

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

29 | that the department proceed to process the application if  
30 | the applicant believes that a request for additional  
31 | information is not authorized by law or rule; extending  
32 | the period for an applicant to timely submit additional  
33 | information, notwithstanding certain provisions of the  
34 | Administrative Procedure Act; amending s. 166.033, F.S.;  
35 | prohibiting a municipality from requiring an applicant to  
36 | obtain a permit or approval from another state or federal  
37 | agency as a condition of approving a development permit  
38 | under certain conditions; authorizing a county to attach  
39 | certain disclaimers to the issuance of a development  
40 | permit; creating s. 166.0447, F.S.; providing that the  
41 | construction and operation of a biofuel processing  
42 | facility or renewable energy generating facility and the  
43 | cultivation of bioenergy is a valid and permitted land use  
44 | within the unincorporated area of a municipality;  
45 | providing an exception; prohibiting any requirement that  
46 | the owner or operator of such a facility obtain  
47 | comprehensive plan amendments, use permits, waivers, or  
48 | variances, or pay any fee in excess of a specified amount;  
49 | amending s. 373.026, F.S.; requiring the Department of  
50 | Environmental Protection to expand its use of Internet-  
51 | based self-certification services for exemptions and  
52 | permits issued by the department and water management  
53 | districts; amending s. 373.4141, F.S.; requiring that a  
54 | request by the department or a water management district  
55 | that an applicant provide additional information be  
56 | accompanied by the signature of specified officials of the

57 | department or district; reducing the time within which the  
58 | department or district must approve or deny a permit  
59 | application; amending s. 373.4144, F.S.; providing  
60 | legislative intent with respect to the coordination of  
61 | regulatory duties among specified state and federal  
62 | agencies; requiring that the department report annually to  
63 | the Legislature on efforts to expand the state  
64 | programmatic general permit or regional general permits;  
65 | providing for a voluntary state programmatic general  
66 | permit for certain dredge and fill activities; amending s.  
67 | 373.441, F.S.; requiring that certain counties or  
68 | municipalities apply by a specified date to the department  
69 | or water management district for authority to require  
70 | certain permits; providing that following such delegation,  
71 | the department or district may not regulate activities  
72 | that are subject to the delegation; clarifying the  
73 | authority of local governments to adopt pollution control  
74 | programs under certain conditions; amending s. 376.30715,  
75 | F.S.; providing that the transfer of a contaminated site  
76 | from an owner to a child or corporate entity does not  
77 | disqualify the site from the innocent victim petroleum  
78 | storage system restoration financial assistance program;  
79 | authorizing certain applicants to reapply for financial  
80 | assistance; amending s. 403.061, F.S.; requiring the  
81 | Department of Environmental Protection to establish  
82 | reasonable zones of mixing for discharges into specified  
83 | waters; providing that certain discharges do not create  
84 | liability for site cleanup; providing that exceedance of

85 | soil cleanup target levels is not a basis for enforcement  
86 | or cleanup; creating s. 403.0874, F.S.; providing a short  
87 | title; providing legislative findings and intent with  
88 | respect to the consideration of the compliance history of  
89 | a permit applicant; providing for applicability;  
90 | specifying the period of compliance history to be  
91 | considered is issuing or renewing a permit; providing  
92 | criteria to be considered by the Department of  
93 | Environmental Protection; authorizing expedited review of  
94 | permit issuance, renewal, modification, and transfer;  
95 | providing for a reduced number of inspections; providing  
96 | for extended permit duration; authorizing the department  
97 | to make additional incentives available under certain  
98 | circumstances; providing for automatic permit renewal and  
99 | reduced or waived fees under certain circumstances;  
100 | requiring the department to adopt rules that are binding  
101 | on a water management district or local government that  
102 | has been delegated certain regulatory duties; amending ss.  
103 | 161.041 and 373.413, F.S.; specifying that s. 403.0874,  
104 | F.S., authorizing expedited permitting, applies to  
105 | provisions governing beaches and shores and surface water  
106 | management and storage; amending s. 403.087, F.S.;  
107 | revising conditions under which the department is  
108 | authorized to revoke a permit; amending s. 403.703, F.S.;  
109 | revising the term "solid waste" to exclude sludge from a  
110 | waste treatment works that is not discarded; amending s.  
111 | 403.707, F.S.; revising provisions relating to disposal by  
112 | persons of solid waste resulting from their own activities

