

House Bill No. 7163

An act relating to environmental permitting; reenacting and amending s. 373.4145, F.S.; requiring the Northwest Florida Water Management District and the Department of Environmental Protection to jointly develop rules for the regulation of certain activities related to stormwater management systems and the management and storage of surface waters; requiring the district and the department to streamline federal and state wetland permitting programs and to implement such measures; requiring certain exemptions and provisions for rules relating to certain dwellings; requiring the department and district to incorporate certain exemptions and general permits in joint rules; exempting certain activities and structures from permitting requirements; requiring the department and the district to enter into an operating agreement for the implementation of certain provisions; requiring the district to be responsible for the regulation and local delegation of certain activities; providing for continuing operation of certain earlier law; repealing certain provisions upon the adoption of rules; providing effect for failure to fund in any given fiscal year; requiring the department to negotiate with local governments in the district by a certain date for delegation of responsibility for certain permitting; requiring the department to report to the Legislature by a certain date; providing an appropriation for operational expenses of the district; repealing s. 4 of ch. 2005-273, Laws of Florida, and s. 32 of ch. 2005-71, Laws of Florida, which specified dates certain for the repeal of certain provisions relating to permitting in the district; prohibiting limitation or restriction on the protections from duplication contained in certain provisions of law; providing an effective date.

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

Section 1. Section 373.4145, Florida Statutes, is reenacted and amended to read:

373.4145 ~~Interim~~ Part IV permitting program within the geographical jurisdiction of for the Northwest Florida Water Management District.—

(1) Within the geographical jurisdiction of the Northwest Florida Water Management District, taking into consideration the differing physical and natural characteristics of the area, the department and the district shall 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) Jointly develop rules to regulate the construction, operation, alteration, maintenance, abandonment, and removal of stormwater management systems. The department shall initiate the rulemaking process within 60 days after the effective date of this act and shall implement the rules no sooner than January 1, 2007; the district may implement the rules without adoption pursuant to s. 120.54. Until the stormwater management system

rules take effect, chapter 62-25 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 62-25 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. The intent of the rules created under this paragraph is to update existing stormwater rules, to improve water quality and flood protection, and to apply the least restrictive measures and criteria adopted in other water management district rules.

(b) Jointly develop rules for the management and storage of surface waters under this part. The department shall initiate the rulemaking process within 60 days after the effective date of this act and shall implement the rules no sooner than January 1, 2008; the district may implement the rules without adoption pursuant to s. 120.54. Until the rules for the management and storage of surface waters under this part take effect, 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 62-312 17-312, Florida Administrative Code, the landward extent of surface waters of the state identified in rule 62-312.030(2) 17-312.030(2), Florida Administrative Code, shall be determined in accordance with the methodology in rules 62-340.100 through 62-340.600 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 that which can be delineated by the methodology ratified in s. 373.4211, but that which are not subject to the regulatory authority of the department as described in this paragraph. The intent of the rules created under this paragraph is to improve the management and storage of surface waters with minimal impact on property interests and to consider the rural nature, current development trends, and abundant natural resources of the district relative to the permitting thresholds and requirements.

(c) Pursue streamlining of the federal and state wetland permitting programs pursuant to ss. 373.4143 and 373.4144.

(d) Implement, to the maximum extent possible, streamlining measures, including electronic permitting, field permitting, and certification programs for activities with minimal individual or cumulative impact, informal wetland determinations, and other similar measures.

(2)(e) 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).

(3) The rules adopted under subsection (1), as applicable, shall:

(a) Incorporate the exemptions in ss. 373.406 and 403.813(2).

(b) Incorporate the provisions of rule 62-341.475(1)(f), Florida Administrative Code, applicable to single-family homes located entirely or partially within wholly owned, isolated wetlands.

(c) Exempt from the notice and permitting requirements of this part the construction or private use of a single-family dwelling unit, duplex, triplex, or quadruplex that:

1. Is not part of a larger common plan of development or sale proposed by the applicant.

2. Does not involve wetlands or other surface waters.

(d) Incorporate the exemptions and general permits that are effective under this part and have been enacted by rule by the department and other water management districts, including the general permits authorized by s. 403.814.

(e) Provide an exemption for the repair, stabilization, or paving of county maintained roads existing on or before January 1, 2002, and the repair or replacement of bridges that are part of the roadway consistent with the provisions of s. 403.813(2)(t), notwithstanding the provisions of s. 403.813(2)(t)7. requiring adoption of a general permit applicable within the Northwest Florida Water Management District and the repeal of such exemption upon the adoption of a general permit.

(f) Exempt from rule criteria under paragraph (1)(b) an alteration of a wholly owned, artificial surface water created entirely from uplands that does not connect to surface waters of the state, except for those created for the purpose of providing mitigation under this part.

~~(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.~~

(4)(3) The department and the division of permitting responsibilities in s. 373.046(4) shall not apply within the geographical jurisdiction of the Northwest Florida Water Management District shall enter into an operating agreement under s. 373.046 to effectively implement this section and provide the district with the amount of responsibility under the agreement that resources allow, including, at a minimum, the responsibility for regulating silviculture and agriculture. The operating agreement shall encourage local delegation of the responsibilities under this section pursuant to s. 373.441.

