b) Authorize the Department of Environmental Protection
667 to obtain issuance by the United States Army Corps of Engineers,
668 pursuant to state and federal law and as set forth in this
669 section, of an expanded state programmatic general permit, or a
670 series of regional general permits, for categories of activities
671 in waters of the United States governed by the Clean Water Act

672 and in navigable waters under the Rivers and Harbors Act of 1899
673 which are similar in nature, which will cause only minimal
674 adverse environmental effects when performed separately, and
675 which will have only minimal cumulative adverse effects on the
676 environment.

677 (c) Use the mechanism of such a state general permit or
678 such regional general permits to eliminate overlapping federal
679 regulations and state rules that seek to protect the same
680 resource and to avoid duplication of permitting between the
681 United States Army Corps of Engineers and the department for
682 minor work located in waters of the United States, including
683 navigable waters, thus eliminating, in appropriate cases, the
684 need for a separate individual approval from the United States
685 Army Corps of Engineers while ensuring the most stringent
686 protection of wetland resources.

687 (d) Direct the department not to seek issuance of or take
688 any action pursuant to any such permit or permits unless such
689 conditions are at least as protective of the environment and
690 natural resources as existing state law under this part and
691 federal law under the Clean Water Act and the Rivers and Harbors
692 Act of 1899. ~~The department is directed to develop, on or before~~
693 ~~October 1, 2005, a mechanism or plan to consolidate, to the~~
694 ~~maximum extent practicable, the federal and state wetland~~
695 ~~permitting programs. It is the intent of the Legislature that~~
696 ~~all dredge and fill activities impacting 10 acres or less of~~
697 ~~wetlands or waters, including navigable waters, be processed by~~
698 ~~the state as part of the environmental resource permitting~~
699 ~~program implemented by the department and the water management~~

700 ~~districts. The resulting mechanism or plan shall analyze and~~
 701 ~~propose the development of an expanded state programmatic~~
 702 ~~general permit program in conjunction with the United States~~
 703 ~~Army Corps of Engineers pursuant to s. 404 of the Clean Water~~
 704 ~~Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,~~
 705 ~~and s. 10 of the Rivers and Harbors Act of 1899. Alternatively,~~
 706 ~~or in combination with an expanded state programmatic general~~
 707 ~~permit, the mechanism or plan may propose the creation of a~~
 708 ~~series of regional general permits issued by the United States~~
 709 ~~Army Corps of Engineers pursuant to the referenced statutes. All~~
 710 ~~of the regional general permits must be administered by the~~
 711 ~~department or the water management districts or their designees.~~

712 (2) In order to effectuate efficient wetland permitting
 713 and avoid duplication, the department and water management
 714 districts are authorized to implement a voluntary state
 715 programmatic general permit for all dredge and fill activities
 716 impacting 3 acres or less of wetlands or other surface waters,
 717 including navigable waters, subject to agreement with the United
 718 States Army Corps of Engineers, if the general permit is at
 719 least as protective of the environment and natural resources as
 720 existing state law under this part and federal law under the
 721 Clean Water Act and the Rivers and Harbors Act of 1899. The
 722 ~~department is directed to file with the Speaker of the House of~~
 723 ~~Representatives and the President of the Senate a report~~
 724 ~~proposing any required federal and state statutory changes that~~
 725 ~~would be necessary to accomplish the directives listed in this~~
 726 ~~section and to coordinate with the Florida Congressional~~
 727 ~~Delegation on any necessary changes to federal law to implement~~

CS/CS/HB 991

2011

728 ~~the directives.~~

729 (3) Nothing in this section shall be construed to preclude
730 the department from pursuing a series of regional general
731 permits for construction activities in wetlands or surface
732 waters or complete assumption of federal permitting programs
733 regulating the discharge of dredged or fill material pursuant to
734 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,
735 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors
736 Act of 1899, so long as the assumption encompasses all dredge
737 and fill activities in, on, or over jurisdictional wetlands or
738 waters, including navigable waters, within the state.

739 Section 14. Subsections (2) and (3), paragraph (a) of
740 subsection (4), and paragraph (a) of subsection (6) of section
741 373.41492, Florida Statutes, are amended to read:

742 373.41492 Miami-Dade County Lake Belt Mitigation Plan;
743 mitigation for mining activities within the Miami-Dade County
744 Lake Belt.—

745 (2) To provide for the mitigation of wetland resources
746 lost to mining activities within the Miami-Dade County Lake Belt
747 Plan, effective October 1, 1999, a mitigation fee is imposed on
748 each ton of limerock and sand extracted by any person who
749 engages in the business of extracting limerock or sand from
750 within the Miami-Dade County Lake Belt Area and the east one-
751 half of sections 24 and 25 and all of sections 35 and 36,
752 Township 53 South, Range 39 East. The mitigation fee is imposed
753 for each ton of limerock and sand sold from within the
754 properties where the fee applies in raw, processed, or
755 manufactured form, including, but not limited to, sized

CS/CS/HB 991

2011

756 aggregate, asphalt, cement, concrete, and other limerock and
757 concrete products. The mitigation fee imposed by this subsection
758 for each ton of limerock and sand sold shall be 12 cents per ton
759 beginning January 1, 2007; 18 cents per ton beginning January 1,
760 2008; 24 cents per ton beginning January 1, 2009; and 45 cents
761 per ton beginning close of business December 31, 2011. To pay
762 for seepage mitigation projects, including hydrological
763 structures, as authorized in an environmental resource permit
764 issued by the department for mining activities within the Miami-
765 Dade County Lake Belt Area, and to upgrade a water treatment
766 plant that treats water coming from the Northwest Wellfield in
767 Miami-Dade County, a water treatment plant upgrade fee is
768 imposed within the same Lake Belt Area subject to the mitigation
769 fee and upon the same kind of mined limerock and sand subject to
770 the mitigation fee. The water treatment plant upgrade fee
771 imposed by this subsection for each ton of limerock and sand
772 sold shall be 15 cents per ton beginning on January 1, 2007, and
773 the collection of this fee shall cease once the total amount of
774 proceeds collected for this fee reaches the amount of the actual
775 moneys necessary to design and construct the water treatment
776 plant upgrade, as determined in an open, public solicitation
777 process. Any limerock or sand that is used within the mine from
778 which the limerock or sand is extracted is exempt from the fees.
779 The amount of the mitigation fee and the water treatment plant
780 upgrade fee imposed under this section must be stated separately
781 on the invoice provided to the purchaser of the limerock or sand
782 product from the limerock or sand miner, or its subsidiary or
783 affiliate, for which the fee or fees apply. The limerock or sand

CS/CS/HB 991

2011

784 miner, or its subsidiary or affiliate, who sells the limerock or
785 sand product shall collect the mitigation fee and the water
786 treatment plant upgrade fee and forward the proceeds of the fees
787 to the Department of Revenue on or before the 20th day of the
788 month following the calendar month in which the sale occurs. As
789 used in this section, the term "proceeds of the fee" means all
790 funds collected and received by the Department of Revenue under
791 this section, including interest and penalties on delinquent
792 fees. The amount deducted for administrative costs may not
793 exceed 3 percent of the total revenues collected under this
794 section and may equal only those administrative costs reasonably
795 attributable to the fees.