113 on their property; clarifying what constitutes "addressed  
114 by a groundwater monitoring plan" with regard to certain  
115 effects on groundwater and surface waters; authorizing the  
116 disposal of solid waste over a zone of discharge;  
117 providing that exceedance of soil cleanup target levels is  
118 not a basis for enforcement or cleanup; extending the  
119 duration of all permits issued to solid waste management  
120 facilities; providing applicability; providing that  
121 certain disposal of solid waste does not create liability  
122 for site cleanup; amending s. 403.814, F.S.; providing for  
123 issuance of general permits for the construction,  
124 alteration, and maintenance of certain surface water  
125 management systems without the action of the department or  
126 a water management district; specifying conditions for the  
127 general permits; amending s. 380.06, F.S.; exempting a  
128 proposed solid mineral mine or a proposed addition or  
129 expansion of an existing solid mineral mine from  
130 provisions governing developments of regional impact;  
131 providing certain exceptions; amending ss. 380.0657 and  
132 403.973, F.S.; authorizing expedited permitting for  
133 certain inland multimodal facilities and for commercial or  
134 industrial development projects that individually or  
135 collectively will create a minimum number of jobs;  
136 providing for a project-specific memorandum of agreement  
137 to apply to a project subject to expedited permitting;  
138 providing for review and certification of a business as  
139 eligible for expedited permitting by the Secretary of  
140 Environmental Protection rather than by the Office of

141 Tourism, Trade, and Economic Development; amending s.  
 142 163.3180, F.S.; providing an exemption to the level-of-  
 143 service standards adopted under the Strategic Intermodal  
 144 System for certain inland multimodal facilities;  
 145 specifying project criteria; amending s. 373.4137, F.S.,  
 146 relating to transportation projects; revising legislative  
 147 findings with respect to the options for mitigation;  
 148 revising certain requirements for determining the habitat  
 149 impacts of transportation projects; requiring water  
 150 management districts to purchase credits from public or  
 151 private mitigation banks under certain conditions;  
 152 providing for the release of certain mitigation funds held  
 153 for the benefit of a water management district if a  
 154 project is excluded from a mitigation plan; revising the  
 155 procedure for excluding a project from a mitigation plan;  
 156 amending s. 526.203, F.S.; authorizing the sale of  
 157 unblended fuels for certain uses; revising rules of the  
 158 Department of Environmental Protection relating to the  
 159 uniform mitigation assessment method for activities in  
 160 surface waters and wetlands; directing the Department of  
 161 Environmental Protection to make additional changes to  
 162 conform; providing for reassessment of mitigation banks  
 163 under certain conditions; providing an effective date.

164  
 165 Be It Enacted by the Legislature of the State of Florida:  
 166

167 Section 1. Subsection (1) of section 120.569, Florida  
 168 Statutes, is amended, and paragraph (p) is added to subsection

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169 (2) of that section, to read:

170 120.569 Decisions which affect substantial interests.—

171 (1) The provisions of this section apply in all  
172 proceedings in which the substantial interests of a party are  
173 determined by an agency, unless the parties are proceeding under  
174 s. 120.573 or s. 120.574. Unless waived by all parties, s.  
175 120.57(1) applies whenever the proceeding involves a disputed  
176 issue of material fact. Unless otherwise agreed, s. 120.57(2)  
177 applies in all other cases. If a disputed issue of material fact  
178 arises during a proceeding under s. 120.57(2), ~~then,~~ unless  
179 waived by all parties, the proceeding under s. 120.57(2) shall  
180 be terminated and a proceeding under s. 120.57(1) shall be  
181 conducted. Parties shall be notified of any order, including a  
182 final order. Unless waived, a copy of the order shall be  
183 delivered or mailed to each party or the party's attorney of  
184 record at the address of record. Each notice shall inform the  
185 recipient of any administrative hearing or judicial review that  
186 is available under this section, s. 120.57, or s. 120.68; shall  
187 indicate the procedure which must be followed to obtain the  
188 hearing or judicial review; and shall state the time limits that  
189 ~~which~~ apply. Notwithstanding any other provision of law, notice  
190 of the procedure to obtain an administrative hearing or judicial  
191 review, including any items required by the uniform rules  
192 adopted pursuant to s. 120.54(5), may be provided via a link to  
193 a publicly available Internet website.

194 (2)

195 (p) For any proceeding arising under chapter 373, chapter  
196 378, or chapter 403, if a nonapplicant petitions as a third

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197 party to challenge an agency's issuance of a license or  
 198 conceptual approval, the petitioner initiating the action has  
 199 the burden of ultimate persuasion and, in the first instance,  
 200 has the burden of going forward with the evidence.  
 201 Notwithstanding subsection (1), this paragraph applies to  
 202 proceedings under s. 120.574.

