

## House Bill No. 759

An act relating to environmental permitting programs; amending s. 373.414, F.S., relating to additional criteria for activities in surface waters and wetlands; revising a date relating to an exemption from specified requirements; providing for submission of financial responsibility prior to the commencement of phosphate mining operations; providing for review of financial responsibility; providing mechanisms for providing financial responsibility; providing exclusions; clarifying intent; creating s. 373.4143, F.S.; providing legislative intent; creating s. 373.4144, F.S.; providing for the consolidation of federal and state wetland permitting programs; providing duties of the Department of Environmental Protection; requiring a report to the Legislature and coordination with the Florida Congressional Delegation; amending s. 373.4145, F.S., and reenacting subsections (1)-(4), to continue the interim part IV permitting program for the Northwest Florida Water Management District; providing for future repeal of such interim program; amending s. 10, ch. 2003-423, Laws of Florida; revising the date by which the Peace River Basin resource management plan must be submitted; providing an effective date.

WHEREAS, the Legislature recognizes that consolidation of existing federal and state permitting associated with wetlands and navigable waters is in the public interest by eliminating unnecessary duplication and reducing subjective and potentially inconsistent permitting decisions, and

WHEREAS, the Legislature further recognizes that consolidation of federal and state wetland and navigable waters permitting would reduce the substantial costs to both public and private sectors, provide a more efficient delivery of government services, and avoid protracted processing delays while maintaining the federal and state protection afforded to Florida's natural resources, NOW, THEREFORE,

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

Section 1. Subsection (13) of section 373.414, Florida Statutes, is amended, and subsection (19) is added to said section, to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(13) Any declaratory statement issued by the department under s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, or by a water management district under s. 373.421, in response to a petition filed on or before June 1, 1994, shall continue to be valid for the duration of such declaratory statement. Any such petition pending on June 1, 1994, shall be exempt from the methodology ratified in s. 373.4211, but the rules of the department or the relevant water management district, as applicable, in effect prior to the effective date of s. 373.4211, shall apply. Until May 1, 1998, activities within the boundaries of an area subject to a petition pending on June 1, 1994, and

prior to final agency action on such petition, shall be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9). In the event that a jurisdictional declaratory statement pursuant to the vegetative index in effect prior to the effective date of chapter 84-79, Laws of Florida, has been obtained and is valid prior to the effective date of the rules adopted under subsection (9) or July 1, 1994, whichever is later, and the affected lands are part of a project for which a master development order has been issued pursuant to s. 380.06(21), the declaratory statement shall remain valid for the duration of the buildout period of the project. Any jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in rule 17-4.022, Florida Administrative Code, on April 1, 1985, shall remain in effect for a period of 5 years following the effective date of this act if proof of such validation is submitted to the department prior to January 1, 1995. In the event that a jurisdictional determination has been revalidated by the department pursuant to this subsection and the affected lands are part of a project for which a development order has been issued pursuant to s. 380.06(15), a final development order to which s. 163.3167(8) applies has been issued, or a vested rights determination has been issued pursuant to s. 380.06(20), the jurisdictional determination shall remain valid until the completion of the project, provided proof of such validation and documentation establishing that the project meets the requirements of this sentence are submitted to the department prior to January 1, 1995. Activities proposed within the boundaries of a valid declaratory statement issued pursuant to a petition submitted to either the department or the relevant water management district ~~on or before prior to~~ June 1, 1994, or a revalidated jurisdictional determination, prior to its expiration shall continue thereafter to be exempt from the methodology ratified in s. 373.4211 and to be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9).

(19)(a) Financial responsibility for mitigation for wetlands and other surface waters required by a permit issued pursuant to this part for activities associated with the extraction of phosphate are subject to approval by the department as part of permit application review. Financial responsibility for permitted activities which will occur over a period of 3 years or less of mining operations must be provided to the department prior to the commencement of mining operations and shall be in an amount equal to 110 percent of the estimated mitigation costs for wetlands and other surface waters affected under the permit. For permitted activities which will occur over a period of more than 3 years of mining operations, the initial financial responsibility demonstration shall be in an amount equal to 110 percent of the estimated mitigation costs for wetlands and other surface waters affected in the first 3 years of operation under the permit; and, for each year thereafter, the financial responsibility demonstration shall be updated, including to provide

an amount equal to 110 percent of the estimated mitigation costs for the next year of operations under the permit for which financial responsibility has not already been demonstrated and to release portions of the financial responsibility mechanisms in accordance with applicable rules.

(b) The mechanisms for providing financial responsibility pursuant to the permit shall, at the discretion of the applicant, include the following:

1. Cash or cash equivalent deposited in an escrow account.
2. Irrevocable letter of credit.
3. Performance bond.
4. Trust fund agreement.
5. Guarantee bond.
6. Insurance certificate.
7. A demonstration that the applicant meets the financial test and corporate guarantee requirements set forth in 40 C.F.R. s. 264.143(f).
8. A demonstration that the applicant meets the self-bonding provision set forth in 30 C.F.R. s. 800.23.