796 (3) The mitigation fee and the water treatment plant
797 upgrade fee imposed by this section must be reported to the
798 Department of Revenue. Payment of the mitigation and the water
799 treatment plant upgrade fees must be accompanied by a form
800 prescribed by the Department of Revenue. The proceeds of the
801 mitigation fee, less administrative costs, must be transferred
802 by the Department of Revenue to the South Florida Water
803 Management District and deposited into the Lake Belt Mitigation
804 Trust Fund. Beginning January 1, 2012, and ending December 31,
805 2017, or upon issuance of water quality certification by the
806 department for mining activities within Phase II of the Miami-
807 Dade County Lake Belt Plan, whichever occurs later, the proceeds
808 of the water treatment plant upgrade fee, less administrative
809 costs, must be transferred by the Department of Revenue to the
810 South Florida Water Management District and deposited into the
811 Lake Belt Mitigation Trust Fund. Beginning January 1, 2018, the

CS/CS/HB 991

2011

812 proceeds of the water treatment plant upgrade fee, less
813 administrative costs, must be transferred by the Department of
814 Revenue to a trust fund established by Miami-Dade County, for
815 the sole purpose authorized by paragraph (6) (a). ~~As used in this~~
816 ~~section, the term "proceeds of the fee" means all funds~~
817 ~~collected and received by the Department of Revenue under this~~
818 ~~section, including interest and penalties on delinquent fees.~~
819 ~~The amount deducted for administrative costs may not exceed 3~~
820 ~~percent of the total revenues collected under this section and~~
821 ~~may equal only those administrative costs reasonably~~
822 ~~attributable to the fees.~~

823 (4) (a) The Department of Revenue shall administer,
824 collect, and enforce the mitigation and water treatment plant
825 upgrade fees authorized under this section in accordance with
826 the procedures used to administer, collect, and enforce the
827 general sales tax imposed under chapter 212. The provisions of
828 chapter 212 with respect to the authority of the Department of
829 Revenue to audit and make assessments, the keeping of books and
830 records, and the interest and penalties imposed on delinquent
831 fees apply to this section. The fees may not be included in
832 computing estimated taxes under s. 212.11, and the dealer's
833 credit for collecting taxes or fees provided for in s. 212.12
834 does not apply to the fees imposed by this section.

835 (6) (a) The proceeds of the mitigation fee must be used to
836 conduct mitigation activities that are appropriate to offset the
837 loss of the value and functions of wetlands as a result of
838 mining activities and must be used in a manner consistent with
839 the recommendations contained in the reports submitted to the

840 Legislature by the Miami-Dade County Lake Belt Plan
 841 Implementation Committee and adopted under s. 373.4149. Such
 842 mitigation may include the purchase, enhancement, restoration,
 843 and management of wetlands and uplands, the purchase of
 844 mitigation credit from a permitted mitigation bank, and any
 845 structural modifications to the existing drainage system to
 846 enhance the hydrology of the Miami-Dade County Lake Belt Area.
 847 Funds may also be used to reimburse other funding sources,
 848 including the Save Our Rivers Land Acquisition Program, the
 849 Internal Improvement Trust Fund, the South Florida Water
 850 Management District, and Miami-Dade County, for the purchase of
 851 lands that were acquired in areas appropriate for mitigation due
 852 to rock mining and to reimburse governmental agencies that
 853 exchanged land under s. 373.4149 for mitigation due to rock
 854 mining. The proceeds of the water treatment plant upgrade fee
 855 that are deposited into the Lake Belt Mitigation Trust Fund
 856 shall be used solely to pay for seepage mitigation projects,
 857 including groundwater or surface water management structures, as
 858 authorized in an environmental resource permit issued by the
 859 department for mining activities within the Miami-Dade County
 860 Lake Belt Area. The proceeds of the water treatment plant
 861 upgrade fee that are transferred to a trust fund established by
 862 Miami-Dade County shall be used to upgrade a water treatment
 863 plant that treats water coming from the Northwest Wellfield in
 864 Miami-Dade County. As used in this section, the terms "upgrade a
 865 water treatment plant" or "water treatment plant upgrade" means
 866 those works necessary to treat or filter a surface water source
 867 or supply or both.

CS/CS/HB 991

2011

868 Section 15. Present subsections (3), (4), and (5) of
869 section 373.441, Florida Statutes, are renumbered as subsections
870 (6), (7), and (8), respectively, and new subsections (3), (4),
871 and (5) are added to that section to read:

872 373.441 Role of counties, municipalities, and local
873 pollution control programs in permit processing; delegation.—

874 (3) A county having a population of 75,000 or more or a
875 municipality having a population of more than 50,000 that
876 implements a local pollution control program regulating wetlands
877 or surface waters throughout its geographic boundary must apply
878 for delegation of state environmental resource permitting
879 authority on or before June 1, 2012. A county, municipality, or
880 local pollution control program that fails to receive delegation
881 of authority by June 1, 2013, may not require permits that in
882 part or in full are substantially similar to the requirements
883 needed to obtain an environmental resource permit.

884 (4) Upon delegation to a qualified local government, the
885 department and water management district may not regulate the
886 activities subject to the delegation within that jurisdiction
887 unless regulation is required pursuant to the terms of the
888 delegation agreement.

889 (5) This section does not prohibit or limit a local
890 government from adopting a pollution control program regulating
891 wetlands or surface waters after June 1, 2012, if the local
892 government applies for and receives delegation of state
893 environmental resource permitting authority within 1 year after
894 adopting such a program.

895 Section 16. Section 376.30715, Florida Statutes, is

896 amended to read:

897 376.30715 Innocent victim petroleum storage system
 898 restoration.—A contaminated site acquired by the current owner
 899 prior to July 1, 1990, which has ceased operating as a petroleum
 900 storage or retail business prior to January 1, 1985, is eligible
 901 for financial assistance pursuant to s. 376.305(6),
 902 notwithstanding s. 376.305(6)(a). For purposes of this section,
 903 the term "acquired" means the acquisition of title to the
 904 property; however, a subsequent transfer of the property to a
 905 spouse or child of the owner, a surviving spouse or child of the
 906 owner in trust or free of trust, ~~or~~ a revocable trust created
 907 for the benefit of the settlor, or a corporate entity created by
 908 the owner to hold title to the site does not disqualify the site
 909 from financial assistance pursuant to s. 376.305(6) and
 910 applicants previously denied coverage may reapply. Eligible
 911 sites shall be ranked in accordance with s. 376.3071(5).

912 Section 17. Paragraph (u) is added to subsection (24) of
 913 section 380.06, Florida Statutes, to read:

914 380.06 Developments of regional impact.—

915 (24) STATUTORY EXEMPTIONS.—

916 (u) Any proposed solid mineral mine and any proposed
 917 addition to, expansion of, or change to an existing solid
 918 mineral mine is exempt from the provisions of this section.
 919 Proposed changes to any previously approved solid mineral mine
 920 development-of-regional-impact development orders having vested
 921 rights is not subject to further review or approval as a
 922 development of regional impact or notice of proposed change
 923 review or approval pursuant to subsection (19), except for those

924 applications pending as of July 1, 2011, which shall be governed
 925 by s. 380.115(2). Notwithstanding the foregoing, however,
 926 pursuant to s. 380.115(1), previously approved solid mineral
 927 mine development-of-regional-impact development orders shall
 928 continue to enjoy vested rights and continue to be effective
 929 unless rescinded by the developer.

930
 931 If a use is exempt from review as a development of regional
 932 impact under paragraphs (a)-(s), but will be part of a larger
 933 project that is subject to review as a development of regional
 934 impact, the impact of the exempt use must be included in the
 935 review of the larger project, unless such exempt use involves a
 936 development of regional impact that includes a landowner,
 937 tenant, or user that has entered into a funding agreement with
 938 the Office of Tourism, Trade, and Economic Development under the
 939 Innovation Incentive Program and the agreement contemplates a
 940 state award of at least \$50 million.

941 Section 18. Subsection (1) of section 380.0657, Florida
 942 Statutes, is amended to read:

943 380.0657 Expedited permitting process for economic
 944 development projects.—

945 (1) The Department of Environmental Protection and, as
 946 appropriate, the water management districts created under
 947 chapter 373 shall adopt programs to expedite the processing of
 948 wetland resource and environmental resource permits for economic
 949 development projects that have been identified by a municipality
 950 or county as meeting the definition of target industry
 951 businesses under s. 288.106, or any inland multimodal facility,

952 receiving or sending cargo to or from Florida ports, with the
 953 exception of those projects requiring approval by the Board of
 954 Trustees of the Internal Improvement Trust Fund.

955 Section 19. Subsection (11) of section 403.061, Florida
 956 Statutes, is amended to read:

957 403.061 Department; powers and duties.—The department
 958 shall have the power and the duty to control and prohibit
 959 pollution of air and water in accordance with the law and rules
 960 adopted and promulgated by it and, for this purpose, to:

961 (11) Establish ambient air quality and water quality
 962 standards for the state as a whole or for any part thereof, and
 963 also standards for the abatement of excessive and unnecessary
 964 noise. The department shall ~~is authorized to~~ establish
 965 reasonable zones of mixing for discharges into waters where
 966 assimilative capacity in the receiving water is available. Zones
 967 of discharge to groundwater are authorized to a facility or
 968 owner's property boundary and extending to the base of a
 969 specifically designated aquifer or aquifers. Discharges that
 970 occur within a zone of discharge or on land that is over a zone
 971 of discharge do not create liability under this chapter or
 972 chapter 376 for site cleanup and the exceedance of soil cleanup
 973 target levels is not a basis for enforcement or site cleanup.