(5) The provisions of s. 373.414(11)-(14) shall not apply to rules adopted under this section.

(6) The following activities shall continue to be governed by the provisions of s. 373.4145, Florida Statutes 1994:

(a) The operation and routine custodial maintenance of activities legally in existence before the effective date of the rules adopted under subsection (1), as long as the terms and conditions of the permit, exemption, or other authorization for such activities continue to be met.

(b) The activities approved in a permit issued pursuant to s. 373.4145, Florida Statutes 1994, and the review of activities proposed in applications received and completed before the effective date of the rules adopted under subsection (1), as applicable. This paragraph shall also apply to any modification of the plans, terms, and conditions of a permit issued pursuant to s. 373.4145, Florida Statutes 1994, that lessens the environmental impact, except that any such modification shall not extend the time limit for construction beyond 2 additional years.

This subsection shall not apply to any activity that is altered, modified, expanded, abandoned, or removed after adoption of the applicable rules under subsection (1).

(7) Unless the petitioner elects to apply rule 62-340, Florida Administrative Code, to all wetlands, the delineation of the landward extent of wetlands and other surface waters for petitions filed under s. 373.421(2) prior to the effective date of the rules adopted under paragraph (1)(b) shall continue to be determined in accordance with rule 62-312.030(2), Florida Administrative Code, in effect July 1, 1994, and rules 62-340.100 through 62-340.600, Florida Administrative Code, as ratified in s. 373.4211.

(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.

(8)(5) Within the geographical jurisdiction of the Northwest Florida Water Management District, the methodology for determining the landward extent of surface waters of the state under chapter 403 in effect prior to the effective date of the methodology ratified in s. 373.4211 shall apply to:

(a) Activities permitted under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or that which were exempted from regulation under such rules, prior to July 1, 1994, and that which were permitted under chapter 62-25 17-25, Florida Administrative Code, or exempt from chapter 62-25 17-25, Florida Administrative Code, prior to July 1, 1994, provided:

1. An activity authorized by such permits is conducted in accordance with the plans, terms, and conditions of such permits.

2. An activity exempted from the permitting requirements of the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or chapter 62-25 17-25, Florida Administrative Code, is:

- a. Commenced prior to July 1, 1994, and completed by July 1, 1999;
- b. Conducted in accordance with a plan depicting the activity ~~that~~ which has been submitted to and approved for construction by the department, the appropriate local government, the United States Army Corps of Engineers, or the Northwest Florida Water Management District; and
- c. Conducted in accordance with the terms of the exemption.

(b) An activity within the boundaries of a valid jurisdictional declaratory statement issued pursuant to s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or the rules adopted thereunder, in response to a petition received prior to June 1, 1994.

(c) Any modification of a permitted or exempt activity as described in paragraph (a) ~~that~~ which does not constitute a substantial modification or ~~that~~ which lessens the environmental impact of such permitted or exempt activity. For the purposes of this section, a substantial modification is one ~~that~~ which is reasonably expected to lead to substantially different environmental impacts.

(d) Applications for activities permitted under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the 1983 Florida Statutes, as amended, ~~that~~ which were pending on June 15, 1994, unless the application elects to have applied the delineation methodology ratified in s. 373.4211.

(9) Subsections (2) and (8) are repealed on the effective date of the rules adopted under subsection (1).

(10) If the Legislature in any given fiscal year fails to fund and staff the environmental resource permitting program established under this section, the environmental resource permitting program shall be suspended for that fiscal year and the rules and statutes governing development activity in the district shall revert to those in effect on April 1, 2006, until such time as funding and staffing levels are restored consistent with this section.

~~(6) Subsections (1), (2), (3), and (4) shall be repealed effective July 1, 2006.~~

Section 2. On or before October 1, 2006, the Department of Environmental Protection shall enter into negotiations with any local government within the Northwest Florida Water Management District that requests to be delegated the responsibilities under this act pursuant to s. 373.441, Florida Statutes, in order to minimize duplicative permitting programs and increase governmental efficiency while maintaining environmental standards. The

department shall report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2007, regarding progress made in the negotiation of environmental permitting with any local government and delegation of responsibilities thereto in accordance with this section.

Section 3. The sum of \$2,740,000 is appropriated from the General Revenue Fund to the Department of Environmental Protection for the 2006-2007 fiscal year for the operational expenditures of the Northwest Florida Water Management District pursuant to s. 373.4145, Florida Statutes, as amended by this act.

Section 4. Section 4 of chapter 2005-273, Laws of Florida, and section 32 of chapter 2005-71, Laws of Florida, are repealed.

Section 5. No authority granted by this act shall limit or restrict the protections from duplication contained in s. 163.3162 or s. 823.14, Florida Statutes.

Section 6. This act shall take effect July 1, 2006.

Approved by the Governor June 15, 2006.

Filed in Office Secretary of State June 15, 2006.