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

206 120.60 Licensing.—

207 (1) Upon receipt of a license application, an agency shall  
 208 examine the application and, within 30 days after such receipt,  
 209 notify the applicant of any apparent errors or omissions and  
 210 request any additional information the agency is permitted by  
 211 law to require. An agency may not deny a license for failure to  
 212 correct an error or omission or to supply additional information  
 213 unless the agency timely notified the applicant within this 30-  
 214 day period. The agency may establish by rule the time period for  
 215 submitting any additional information requested by the agency.  
 216 For good cause shown, the agency shall grant a request for an  
 217 extension of time for submitting the additional information. If  
 218 the applicant believes the agency's request for additional  
 219 information is not authorized by law or rule, the agency, at the  
 220 applicant's request, shall proceed to process the application.  
 221 An application is complete upon receipt of all requested  
 222 information and correction of any error or omission for which  
 223 the applicant was timely notified or when the time for such  
 224 notification has expired. An application for a license must be



225 approved or denied within 60 ~~90~~ days after receipt of a  
 226 completed application unless a shorter period of time for agency  
 227 action is provided by law. The 60-day ~~90-day~~ time period is  
 228 tolled by the initiation of a proceeding under ss. 120.569 and  
 229 120.57. Any application for a license which is not approved or  
 230 denied within the 60-day ~~90-day~~ or shorter time period, within  
 231 15 days after conclusion of a public hearing held on the  
 232 application, or within 45 days after a recommended order is  
 233 submitted to the agency and the parties, whichever action and  
 234 timeframe is latest and applicable, is considered approved  
 235 unless the recommended order recommends that the agency deny the  
 236 license. Subject to the satisfactory completion of an  
 237 examination if required as a prerequisite to licensure, any  
 238 license that is considered approved shall be issued and may  
 239 include such reasonable conditions as are authorized by law. Any  
 240 applicant for licensure seeking to claim licensure by default  
 241 under this subsection shall notify the agency clerk of the  
 242 licensing agency, in writing, of the intent to rely upon the  
 243 default license provision of this subsection, and may not take  
 244 any action based upon the default license until after receipt of  
 245 such notice by the agency clerk.

246 Section 3. Section 125.0112, Florida Statutes, is created  
 247 to read:

248 125.0112 Biofuels and renewable energy.—The construction  
 249 and operation of a biofuel processing facility or a renewable  
 250 energy generating facility, as defined in s. 366.91(2)(d), and  
 251 the cultivation and production of bioenergy, as defined pursuant  
 252 to s. 163.3177, except where biomass material derived from

253 municipal solid waste or landfill gases provides the renewable  
 254 energy for such facilities, shall be considered by a local  
 255 government to be a valid industrial, agricultural, and  
 256 silvicultural use permitted within those land use categories in  
 257 the local comprehensive land use plan. If the local  
 258 comprehensive plan does not specifically allow for the  
 259 construction of a biofuel processing facility or renewable  
 260 energy facility, the local government shall establish a specific  
 261 review process that may include expediting local review of any  
 262 necessary comprehensive plan amendment, zoning change, use  
 263 permit, waiver, variance, or special exemption. Local expedited  
 264 review of a proposed biofuel processing facility or a renewable  
 265 energy facility does not obligate a local government to approve  
 266 such proposed use. A comprehensive plan amendment necessary to  
 267 accommodate a biofuel processing facility or renewable energy  
 268 facility shall, if approved by the local government, be eligible  
 269 for the alternative state review process in s. 163.32465. The  
 270 construction and operation of a facility and related  
 271 improvements on a portion of a property under this section does  
 272 not affect the remainder of the property's classification as  
 273 agricultural under s. 193.461.

274 Section 4. Section 125.022, Florida Statutes, is amended  
 275 to read:

276 125.022 Development permits.—When a county denies an  
 277 application for a development permit, the county shall give  
 278 written notice to the applicant. The notice must include a  
 279 citation to the applicable portions of an ordinance, rule,  
 280 statute, or other legal authority for the denial of the permit.