974 (a) When a receiving body of water fails to meet a water
 975 quality standard for pollutants set forth in department rules, a
 976 steam electric generating plant discharge of pollutants that is
 977 existing or licensed under this chapter on July 1, 1984, may
 978 nevertheless be granted a mixing zone, provided that:

979 1. The standard would not be met in the water body in the

980 absence of the discharge;

981 2. The discharge is in compliance with all applicable
982 technology-based effluent limitations;

983 3. The discharge does not cause a measurable increase in
984 the degree of noncompliance with the standard at the boundary of
985 the mixing zone; and

986 4. The discharge otherwise complies with the mixing zone
987 provisions specified in department rules.

988 (b) No mixing zone for point source discharges shall be
989 permitted in Outstanding Florida Waters except for:

990 1. Sources that have received permits from the department
991 prior to April 1, 1982, or the date of designation, whichever is
992 later;

993 2. Blowdown from new power plants certified pursuant to
994 the Florida Electrical Power Plant Siting Act;

995 3. Discharges of water necessary for water management
996 purposes which have been approved by the governing board of a
997 water management district and, if required by law, by the
998 secretary; and

999 4. The discharge of demineralization concentrate which has
1000 been determined permittable under s. 403.0882 and which meets
1001 the specific provisions of s. 403.0882(4)(a) and (b), if the
1002 proposed discharge is clearly in the public interest.

1003 (c) The department, by rule, shall establish water quality
1004 criteria for wetlands which criteria give appropriate
1005 recognition to the water quality of such wetlands in their
1006 natural state.

1007

CS/CS/HB 991

2011

1008 Nothing in this act shall be construed to invalidate any
 1009 existing department rule relating to mixing zones. The
 1010 department shall cooperate with the Department of Highway Safety
 1011 and Motor Vehicles in the development of regulations required by
 1012 s. 316.272(1).

1013
 1014 The department shall implement such programs in conjunction with
 1015 its other powers and duties and shall place special emphasis on
 1016 reducing and eliminating contamination that presents a threat to
 1017 humans, animals or plants, or to the environment.

1018 Section 20. Subsection (7) of section 403.087, Florida
 1019 Statutes, is amended to read:

1020 403.087 Permits; general issuance; denial; revocation;
 1021 prohibition; penalty.—

1022 (7) A permit issued pursuant to this section shall not
 1023 become a vested right in the permittee. The department may
 1024 revoke any permit issued by it if it finds that the permit holder
 1025 has:

1026 (a) ~~Has~~ Submitted false or inaccurate information in the
 1027 ~~his or her~~ application for such permit;

1028 (b) ~~Has~~ Violated law, department orders, rules, ~~or~~
 1029 ~~regulations,~~ or ~~permit~~ conditions;

1030 (c) ~~Has~~ Failed to submit operational reports or other
 1031 information required by department rule which directly relate to
 1032 such permit and has refused to correct or cure such violations
 1033 when requested to do so ~~or regulation~~; or

1034 (d) ~~Has~~ Refused lawful inspection under s. 403.091 at the
 1035 facility authorized by such permit.

CS/CS/HB 991

2011

1036 Section 21. Section 403.0874, Florida Statutes, is created
 1037 to read:

1038 403.0874 Incentive-based permitting program.—

1039 (1) SHORT TITLE.—This section may be cited as the "Florida
 1040 Incentive-based Permitting Act."

1041 (2) FINDINGS AND INTENT.—The Legislature finds and
 1042 declares that the department should consider compliance history
 1043 when deciding whether to issue, renew, amend, or modify a permit
 1044 by evaluating an applicant's site-specific and program-specific
 1045 relevant aggregate compliance history. Persons having a history
 1046 of complying with applicable permits or state environmental laws
 1047 and rules are eligible for permitting benefits, including, but
 1048 not limited to, expedited permit application reviews, longer-
 1049 duration permit periods, decreased announced compliance
 1050 inspections, and other similar regulatory and compliance
 1051 incentives to encourage and reward such persons for their
 1052 environmental performance.

1053 (3) APPLICABILITY.—

1054 (a) This section applies to all persons and regulated
 1055 activities that are subject to the permitting requirements of
 1056 chapter 161, chapter 373, or this chapter, and all other
 1057 applicable state or federal laws that govern activities for the
 1058 purpose of protecting the environment or the public health from
 1059 pollution or contamination.

1060 (b) Notwithstanding paragraph (a), this section does not
 1061 apply to certain permit actions or environmental permitting laws
 1062 such as:

1063 1. Environmental permitting or authorization laws that

1064 regulate activities for the purpose of zoning, growth
 1065 management, or land use; or

1066 2. Any federal law or program delegated or assumed by the
 1067 state to the extent that implementation of this section, or any
 1068 part of this section, would jeopardize the ability of the state
 1069 to retain such delegation or assumption.

1070 (c) As used in this section, the term "regulated activity"
 1071 means any activity, including, but not limited to, the
 1072 construction or operation of a facility, installation, system,
 1073 or project, for which a permit, certification, or authorization
 1074 is required under chapter 161, chapter 373, or this chapter.

1075 (4) COMPLIANCE HISTORY.—The compliance history period
 1076 shall be the 10 years before the date any permit or renewal
 1077 application is received by the department. Any person is
 1078 entitled to the incentives under subsection (5) if:

1079 (a)1. The applicant has conducted the regulated activity
 1080 at the same site for which the permit or renewal is sought for
 1081 at least 8 of the 10 years before the date the permit
 1082 application is received by the department; or

1083 2. The applicant has conducted the same regulated activity
 1084 at a different site within the state for at least 8 of the 10
 1085 years before the date the permit or renewal application is
 1086 received by the department;

1087 (b) In the 10 years before the date the permit or renewal
 1088 application is received by the department or water management
 1089 district, the applicant has not been subject to a formal
 1090 administrative or civil judgment or criminal conviction whereby
 1091 an administrative law judge or civil or criminal court found the

1092 applicant violated the applicable law or rule or has been the
 1093 subject of an administrative settlement or consent order,
 1094 whether formal or informal, that established a violation of an
 1095 applicable law or rule; and

1096 (c) The applicant can demonstrate during a 10-year
 1097 compliance history period the implementation of activities or
 1098 practices that resulted in:

1099 1. Reductions in actual or permitted discharges or
 1100 emissions;

1101 2. Reductions in the impacts of regulated activities on
 1102 public lands or natural resources; and

1103 3. Implementation of voluntary environmental performance
 1104 programs, such as environmental management systems.

1105 (5) COMPLIANCE INCENTIVES.—An applicant shall request all
 1106 applicable incentives at the time of application submittal.
 1107 Unless otherwise prohibited by state or federal law, rule, or
 1108 regulation, and if the applicant meets all other applicable
 1109 criteria for the issuance of a permit or authorization, an
 1110 applicant is entitled to the following incentives:

1111 (a) Expedited reviews on permit actions, including, but
 1112 not limited to, initial permit issuance, renewal, modification,
 1113 and transfer, if applicable. Expedited review means, at a
 1114 minimum, that any request for additional information regarding a
 1115 permit application shall be issued no later than 15 days after
 1116 the application is filed, and final agency action shall be taken
 1117 no later than 45 days after the application is deemed complete;

1118 (b) Priority review of permit application;

1119 (c) Reduced number of routine compliance inspections;

1120 (d) No more than two requests for additional information
 1121 under s. 120.60; and

1122 (e) Longer permit period durations.

1123 (6) RULEMAKING.—The department shall implement rulemaking
 1124 within 6 months after the effective date of this act. Such
 1125 rulemaking may identify additional incentives and programs not
 1126 expressly enumerated under this section, so long as each
 1127 incentive is consistent with the Legislature's purpose and
 1128 intent of this section. Any rule adopted by the department to
 1129 administer this section shall be deemed an invalid exercise of
 1130 delegated legislative authority if the department cannot
 1131 demonstrate how such rules will produce the compliance
 1132 incentives set forth in subsection (5). The department's rules
 1133 adopted under this section are binding on the water management
 1134 districts and any local government that has been delegated or
 1135 assumed a regulatory program to which this section applies.

