

By Senator Evers

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

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

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

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

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

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

157

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

159

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

163 120.569 Decisions which affect substantial interests.—

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

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

187 (2)

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

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

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

199 120.60 Licensing.—

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

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

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

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

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

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

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

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

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291 what other state or federal permits may apply.

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

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

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

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

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

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

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

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

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

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

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349 Statutes, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

440 373.4141 Permits; processing.—

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

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

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

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

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

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

482 373.4144 Federal environmental permitting.-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

607 403.0874 Incentive-based permitting program.—

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

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

622 (3) APPLICABILITY.—

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

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

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

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

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

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

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

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

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

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668 (5) COMPLIANCE INCENTIVES.—

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

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

682 2. Priority review of permit application;

683 3. Reduced number of routine compliance inspections;

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

686 5. Longer permit period durations.

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

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

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

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

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

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

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

714 2. Reduced or waived application fees.

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

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

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

730 161.041 Permits required.—

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

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

736 373.413 Permits for construction or alteration.—

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

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

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

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

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

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

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

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

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

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

762 403.412 Environmental Protection Act.—

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

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

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

793 403.814 General permits; delegation.-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 842 (c) No activities will impact wetlands or other surface
- 843 waters;
- 844 (d) No activities are conducted in, on, or over wetlands or
- 845 other surface waters;
- 846 (e) Drainage facilities will not include pipes having
- 847 diameters greater than 24 inches, or the hydraulic equivalent,
- 848 and will not use pumps in any manner; and
- 849 (f) The project is not part of a larger common plan of
- 850 development or sale.

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

853 380.06 Developments of regional impact.—

854 (24) STATUTORY EXEMPTIONS.—

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

869
 870 If a use is exempt from review as a development of regional

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1030 163.3180 Concurrency.-

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

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

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

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

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

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

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

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

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

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

1089 373.4137 Mitigation requirements for specified
1090 transportation projects.—

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

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1103 ~~pursuant to this part.~~

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

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

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

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1132 (3)

1133 (c) Except for current mitigation projects in the

1134 monitoring and maintenance phase and except as allowed by

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

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

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

1138 associated with development or implementation of the approved

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

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

1141 production, and staff support. Actual conceptual plan

1142 preparation costs incurred before plan approval may be submitted

1143 to the Department of Transportation or the appropriate

1144 transportation authority each year with the plan. The conceptual

1145 plan preparation costs of each water management district will be

1146 paid from mitigation funds associated with the environmental

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

1148 the escrow accounts each year by the Department of

1149 Transportation and participating transportation authorities

1150 established pursuant to chapter 348 or chapter 349 shall

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

1152 projected acres of impact identified in the environmental impact

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

1154 per acre does not constitute an admission against interest by

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

1156 evidence of full compensation for any property acquired by

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

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

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

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

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

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

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

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

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

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

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