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281 As used in this section, the term "development permit" has the  
 282 same meaning as in s. 163.3164. A county may not require as a  
 283 condition of approval for a development permit that an applicant  
 284 obtain a permit or approval from any other state or federal  
 285 agency unless the agency has issued a notice of intent to deny  
 286 the federal or state permit before the county action on the  
 287 local development permit. Issuance of a development permit by a  
 288 county does not in any way create any rights on the part of the  
 289 applicant to obtain a permit from another state or federal  
 290 agency and does not create any liability on the part of the  
 291 county for issuance of the permit if the applicant fails to  
 292 fulfill its legal obligations to obtain requisite approvals or  
 293 fulfill the obligations imposed by another state or a federal  
 294 agency. A county may attach such a disclaimer to the issuance of  
 295 a development permit, and may include a permit condition that  
 296 all other applicable state or federal permits be obtained before  
 297 commencement of the development. This section does not prohibit  
 298 a county from providing information to an applicant regarding  
 299 what other state or federal permits may apply.

300 Section 5. Section 161.032, Florida Statutes, is created  
 301 to read:

302 161.032 Application review; request for additional  
 303 information.-

304 (1) Within 30 days after receipt of an application for a  
 305 permit under this part, the department shall review the  
 306 application and shall request submission of any additional  
 307 information the department is permitted by law to require. If  
 308 the applicant believes that a request for additional information

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309 is not authorized by law or rule, the applicant may request a  
310 hearing pursuant to s. 120.57. Within 30 days after receipt of  
311 such additional information, the department shall review such  
312 additional information and may request only that information  
313 needed to clarify such additional information or to answer new  
314 questions raised by or directly related to such additional  
315 information. If the applicant believes that the request for such  
316 additional information by the department is not authorized by  
317 law or rule, the department, at the applicant's request, shall  
318 proceed to process the permit application.

319 (2) Notwithstanding s. 120.60, an applicant for a permit  
320 under this part has 90 days after the date of a timely request  
321 for additional information to submit such information. If an  
322 applicant requires more than 90 days in order to respond to a  
323 request for additional information, the applicant must notify  
324 the agency processing the permit application in writing of the  
325 circumstances, at which time the application shall be held in  
326 active status for no more than one additional period of up to 90  
327 days. Additional extensions may be granted for good cause shown  
328 by the applicant. A showing that the applicant is making a  
329 diligent effort to obtain the requested additional information  
330 constitutes good cause. Failure of an applicant to provide the  
331 timely requested information by the applicable deadline shall  
332 result in denial of the application without prejudice.

333 Section 6. Section 166.033, Florida Statutes, is amended  
334 to read:

335 166.033 Development permits.—When a municipality denies an  
336 application for a development permit, the municipality shall

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337 give written notice to the applicant. The notice must include a  
338 citation to the applicable portions of an ordinance, rule,  
339 statute, or other legal authority for the denial of the permit.  
340 As used in this section, the term "development permit" has the  
341 same meaning as in s. 163.3164. A municipality may not require  
342 as a condition of approval for a development permit that an  
343 applicant obtain a permit or approval from any other state or  
344 federal agency unless the agency has issued a notice of intent  
345 to deny the federal or state permit before the municipal action  
346 on the local development permit. Issuance of a development  
347 permit by a municipality does not in any way create any right on  
348 the part of an applicant to obtain a permit from another state  
349 or federal agency and does not create any liability on the part  
350 of the municipality for issuance of the permit if the applicant  
351 fails to fulfill its legal obligations to obtain requisite  
352 approvals or fulfill the obligations imposed by another state or  
353 federal agency. A municipality may attach such a disclaimer to  
354 the issuance of development permits and may include a permit  
355 condition that all other applicable state or federal permits be  
356 obtained before commencement of the development. This section  
357 does not prohibit a municipality from providing information to  
358 an applicant regarding what other state or federal permits may  
359 apply.

360 Section 7. Section 166.0447, Florida Statutes, is created  
361 to read:

362 166.0447 Biofuels and renewable energy.—The construction  
363 and operation of a biofuel processing facility or a renewable  
364 energy generating facility, as defined in s. 366.91(2)(d), and

365 the cultivation and production of bioenergy, as defined pursuant  
 366 to s. 163.3177, except where biomass material derived from  
 367 municipal solid waste or landfill gases provides the renewable  
 368 energy for such facilities, are each a valid industrial,  
 369 agricultural, and silvicultural use permitted within those land  
 370 use categories in the local comprehensive land use plan and for  
 371 purposes of any local zoning regulation within an unincorporated  
 372 area of a municipality. Such comprehensive land use plans and  
 373 local zoning regulations may not require the owner or operator  
 374 of a biofuel processing facility or a renewable energy  
 375 generating facility to obtain any comprehensive plan amendment,  
 376 rezoning, special exemption, use permit, waiver, or variance, or  
 377 to pay any special fee in excess of \$1,000 to operate in an area  
 378 zoned for or categorized as industrial, agricultural, or  
 379 silvicultural use. This section does not exempt biofuel  
 380 processing facilities and renewable energy generating facilities  
 381 from complying with building code requirements. The construction  
 382 and operation of a facility and related improvements on a  
 383 portion of a property pursuant to this section does not affect  
 384 the remainder of that property's classification as agricultural  
 385 pursuant to s. 193.461.