1136 Section 22. Subsection (32) of section 403.703, Florida
 1137 Statutes, is amended to read:

1138 403.703 Definitions.—As used in this part, the term:

1139 (32) "Solid waste" means sludge unregulated under the
 1140 federal Clean Water Act or Clean Air Act, sludge from a waste
 1141 treatment works, water supply treatment plant, or air pollution
 1142 control facility, or garbage, rubbish, refuse, special waste, or
 1143 other discarded material, including solid, liquid, semisolid, or
 1144 contained gaseous material resulting from domestic, industrial,
 1145 commercial, mining, agricultural, or governmental operations.
 1146 Recovered materials as defined in subsection (24) are not solid
 1147 waste. The term does not include sludge from a waste treatment

1148 works if the sludge is not discarded.

1149 Section 23. Subsections (2) and (3) of section 403.707,
1150 Florida Statutes, are amended to read:

1151 403.707 Permits.—

1152 (2) Except as provided in s. 403.722(6), a permit under
1153 this section is not required for the following, ~~if the activity~~
1154 ~~does not create a public nuisance or any condition adversely~~
1155 ~~affecting the environment or public health and does not violate~~
1156 ~~other state or local laws, ordinances, rules, regulations, or~~
1157 ~~orders:~~

1158 (a) Disposal by persons of solid waste resulting from
1159 their own activities on their own property, if such waste is
1160 ordinary household waste from their residential property or is
1161 rocks, soils, trees, tree remains, and other vegetative matter
1162 that normally result from land development operations. Disposal
1163 of materials that could create a public nuisance or adversely
1164 affect the environment or public health, such as white goods;
1165 automotive materials, such as batteries and tires; petroleum
1166 products; pesticides; solvents; or hazardous substances, is not
1167 covered under this exemption.

1168 (b) Storage in containers by persons of solid waste
1169 resulting from their own activities on their property, leased or
1170 rented property, or property subject to a homeowners or
1171 maintenance association for which the person contributes
1172 association assessments, if the solid waste in such containers
1173 is collected at least once a week.

1174 (c) Disposal by persons of solid waste resulting from
1175 their own activities on their property, if:

1176 1. The environmental effects of such disposal on
 1177 groundwater and surface waters are:

1178 ~~a.1.~~ Addressed or authorized by a site certification order
 1179 issued under part II or a permit issued by the department under
 1180 this chapter or rules adopted pursuant to this chapter; or

1181 b.2. Addressed or authorized by, or exempted from the
 1182 requirement to obtain, a groundwater monitoring plan approved by
 1183 the department. As used in this sub-subparagraph, "addressed by
 1184 a groundwater monitoring plan" means the plan is sufficient to
 1185 monitor groundwater or surface water for contaminants of
 1186 concerns associated with the solid waste being disposed. A
 1187 groundwater monitoring plan can be demonstrated to be sufficient
 1188 irrespective of whether the groundwater monitoring plan or
 1189 disposal is referenced in a department permit or other
 1190 authorization.

1191 2. The disposal of solid waste takes place within an area
 1192 which is over a zone of discharge.

1193
 1194 The disposal of solid waste pursuant to this paragraph does not
 1195 create liability under this chapter or chapter 376 for site
 1196 cleanup and the exceedance of soil cleanup target levels is not
 1197 a basis for enforcement or site cleanup.

1198 (d) Disposal by persons of solid waste resulting from
 1199 their own activities on their own property, if such disposal
 1200 occurred prior to October 1, 1988.

1201 (e) Disposal of solid waste resulting from normal farming
 1202 operations as defined by department rule. Polyethylene
 1203 agricultural plastic, damaged, nonsalvageable, untreated wood

CS/CS/HB 991

2011

1204 pallets, and packing material that cannot be feasibly recycled,
1205 which are used in connection with agricultural operations
1206 related to the growing, harvesting, or maintenance of crops, may
1207 be disposed of by open burning if a public nuisance or any
1208 condition adversely affecting the environment or the public
1209 health is not created by the open burning and state or federal
1210 ambient air quality standards are not violated.

1211 (f) The use of clean debris as fill material in any area.
1212 However, this paragraph does not exempt any person from
1213 obtaining any other required permits, and does not affect a
1214 person's responsibility to dispose of clean debris appropriately
1215 if it is not to be used as fill material.

1216 (g) Compost operations that produce less than 50 cubic
1217 yards of compost per year when the compost produced is used on
1218 the property where the compost operation is located.

1219 (3) All applicable provisions of ss. 403.087 and 403.088,
1220 relating to permits, apply to the control of solid waste
1221 management facilities. Additionally, any permit issued to a
1222 solid waste management facility that is designed with a leachate
1223 control system that meets department requirements shall be
1224 issued for a term of 20 years unless the applicant requests a
1225 lesser permit term. Permit fees for qualifying solid waste
1226 management facilities shall be prorated to the permit term
1227 authorized by this section. This provision applies to all
1228 qualifying solid waste management facilities that apply for an
1229 operating or construction permit or renew an existing operating
1230 or construction permit on or after July 1, 2012.

1231 Section 24. Subsection (12) is added to section 403.814,

1232 Florida Statutes, to read:
 1233 403.814 General permits; delegation.—
 1234 (12) A general permit shall be granted for the
 1235 construction, alteration, and maintenance of a surface water
 1236 management system serving a total project area of up to 10
 1237 acres. The construction of such a system may proceed without any
 1238 agency action by the department or water management district if:
 1239 (a) The total project area is less than 10 acres;
 1240 (b) The total project area involves less than 2 acres of
 1241 impervious surface;
 1242 (c) No activities will impact wetlands or other surface
 1243 waters;
 1244 (d) No activities are conducted in, on, or over wetlands
 1245 or other surface waters;
 1246 (e) Drainage facilities will not include pipes having
 1247 diameters greater than 24 inches, or the hydraulic equivalent,
 1248 and will not use pumps in any manner;
 1249 (f) The project is not part of a larger common plan of
 1250 development or sale;
 1251 (g) The project does not:
 1252 1. Cause adverse water quantity or flooding impacts to
 1253 receiving water and adjacent lands;
 1254 2. Cause adverse impacts to existing surface water storage
 1255 and conveyance capabilities;
 1256 3. Cause a violation of state water quality standards; and
 1257 4. Cause an adverse impact to the maintenance of surface
 1258 or ground water levels or surface water flows established
 1259 pursuant to s. 373.042 or a work of the district established

1260 pursuant to s. 373.086; and

1261 (h) The surface water management system design plans must
 1262 be signed and sealed by a registered professional and must be
 1263 capable, based on generally accepted engineering and scientific
 1264 principles, of being performed and functioning as proposed.

1265 Section 25. Paragraph (a) of subsection (3) and
 1266 subsections (4), (5), (10), (11), (14), (15), and (18) of
 1267 section 403.973, Florida Statutes, are amended to read:

1268 403.973 Expedited permitting; amendments to comprehensive
 1269 plans.—

1270 (3) (a) The secretary shall direct the creation of regional
 1271 permit action teams for the purpose of expediting review of
 1272 permit applications and local comprehensive plan amendments
 1273 submitted by:

1274 1. Businesses creating at least 50 jobs or a commercial or
 1275 industrial development project that will be occupied by
 1276 businesses that would individually or collectively create at
 1277 least 50 jobs; or

1278 2. Businesses creating at least 25 jobs if the project is
 1279 located in an enterprise zone, or in a county having a
 1280 population of fewer than 75,000 or in a county having a
 1281 population of fewer than 125,000 which is contiguous to a county
 1282 having a population of fewer than 75,000, as determined by the
 1283 most recent decennial census, residing in incorporated and
 1284 unincorporated areas of the county.

1285 (4) The regional teams shall be established through the
 1286 execution of a project-specific memoranda of agreement developed
 1287 and executed by the applicant and the secretary, with input

1288 | solicited from ~~the office and~~ the respective heads of the
 1289 | Department of Community Affairs, the Department of
 1290 | Transportation and its district offices, the Department of
 1291 | Agriculture and Consumer Services, the Fish and Wildlife
 1292 | Conservation Commission, appropriate regional planning councils,
 1293 | appropriate water management districts, and voluntarily
 1294 | participating municipalities and counties. The memoranda of
 1295 | agreement should also accommodate participation in this
 1296 | expedited process by other local governments and federal
 1297 | agencies as circumstances warrant.