The form and content of all financial responsibility mechanisms shall be approved by the department. When utilizing an irrevocable letter of credit, performance bond, or guarantee bond, all payments made thereunder shall be deposited into a stand-by trust fund established contemporaneously with the posting of the financial assurance instrument. All trust fund agreements and stand-by trust fund agreements shall provide that distributions therefrom will be made only at the request of the department and that the trustees of such funds shall be either a National or state chartered banking institution or a state-regulated trust company.

(c) The provisions of this subsection shall not apply to any mitigation for wetlands and other surface waters that is required pursuant to a permit or permits initially issued by the department or district prior to January 1, 2005.

(d) Nothing provided in this subsection supersedes or modifies the financial responsibility requirements of s. 378.209.

Section 2. Section 373.4143, Florida Statutes, is created to read:

373.4143 Declaration of policy.—It is the policy of the Legislature that the state provide efficient government services by consolidating, to the maximum extent practicable, federal and state permitting associated with wetlands and navigable waters within the state.

Section 3. Section 373.4144, Florida Statutes, is created to read:

373.4144 Federal environmental permitting.—

(1) The department is directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. It is the intent of the Legislature that all dredge and fill activities impacting 10 acres or less of wetlands or waters, including navigable waters, be processed by the state as part of the environmental resource permitting program implemented by the department and the water management districts. The resulting mechanism or plan shall analyze and propose the development of an expanded state programmatic general permit program in conjunction with the United States Army Corps of Engineers pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. Alternatively, or in combination with an expanded state programmatic general permit, the mechanism or plan may propose the creation of a series of regional general permits issued by the United States Army Corps of Engineers pursuant to the referenced statutes. All of the regional general permits must be administered by the department or the water management districts or their designees.

(2) The department is directed to file with the Speaker of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives listed in this section and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives.

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

Section 4. Notwithstanding the repeal of subsections (1), (2), (3), and (4) of section 373.4145, Florida Statutes, scheduled for July 1, 2005, said subsections are reenacted, and subsection (6) of said section is amended, to read:

373.4145 Interim part IV permitting program for the Northwest Florida Water Management District.—

(1) Within the geographical jurisdiction of the Northwest Florida Water Management District, the permitting authority of the department under this part shall consist solely of the following, notwithstanding the rule adoption deadline in s. 373.414(9):

(a) Chapter 17-25, Florida Administrative Code, shall remain in full force and effect, and shall be implemented by the department. Notwithstanding the provisions of this section, chapter 17-25, Florida Administrative Code, may be amended by the department as necessary to comply with any requirements of state or federal laws or regulations, or any condition imposed by a federal program, or as a requirement for receipt of federal grant funds.

(b) Rules adopted pursuant to the authority of ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in effect prior to July 1, 1994, shall remain in full force and effect, and shall be implemented by the department. However, the department is authorized to establish additional exemptions and general permits for dredging and filling, if such exemptions or general permits do not allow significant adverse impacts to occur individually or cumulatively. However, for the purpose of chapter 17-312, Florida Administrative Code, the landward extent of surface waters of the state identified in rule 17-312.030(2), Florida Administrative Code, shall be determined in accordance with the methodology in rules 17-340.100 through 17-340.600, Florida Administrative Code, as ratified in s. 373.4211, upon the effective date of such ratified methodology. In implementing s. 373.421(2), the department shall determine the extent of those surface waters and wetlands within the regulatory authority of the department as described in this paragraph. At the request of the petitioner, the department shall also determine the extent of surface waters and wetlands which can be delineated by the methodology ratified in s. 373.4211, but which are not subject to the regulatory authority of the department as described in this paragraph.

(c) The department may implement chapter 40A-4, Florida Administrative Code, in effect prior to July 1, 1994, pursuant to an interagency agreement with the Northwest Florida Water Management District adopted under s. 373.046(4).

(2) The authority of the Northwest Florida Water Management District to implement this part or to implement any authority pursuant to delegation by the department shall not be affected by this section. The rule adoption deadline in s. 373.414(9) shall not apply to said district.

(3) The division of permitting responsibilities in s. 373.046(4) shall not apply within the geographical jurisdiction of the Northwest Florida Water Management District.

(4) If the United States Environmental Protection Agency approves an assumption of the federal program to regulate the discharge of dredged or fill material by the department or the water management districts, or both, pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.; the United States Army Corps of Engineers issues one or more state programmatic general permits under the referenced statutes; or the United States Environmental Protection Agency or the United States Corps of Engineers approves any other delegation of regulatory authority under the referenced statutes, then the department may implement any permitting authority granted in this part within the Northwest Florida Water Management District which is prescribed as a condition of granting such assumption, general permit, or delegation.

(6) Subsections (1), (2), (3), and (4) shall be repealed effective July 1, 2010 2005.

Section 5. Subsection (4) of section 10 of chapter 2003-423, Laws of Florida, is amended to read:

Section 10.

(4) The resource management plan shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 31, 2007 ~~July 1, 2005~~.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor June 20, 2005.

Filed in Office Secretary of State June 20, 2005.