386 Section 8. Subsection (10) is added to section 373.026,  
 387 Florida Statutes, to read:

388 373.026 General powers and duties of the department.—The  
 389 department, or its successor agency, shall be responsible for  
 390 the administration of this chapter at the state level. However,  
 391 it is the policy of the state that, to the greatest extent  
 392 possible, the department may enter into interagency or

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393 interlocal agreements with any other state agency, any water  
394 management district, or any local government conducting programs  
395 related to or materially affecting the water resources of the  
396 state. All such agreements shall be subject to the provisions of  
397 s. 373.046. In addition to its other powers and duties, the  
398 department shall, to the greatest extent possible:

399 (10) Expand the use of Internet-based self-certification  
400 services for appropriate exemptions and general permits issued  
401 by the department and the water management districts, if such  
402 expansion is economically feasible. In addition to expanding the  
403 use of Internet-based self-certification services for  
404 appropriate exemptions and general permits, the department and  
405 water management districts shall identify and develop general  
406 permits for activities currently requiring individual review  
407 which could be expedited through the use of professional  
408 certification.

409 Section 9. Section 373.4141, Florida Statutes, is amended  
410 to read:

411 373.4141 Permits; processing.—

412 (1) Within 30 days after receipt of an application for a  
413 permit under this part, the department or the water management  
414 district shall review the application and shall request  
415 submittal of all additional information the department or the  
416 water management district is permitted by law to require. If the  
417 applicant believes any request for additional information is not  
418 authorized by law or rule, the applicant may request a hearing  
419 pursuant to s. 120.57. Within 30 days after receipt of such  
420 additional information, the department or water management

421 district shall review it and may request only that information  
 422 needed to clarify such additional information or to answer new  
 423 questions raised by or directly related to such additional  
 424 information. If the applicant believes the request of the  
 425 department or water management district for such additional  
 426 information is not authorized by law or rule, the department or  
 427 water management district, at the applicant's request, shall  
 428 proceed to process the permit application. In order to ensure  
 429 the proper scope and necessity for the information requested, a  
 430 second request for additional information, if any, must be  
 431 signed by the supervisor of the project manager. A third request  
 432 for additional information, if any, must be signed by the  
 433 division director who oversees the program area. A fourth  
 434 request for additional information, if any, must be signed by  
 435 the assistant secretary of the department or the assistant  
 436 executive director of the district. Any additional request for  
 437 information must be signed by the secretary of the department or  
 438 the executive director of the district.

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

443 (3) Processing of applications for permits for affordable  
 444 housing projects shall be expedited to a greater degree than  
 445 other projects.

446 Section 10. Section 373.4144, Florida Statutes, is amended  
 447 to read:

448 373.4144 Federal environmental permitting.—



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

450           (a) Facilitate coordination and a more efficient process  
451 of implementing regulatory duties and functions between the  
452 Department of Environmental Protection, the water management  
453 districts, the United States Army Corps of Engineers, the United  
454 States Fish and Wildlife Service, the National Marine Fisheries  
455 Service, the United States Environmental Protection Agency, the  
456 Fish and Wildlife Conservation Commission, and other relevant  
457 federal and state agencies.

458           (b) Authorize the Department of Environmental Protection  
459 to obtain issuance by the United States Army Corps of Engineers,  
460 pursuant to state and federal law and as set forth in this  
461 section, of an expanded state programmatic general permit, or a  
462 series of regional general permits, for categories of activities  
463 in waters of the United States governed by the Clean Water Act  
464 and in navigable waters under the Rivers and Harbors Act of 1899  
465 which are similar in nature, which will cause only minimal  
466 adverse environmental effects when performed separately, and  
467 which will have only minimal cumulative adverse effects on the  
468 environment.