1298 | (5) In order to facilitate local government's option to
 1299 | participate in this expedited review process, the secretary
 1300 | shall, in cooperation with local governments and participating
 1301 | state agencies, create a standard form memorandum of agreement.
 1302 | The standard form of the memorandum of agreement shall be used
 1303 | only if the local government participates in the expedited
 1304 | review process. In the absence of local government
 1305 | participation, only the project-specific memorandum of agreement
 1306 | executed pursuant to subsection (4) applies. A local government
 1307 | shall hold a duly noticed public workshop to review and explain
 1308 | to the public the expedited permitting process and the terms and
 1309 | conditions of the standard form memorandum of agreement.

1310 | (10) The memoranda of agreement may provide for the waiver
 1311 | or modification of procedural rules prescribing forms, fees,
 1312 | procedures, or time limits for the review or processing of
 1313 | permit applications under the jurisdiction of those agencies
 1314 | that are members of the regional permit action team ~~party to the~~
 1315 | ~~memoranda of agreement.~~ Notwithstanding any other provision of

1316 law to the contrary, a memorandum of agreement must to the
 1317 extent feasible provide for proceedings and hearings otherwise
 1318 held separately ~~by the parties to the memorandum of agreement~~ to
 1319 be combined into one proceeding or held jointly and at one
 1320 location. Such waivers or modifications shall not be available
 1321 for permit applications governed by federally delegated or
 1322 approved permitting programs, the requirements of which would
 1323 prohibit, or be inconsistent with, such a waiver or
 1324 modification.

1325 (11) The ~~standard form for~~ memoranda of agreement shall
 1326 include guidelines to be used in working with state, regional,
 1327 and local permitting authorities. Guidelines may include, but
 1328 are not limited to, the following:

1329 (a) A central contact point for filing permit applications
 1330 and local comprehensive plan amendments and for obtaining
 1331 information on permit and local comprehensive plan amendment
 1332 requirements;

1333 (b) Identification of the individual or individuals within
 1334 each respective agency who will be responsible for processing
 1335 the expedited permit application or local comprehensive plan
 1336 amendment for that agency;

1337 (c) A mandatory preapplication review process to reduce
 1338 permitting conflicts by providing guidance to applicants
 1339 regarding the permits needed from each agency and governmental
 1340 entity, site planning and development, site suitability and
 1341 limitations, facility design, and steps the applicant can take
 1342 to ensure expeditious permit application and local comprehensive
 1343 plan amendment review. As a part of this process, the first

1344 interagency meeting to discuss a project shall be held within 14
 1345 days after the secretary's determination that the project is
 1346 eligible for expedited review. Subsequent interagency meetings
 1347 may be scheduled to accommodate the needs of participating local
 1348 governments that are unable to meet public notice requirements
 1349 for executing a memorandum of agreement within this timeframe.
 1350 This accommodation may not exceed 45 days from the secretary's
 1351 determination that the project is eligible for expedited review;

1352 (d) The preparation of a single coordinated project
 1353 description form and checklist and an agreement by state and
 1354 regional agencies to reduce the burden on an applicant to
 1355 provide duplicate information to multiple agencies;

1356 (e) Establishment of a process for the adoption and review
 1357 of any comprehensive plan amendment needed by any certified
 1358 project within 90 days after the submission of an application
 1359 for a comprehensive plan amendment. However, the memorandum of
 1360 agreement may not prevent affected persons as defined in s.
 1361 163.3184 from appealing or participating in this expedited plan
 1362 amendment process and any review or appeals of decisions made
 1363 under this paragraph; and

1364 (f) Additional incentives for an applicant who proposes a
 1365 project that provides a net ecosystem benefit.

1366 (14) (a) Challenges to state agency action in the expedited
 1367 permitting process for projects processed under this section are
 1368 subject to the summary hearing provisions of s. 120.574, except
 1369 that the administrative law judge's decision, as provided in s.
 1370 120.574(2) (f), shall be in the form of a recommended order and
 1371 shall not constitute the final action of the state agency. In

1372 those proceedings where the action of only one agency of the
 1373 state other than the Department of Environmental Protection is
 1374 challenged, the agency of the state shall issue the final order
 1375 within 45 working days after receipt of the administrative law
 1376 judge's recommended order, and the recommended order shall
 1377 inform the parties of their right to file exceptions or
 1378 responses to the recommended order in accordance with the
 1379 uniform rules of procedure pursuant to s. 120.54. In those
 1380 proceedings where the actions of more than one agency of the
 1381 state are challenged, the Governor shall issue the final order
 1382 within 45 working days after receipt of the administrative law
 1383 judge's recommended order, and the recommended order shall
 1384 inform the parties of their right to file exceptions or
 1385 responses to the recommended order in accordance with the
 1386 uniform rules of procedure pursuant to s. 120.54. For ~~This~~
 1387 ~~paragraph does not apply to~~ the issuance of department licenses
 1388 required under any federally delegated or approved permit
 1389 program. ~~In such instances,~~ the department, and not the
 1390 Governor, shall enter the final order. The participating
 1391 agencies of the state may opt at the preliminary hearing
 1392 conference to allow the administrative law judge's decision to
 1393 constitute the final agency action. If a participating local
 1394 government agrees to participate in the summary hearing
 1395 provisions of s. 120.574 for purposes of review of local
 1396 government comprehensive plan amendments, s. 163.3184(9) and
 1397 (10) apply.

1398 (b) Projects identified in paragraph (3)(f) or challenges
 1399 to state agency action in the expedited permitting process for

1400 establishment of a state-of-the-art biomedical research
 1401 institution and campus in this state by the grantee under s.
 1402 288.955 are subject to the same requirements as challenges
 1403 brought under paragraph (a), except that, notwithstanding s.
 1404 120.574, summary proceedings must be conducted within 30 days
 1405 after a party files the motion for summary hearing, regardless
 1406 of whether the parties agree to the summary proceeding.

1407 (15) The office, working with the agencies providing
 1408 cooperative assistance and input regarding the memoranda of
 1409 agreement, shall review sites proposed for the location of
 1410 facilities that the office has certified to be eligible for the
 1411 Innovation Incentive Program under s. 288.1089. Within 20 days
 1412 after the request for the review by the office, the agencies
 1413 shall provide to the office a statement as to each site's
 1414 necessary permits under local, state, and federal law and an
 1415 identification of significant permitting issues, which if
 1416 unresolved, may result in the denial of an agency permit or
 1417 approval or any significant delay caused by the permitting
 1418 process.

1419 (18) The office, working with the Rural Economic
 1420 Development Initiative ~~and the agencies participating in the~~
 1421 ~~memoranda of agreement~~, shall provide technical assistance in
 1422 preparing permit applications and local comprehensive plan
 1423 amendments for counties having a population of fewer than 75,000
 1424 residents, or counties having fewer than 125,000 residents which
 1425 are contiguous to counties having fewer than 75,000 residents.
 1426 Additional assistance may include, but not be limited to,
 1427 guidance in land development regulations and permitting

CS/CS/HB 991

2011

1428 processes, working cooperatively with state, regional, and local
 1429 entities to identify areas within these counties which may be
 1430 suitable or adaptable for preclearance review of specified types
 1431 of land uses and other activities requiring permits.

1432 Section 26. Subsection (5) is added to section 526.203,
 1433 Florida Statutes, to read:

1434 526.203 Renewable fuel standard.—

1435 (5) This section does not prohibit the sale of unblended
 1436 fuels for the uses exempted under subsection (3).

1437 Section 27. Section 604.50, Florida Statutes, is amended
 1438 to read:

1439 604.50 Nonresidential farm buildings.—

1440 (1) Notwithstanding any other law to the contrary, any
 1441 nonresidential farm building or farm fence is exempt from the
 1442 Florida Building Code and any county or municipal building code
 1443 or fee, except for code provisions implementing local, state, or
 1444 federal floodplain management regulations.

1445 (2) As used in ~~For purposes of~~ this section, the term:

1446 (a) "Nonresidential farm building" means any temporary or
 1447 permanent building or support structure that is classified as a
 1448 nonresidential farm building on a farm under s. 553.73(9)(c) or
 1449 that is used primarily for agricultural purposes, is located on
 1450 a farm that is not used as a residential dwelling, and is
 1451 located on land that is an integral part of a farm operation or
 1452 is classified as agricultural land under s. 193.461, and is not
 1453 intended to be used as a residential dwelling. The term may
 1454 include, but is not limited to, a barn, greenhouse, shade house,
 1455 farm office, storage building, or poultry house.

1456 (b) The term "Farm" has the same meaning ~~is~~ as provided
 1457 defined in s. 823.14.

1458 Section 28. The installation of fuel tank upgrades to
 1459 secondary containment systems shall be completed by the
 1460 deadlines specified in Rule 62-761.510, Florida Administrative
 1461 Code, Table UST. However, notwithstanding any agreements to the
 1462 contrary, any fuel service station that changed ownership
 1463 interest through a bona fide sale of the property between
 1464 January 1, 2009, and December 31, 2009, is not required to
 1465 complete the upgrades described in Rule 62-761.510, Florida
 1466 Administrative Code, Table UST, until December 31, 2012.

1467 Section 29. The uniform mitigation assessment rules
 1468 adopted by the Department of Environmental Protection in chapter
 1469 62-345, Florida Administrative Code, as of January 1, 2011, to
 1470 fulfill the mandate of s. 373.414(18), Florida Statutes, are
 1471 changed as follows:

1472 (1) Rule 62-345.100(11), Florida Administrative Code, is
 1473 added to read: "(11) The Department of Environmental Protection
 1474 shall be responsible for ensuring statewide coordination and
 1475 consistency in the application of this rule by providing
 1476 training and guidance to other relevant state agencies, water
 1477 management districts, and local governments. Not less than every
 1478 two years, the Department of Environmental Protection shall
 1479 coordinate with the water management districts to verify
 1480 consistent application of the methodology. To ensure that this
 1481 rule is interpreted and applied uniformly, any interpretation or
 1482 application of this rule by any agency or local government that
 1483 differs from the Department of Environmental Protection's

1484 interpretation or application of this rule is incorrect and
 1485 invalid. The Department of Environmental Protection's
 1486 interpretation, application, and implementation of this rule
 1487 shall be the only acceptable method."

1488 (2) Rule 62-345.200(12), Florida Administrative Code, is
 1489 changed to read: "(12) "Without preservation assessment" means
 1490 a reasonably anticipated use of the assessment area, and the
 1491 temporary or permanent effects of those uses on the assessment
 1492 area, considering the protection provided by existing easements,
 1493 regulations, and land use restrictions. Reasonably anticipated
 1494 uses include those activities that have been previously
 1495 implemented within the assessment area or adjacent to the
 1496 assessment area, or are considered to be common uses in the
 1497 region without the need for additional authorizations or zoning,
 1498 land use code, or comprehensive plan changes."

1499 (3) Rule 62-345.300(1), Florida Administrative Code, is
 1500 changed to read: "(1) When an applicant proposes mitigation for
 1501 impacts to wetlands and surface waters as part of an
 1502 environmental resource permit or wetland resource permit
 1503 application, the applicant will be responsible for preparing and
 1504 submitting the necessary supporting information for the
 1505 application of Rules 62-345.400-62-345.600, F.A.C., of this
 1506 chapter and the reviewing agency will be responsible for
 1507 verifying this information , contacting the applicant to address
 1508 any insufficiencies or need for clarification, and approving the
 1509 amount of mitigation necessary to offset the proposed impacts.
 1510 When an applicant submits a mitigation bank or regional
 1511 mitigation permit application, the applicant will be responsible

1512 for preparing and submitting the necessary supporting
1513 information for the application of Rules 62-345.400-.600,
1514 F.A.C., of this chapter and the reviewing agency will be
1515 responsible for verifying this information, contacting the
1516 applicant to address any insufficiencies or need for
1517 clarification, and approving the potential amount of mitigation
1518 to be provided by the bank or regional mitigation area. If an
1519 applicant submits either Part I or Part II or both, the
1520 reviewing agency shall notify the applicant of any inadequacy in
1521 the submittal or disagreement with the information provided.

1522 (4) Rule 62-345.300(3)(a), Florida Administrative Code, is
1523 changed to read: "(a) Conduct qualitative characterization of
1524 both the impact and mitigation assessment areas (Part I) that
1525 identifies the assessment area's native community type and the
1526 functions to fish and wildlife and their habitat, describes the
1527 current condition and functions provided by the assessment area,
1528 and summarizes the project condition of the assessment area. The
1529 purpose of Part I is to provide a framework for comparison of
1530 the assessment area to the optimal condition and
1531 location/landscape setting of that native community type.
1532 Another purpose of this part is to note any relevant factors of
1533 the assessment area that are discovered by site inspectors,
1534 including use by listed species."

1535 (5) Rule 62-345.300(3)(c), Florida Administrative Code, is
1536 changed to read: "(c) Adjust the gain in ecological value from
1537 either upland or wetland preservation in accordance with
1538 subsection 62-345.500(3), F.A.C. when preservation is the only
1539 mitigation activity proposed (absent creation, restoration, or

1540 enhancement activities) at a specified assessment area."
1541 (6) The introductory paragraph of rule 62-345.400, Florida
1542 Administrative Code, is changed to read: "An impact or
1543 mitigation assessment area must be described with sufficient
1544 detail to provide a frame of reference for the type of community
1545 being evaluated and to identify the functions that will be
1546 evaluated. When an assessment area is an upland proposed as
1547 mitigation, functions must be related to the benefits provided
1548 by that upland to fish and wildlife of associated wetlands or
1549 other surface waters. Information for each assessment area must
1550 be sufficient to identify the functions beneficial to fish and
1551 wildlife and their habitat that are characteristic of the
1552 assessment area's native community type, based on currently
1553 available information, such as current and historic aerial
1554 photographs, topographic maps, geographic information system
1555 data and maps, site visits, scientific articles, journals, other
1556 professional reports, field verification when needed, and
1557 reasonable scientific judgment. For wetlands and other surface
1558 waters, other than those created for mitigation, that have been
1559 created on sites where such did not exist before the creation,
1560 such as borrow pits, ditches, and canals, refer to the native
1561 community type or surface water body to which it is most
1562 analogous in function for the given landscape position. For
1563 altered natural communities or surface waterbodies, refer to the
1564 native community type or surface water body present in the
1565 earliest available aerial photography except that if the
1566 alteration has been of such a degree and extent that a clearly
1567 defined different native community type is now present and self-

CS/CS/HB 991

2011

1568 sustaining, in which case the native community type shall be
1569 identified as the one the present community most closely
1570 resembles. In determining the historic native community type,
1571 all currently available information shall be used to ensure the
1572 highest degree of accuracy. The information provided by the
1573 applicant for each assessment area must address the following,
1574 as applicable:"

1575 (7) Rule 62-345.500(1)(a), Florida Administrative Code, is
1576 changed to read: "(a) Current condition or, in the case of
1577 preservation only mitigation, without preservation - The current
1578 condition of an assessment area is scored using the information
1579 in this part to determine the degree to which the assessment
1580 area currently provides the relative value of functions
1581 identified in Part I for the native community type. In the case
1582 of preservation-only mitigation, the "without preservation"
1583 assessment utilizes the information in this part to determine
1584 the degree to which the assessment area could provide the
1585 relative value of functions identified in Part I for the native
1586 community type assuming the area is not preserved. For
1587 assessment areas where previous impacts that affect the current
1588 condition are temporary in nature, consideration will be given
1589 to the inherent functions of these areas relative to seasonal
1590 hydrologic changes, and expected vegetation regeneration and
1591 projected habitat functions if the use of the area were to
1592 remain unchanged. When evaluating impacts to a previously
1593 permitted mitigation site that has not achieved its intended
1594 function, the reviewing agency shall consider the functions the
1595 mitigation site was intended to offset and any delay or

1596 reduction in offsetting those functions that may be caused by
1597 the project. Previous construction or alteration undertaken in
1598 violation of Part IV, Chapter 373, F.S., or Sections 403.91-
1599 .929, F.S. (1984 Supp.), as amended, or rule, order or permit
1600 adopted or issued thereunder, will not be considered as having
1601 diminished the condition and relative value of a wetland or
1602 surface water, when assigning a score under this part. When
1603 evaluating wetlands or other surface waters that are within an
1604 area that is subject to a recovery strategy pursuant to Chapter
1605 40D-80, F.A.C., impacts from water withdrawals will not be
1606 considered when assigning a score under this part."

1607 (8) Rule 62-345.500(1)(b), Florida Administrative Code, is
1608 changed to read: "(b) "With mitigation" or "with impact" - The
1609 "with mitigation" and "with impact" assessments are based on the
1610 reasonably expected outcome, which may represent an increase,
1611 decrease, or no change in value relative to current conditions.
1612 For the "with impact" and "with mitigation" assessments, the
1613 evaluator will assume that all other necessary regulatory
1614 authorizations required for the proposed project have been
1615 obtained and that construction will be consistent with such
1616 authorizations. The "with mitigation" assessment will be scored
1617 only when reasonable assurance has been provided that the
1618 proposed plan can be conducted. When scoring the "with
1619 mitigation" assessment for assessment areas involving
1620 enhancement, restoration, or creation activities and that are
1621 proposed to be placed under a conservation easement or other
1622 similar land protection mechanism, the with mitigation score
1623 shall reflect the combined preservation and

1624 enhancement/restoration/creation value of the specified
1625 assessment area, and the Preservation Adjustment Factor shall
1626 not apply to these mitigation assessments."

1627 (9) Rule 62-345.500(2), Florida Administrative Code, is
1628 changed to read: "(2) Uplands function as the contributing
1629 watershed to wetlands and are necessary to maintain the
1630 ecological value of associated wetlands or other surface waters.
1631 Upland mitigation assessment areas shall be scored using the
1632 landscape support/location and community structure indicators
1633 listed in subsection 62-345.500(6), F.A.C. Scoring of these
1634 indicators for the upland assessment areas shall be based on the
1635 degree to which the relative value of functions of the upland
1636 assessment area provide benefits to the fish and wildlife of the
1637 associated wetlands or other surface waters, considering the
1638 native community type, current condition, and anticipated
1639 ecological value of the uplands and associated wetlands and
1640 other surface waters.

1641 (a) For upland preservation, the without preservation
1642 assessment utilizes the information in this part to determine
1643 the degree to which the assessment area could provide the
1644 relative value of functions identified in Part I for the native
1645 community type (to include benefits to fish and wildlife of the
1646 associated wetlands or other surface waters) assuming the upland
1647 area is not preserved. The gain in ecological value is
1648 determined by the mathematical difference between the score of
1649 the upland assessment area with the proposed preservation
1650 measure and the upland assessment area without the proposed
1651 preservation measure. When the community structure is scored as

CS/CS/HB 991

2011

1652 "zero", then the location and landscape support shall also be
1653 "zero". However, a gain in ecological value for the location and
1654 landscape support score can also occur when the community
1655 structure is scored other than "zero". The resulting delta is
1656 then multiplied by the preservation adjustment factor contained
1657 in subsection 62-345.500(3), F.A.C.

1658 (b) For upland enhancement or restoration, the current
1659 condition of an assessment area is scored using the information
1660 in this part to determine the degree to which the assessment
1661 area currently provides the relative value of functions
1662 identified in Part I for the native community type (to include
1663 benefits to fish and wildlife of the associated wetlands or
1664 other surface waters). The value provided shall be determined by
1665 the mathematical difference between the score of the upland
1666 assessment area with the proposed restoration or enhancement
1667 measure and the current condition of the upland assessment area.

1668 (c) For uplands proposed to be converted to wetlands or
1669 other surface waters through creation or restoration measures,
1670 the upland areas shall be scored as "zero" in their current
1671 condition. Only the "with mitigation" assessment shall be scored
1672 in accordance with the indicators listed in subsection 62-
1673 345.500(6), F.A.C."

1674 (10) Rule 62-345.500(3), Florida Administrative Code, is
1675 changed to read: "(3)(a) When an assessment area's mitigation
1676 plan consists of preservation only (absent creation,
1677 restoration, or enhancement activities), the "with mitigation"
1678 assessment shall consider the potential of the assessment area
1679 to perform current functions in the long term, considering the

1680 protection mechanism proposed, and the "without preservation"
1681 assessment shall evaluate the assessment area's functions
1682 considering the reasonably anticipated use of the assessment
1683 area and the temporary or permanent effects of those uses in the
1684 assessment area considering the protection provided by existing
1685 easements, regulations, and land use restrictions. The gain in
1686 ecological value is determined by the mathematical difference
1687 between the Part II scores for the "with mitigation" and
1688 "without preservation" (the delta) multiplied by a preservation
1689 adjustment factor. The preservation adjustment factor shall be
1690 scored on a scale from 0.2 (minimum preservation value) to 1
1691 (optimal preservation value), on one-tenth increments. The score
1692 shall be calculated by evaluating the scoring method set forth
1693 in the "Preservation Adjustment Factor Worksheet" for each of
1694 the following considerations:

1695 1. The extent to which proposed management activities
1696 within the preserve area promote natural ecological conditions
1697 such as fire patterns or the exclusion of invasive exotic
1698 species.

1699 2. The ecological and hydrological relationship between
1700 wetlands, other surface waters, and uplands to be preserved.

1701 3. The scarcity of the habitat provided by the proposed
1702 preservation area and the degree to which listed species use the
1703 area.

1704 4. The proximity of the area to be preserved to areas of
1705 national, state, or regional ecological significance, such as
1706 national or state parks, Outstanding Florida Waters, and other
1707 regionally significant ecological resources or habitats, such as

CS/CS/HB 991

2011

1708 lands acquired or to be acquired through governmental or non-
1709 profit land acquisition programs for environmental conservation,
1710 and whether the areas to be preserved include corridors between
1711 these habitats.

1712 5. The extent and likelihood of potential adverse impacts
1713 if the assessment area were not preserved.

1714 (b) Each of these considerations shall be scored on a
1715 relative scale of zero (0) to two-tenths (0.2) based on the
1716 value provided [optimal (0.2), low to moderate (0.1), and no
1717 value (0)] and summed together to calculate the preservation
1718 adjustment factor. The minimum value to be assigned to a
1719 specified assessment area will be 0.2. The preservation
1720 adjustment factor is multiplied by the mitigation delta assigned
1721 to the preservation proposal to yield an adjusted mitigation
1722 delta for preservation."

1723 (11) Rule 62-345.500(6)(a), Florida Administrative Code,
1724 is changed to read: "(6) Three categories of indicators of
1725 wetland function (landscape support, water environment and
1726 community structure) listed below are to be scored to the extent
1727 that they affect the ecological value of the assessment area.
1728 Upland mitigation assessment areas shall be scored for landscape
1729 support/location and community structure only.

1730 (a) Landscape Support/Location - The value of functions
1731 provided by an assessment area to fish and wildlife are
1732 influenced by the landscape attributes of the assessment area
1733 and its relationship with surrounding areas. While the
1734 geographic location of the assessment area does not change, the
1735 ecological relationship between the assessment area and

CS/CS/HB 991

2011

1736 surrounding landscape may vary from the current condition to the
1737 "with impact" and "with mitigation" conditions. Additionally, a
1738 mitigation assessment area may be located within a regional
1739 corridor or in proximity to areas of national, state, or
1740 regional significance, and the "with mitigation" condition may
1741 serve to complement the regional ecological value identified for
1742 these areas. Many species that nest, feed, or find cover in a
1743 specific habitat or habitat type are also dependent in varying
1744 degrees upon other habitats, including upland, wetland, and
1745 other surface waters, that are present in the regional
1746 landscape. For example, many amphibian species require small
1747 isolated wetlands for breeding pools and for juvenile life
1748 stages, but may spend the remainder of their adult lives in
1749 uplands or other wetland habitats. If these habitats are
1750 unavailable or poorly connected in the landscape or are
1751 degraded, then the value of functions provided by the assessment
1752 area to the fish and wildlife identified in Part I is reduced.
1753 The assessment area shall also be considered to the extent that
1754 fish and wildlife utilizing the area have the opportunity to
1755 access other habitats necessary to fulfill their life history
1756 requirements. The availability, connectivity, and quality of
1757 offsite habitats, and offsite land uses which might adversely
1758 impact fish and wildlife utilizing these habitats, are factors
1759 to be considered in assessing the landscape support of the
1760 assessment area. The location of the assessment area shall be
1761 considered relative to offsite and upstream hydrologic
1762 contributing areas and to downstream and other connected waters
1763 to the extent that the diversity and abundance of fish and

1764 wildlife and their habitats is affected in these areas. The
1765 opportunity for the assessment area to provide offsite water
1766 quantity and quality benefits to fish and wildlife and their
1767 habitats downstream and in connected waters is assessed based on
1768 the degree of hydrologic connectivity between these habitats and
1769 the extent to which offsite habitats are affected by discharges
1770 from the assessment area. It is recognized that isolated
1771 wetlands lack surface water connections to downstream waters and
1772 as a result, do not perform certain functions (e.g., detrital
1773 transport) to benefit downstream fish and wildlife; for such
1774 wetlands, this consideration does not apply.

1775 1. A score of (10) means the assessment area, in
1776 combination with the surrounding landscape, provides full
1777 opportunity for the assessment area to perform beneficial
1778 functions at an optimal level. The score is based on reasonable
1779 scientific judgment and characterized by a predominance of the
1780 following, as applicable:

1781 a. Habitats outside the assessment area represent the full
1782 range of habitats needed to fulfill the life history
1783 requirements of all wildlife listed in Part I and are available
1784 in sufficient quantity to provide optimal support for these
1785 wildlife.

1786 b. Invasive exotic or other invasive plant species are not
1787 present in the proximity of the assessment area.

1788 c. Wildlife access to and from habitats outside the
1789 assessment area is not limited by distance to these habitats and
1790 is unobstructed by landscape barriers.

1791 d. Functions of the assessment area that benefit

1792 downstream fish and wildlife are not limited by distance or
1793 barriers that reduce the opportunity for the assessment area to
1794 provide these benefits.

1795 e. Land uses outside the assessment area have no adverse
1796 impacts on wildlife in the assessment area as listed in Part I.

1797 f. The opportunity for the assessment area to provide
1798 benefits to downstream or other hydrologically connected areas
1799 is not limited by hydrologic impediments or flow restrictions.

1800 g. Downstream or other hydrologically connected habitats
1801 are critically or solely dependent on discharges from the
1802 assessment area and could suffer severe adverse impacts if the
1803 quality or quantity of these discharges were altered.

1804 h. For upland mitigation assessment areas, the uplands
1805 provide a full suite of ecological values so as to provide
1806 optimal protection and support of wetland functions.

1807 2. A score of (7) means that, compared to the optimal
1808 condition of the native community type, the opportunity for the
1809 assessment area to perform beneficial functions in combination
1810 with the surrounding landscape is limited to 70% of the optimal
1811 ecological value. The score is based on reasonable scientific
1812 judgment and characterized by a predominance of the following,
1813 as applicable:

1814 a. Habitats outside the assessment area are available in
1815 sufficient quantity and variety to provide optimal support for
1816 most, but not all, of the wildlife listed in Part I, or certain
1817 wildlife populations may be limited due to the reduced
1818 availability of habitats needed to fulfill their life history
1819 requirements.

1820 b. Some of the plant community composition in the
1821 proximity of the assessment area consists of invasive exotic or
1822 other invasive plant species, but cover is minimal and has
1823 minimal adverse effect on the functions provided by the
1824 assessment area.

1825 c. Wildlife access to and from habitats outside the
1826 assessment area is partially limited, either by distance or by
1827 the presence of barriers that impede wildlife movement.

1828 d. Functions of the assessment area that benefit fish and
1829 wildlife downstream are somewhat limited by distance or barriers
1830 that reduce the opportunity for the assessment area to provide
1831 these benefits.

1832 e. Land uses outside the assessment area have minimal
1833 adverse impacts on fish and wildlife identified in Part I.

1834 f. The opportunity for the assessment area to provide
1835 benefits to downstream or other hydrologically connected areas
1836 is limited by hydrologic impediments or flow restrictions such
1837 that these benefits are provided with lesser frequency or lesser
1838 magnitude than would occur under optimal conditions.

1839 g. Downstream or other hydrologically connected habitats
1840 derive significant benefits from discharges from the assessment
1841 area and could suffer substantial adverse impacts if the quality
1842 or quantity of these discharges were altered.

1843 h. For upland mitigation assessment areas, the uplands
1844 provide significant, but suboptimal ecological values and
1845 protection of wetland functions.

1846 3. A score of (4) means that, compared to the optimal
1847 condition of the native community type, the opportunity for the

1848 assessment area to perform beneficial functions in combination
1849 with the surrounding landscape is limited to 40% of the optimal
1850 ecological value. The score is based on reasonable scientific
1851 judgment and characterized by a predominance of the following,
1852 as applicable:

1853 a. Availability of habitats outside the assessment area is
1854 fair, but fails to provide support for some species of wildlife
1855 listed in Part I, or provides minimal support for many of the
1856 species listed in Part I.

1857 b. The majority of the plant community composition in the
1858 proximity of the assessment area consists of invasive exotic or
1859 other invasive plant species that adversely affect the functions
1860 provided by the assessment area.

1861 c. Wildlife access to and from habitats outside the
1862 assessment area is substantially limited, either by distance or
1863 by the presence of barriers which impede wildlife movement.

1864 d. Functions of the assessment area that benefit fish and
1865 wildlife downstream are limited by distance or barriers that
1866 substantially reduce the opportunity for the assessment area to
1867 provide these benefits.

1868 e. Land uses outside the assessment area have significant
1869 adverse impacts on fish and wildlife identified in Part I.

1870 f. The opportunity for the assessment area to provide
1871 benefits to downstream or other hydrologically connected areas
1872 is limited by hydrologic impediments or flow restrictions, such
1873 that these benefits are rarely provided or are provided at
1874 greatly reduced levels compared to optimal conditions.

1875 g. Downstream or other hydrologically connected habitats

CS/CS/HB 991

2011

1876 derive minimal benefits from discharges from the assessment area
1877 but could be adversely impacted if the quality or quantity of
1878 these discharges were altered.

1879 h. For upland mitigation assessment areas, the uplands
1880 provide minimal ecological values and protection of wetland
1881 functions.

1882 4. A score of (0) means that the assessment area, in
1883 combination with the surrounding landscape, provides no habitat
1884 support for wildlife utilizing the assessment area and no
1885 opportunity for the assessment area to provide benefits to fish
1886 and wildlife outside the assessment area. The score is based on
1887 reasonable scientific judgment and characterized by a
1888 predominance of the following, as applicable:

1889 a. No habitats are available outside the assessment area
1890 to provide any support for the species of wildlife listed in
1891 Part I.

1892 b. The plant community composition in the proximity of the
1893 assessment area consists predominantly of invasive exotic or
1894 other invasive plant species such that little or no function is
1895 provided by the assessment area.

1896 c. Wildlife access to and from habitats outside the
1897 assessment area is precluded by barriers or distance.

1898 d. Functions of the assessment area that would be expected
1899 to benefit fish and wildlife downstream are not present.

1900 e. Land uses outside the assessment area have a severe
1901 adverse impact on wildlife in the assessment area as listed in
1902 Part I.

1903 f. There is negligible or no opportunity for the

1904 assessment area to provide benefits to downstream or other
 1905 hydrologically connected areas due to hydrologic impediments or
 1906 flow restrictions that preclude provision of these benefits.

1907 g. Discharges from the assessment area provide negligible
 1908 or no benefits to downstream or hydrologically connected areas
 1909 and these areas would likely be unaffected if the quantity or
 1910 quality of these discharges were altered.

1911 h. For upland mitigation assessment areas, the uplands
 1912 provide no ecological value or protection of wetland functions."

1913 (12) The Department of Environmental Protection is
 1914 directed to make additional changes to the worksheet portions of
 1915 chapter 62-345, Florida Administrative Code, as needed to
 1916 conform to the changes set forth in this section.

1917 (13) Any entity holding a mitigation bank permit that was
 1918 evaluated under chapter 62-345, Florida Administrative Code, may
 1919 apply to the relevant agency to have such mitigation bank
 1920 reassessed pursuant to the changes to chapter 62-345, Florida
 1921 Administrative Code, set forth in this section, if such
 1922 application is filed with that agency no later than September
 1923 30, 2011.

1924 Section 30. This act shall take effect July 1, 2011.