469           (c) Use the mechanism of such a state general permit or  
470 such regional general permits to eliminate overlapping federal  
471 regulations and state rules that seek to protect the same  
472 resource and to avoid duplication of permitting between the  
473 United States Army Corps of Engineers and the department for  
474 minor work located in waters of the United States, including  
475 navigable waters, thus eliminating, in appropriate cases, the  
476 need for a separate individual approval from the United States

477 Army Corps of Engineers while ensuring the most stringent  
 478 protection of wetland resources.

479 (d) Direct the department not to seek issuance of or take  
 480 any action pursuant to any such permit or permits unless such  
 481 conditions are at least as protective of the environment and  
 482 natural resources as existing state law under this part and  
 483 federal law under the Clean Water Act and the Rivers and Harbors  
 484 Act of 1899. The department is directed to develop, on or before  
 485 October 1, 2005, a mechanism or plan to consolidate, to the  
 486 maximum extent practicable, the federal and state wetland  
 487 permitting programs. It is the intent of the Legislature that  
 488 all dredge and fill activities impacting 10 acres or less of  
 489 wetlands or waters, including navigable waters, be processed by  
 490 the state as part of the environmental resource permitting  
 491 program implemented by the department and the water management  
 492 districts. The resulting mechanism or plan shall analyze and  
 493 propose the development of an expanded state programmatic  
 494 general permit program in conjunction with the United States  
 495 Army Corps of Engineers pursuant to s. 404 of the Clean Water  
 496 Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,  
 497 and s. 10 of the Rivers and Harbors Act of 1899. Alternatively,  
 498 or in combination with an expanded state programmatic general  
 499 permit, the mechanism or plan may propose the creation of a  
 500 series of regional general permits issued by the United States  
 501 Army Corps of Engineers pursuant to the referenced statutes. All  
 502 of the regional general permits must be administered by the  
 503 department or the water management districts or their designees.

504 (2) In order to effectuate efficient wetland permitting

505 and avoid duplication, the department and water management  
 506 districts are authorized to implement a voluntary state  
 507 programmatic general permit for all dredge and fill activities  
 508 impacting 3 acres or less of wetlands or other surface waters,  
 509 including navigable waters, subject to agreement with the United  
 510 States Army Corps of Engineers, if the general permit is at  
 511 least as protective of the environment and natural resources as  
 512 existing state law under this part and federal law under the  
 513 Clean Water Act and the Rivers and Harbors Act of 1899. The  
 514 ~~department is directed to file with the Speaker of the House of~~  
 515 ~~Representatives and the President of the Senate a report~~  
 516 ~~proposing any required federal and state statutory changes that~~  
 517 ~~would be necessary to accomplish the directives listed in this~~  
 518 ~~section and to coordinate with the Florida Congressional~~  
 519 ~~Delegation on any necessary changes to federal law to implement~~  
 520 ~~the directives.~~

521 (3) Nothing in this section shall be construed to preclude  
 522 the department from pursuing a series of regional general  
 523 permits for construction activities in wetlands or surface  
 524 waters or complete assumption of federal permitting programs  
 525 regulating the discharge of dredged or fill material pursuant to  
 526 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,  
 527 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors  
 528 Act of 1899, so long as the assumption encompasses all dredge  
 529 and fill activities in, on, or over jurisdictional wetlands or  
 530 waters, including navigable waters, within the state.

531 Section 11. Present subsections (3), (4), and (5) of  
 532 section 373.441, Florida Statutes, are renumbered as subsections

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533 (6), (7), and (8), respectively, and new subsections (3), (4),  
534 and (5) are added to that section to read:

535 373.441 Role of counties, municipalities, and local  
536 pollution control programs in permit processing; delegation.—

537 (3) A county having a population of 75,000 or more or a  
538 municipality having a population of more than 50,000 that  
539 implements a local pollution control program regulating wetlands  
540 or surface waters throughout its geographic boundary must apply  
541 for delegation of state environmental resource permitting  
542 authority on or before June 1, 2012. A county, municipality, or  
543 local pollution control program that fails to apply for  
544 delegation of authority may not require permits that in part or  
545 in full are substantially similar to the requirements needed to  
546 obtain an environmental resource permit.

547 (4) Upon delegation to a qualified local government, the  
548 department and water management district may not regulate the  
549 activities subject to the delegation within that jurisdiction  
550 unless regulation is required pursuant to the terms of the  
551 delegation agreement.

552 (5) This section does not prohibit or limit a local  
553 government from adopting a pollution control program regulating  
554 wetlands or surface waters after June 1, 2012, if the local  
555 government applies for delegation of state environmental  
556 resource permitting authority within 1 year after adopting such  
557 a program.

558 Section 12. Section 376.30715, Florida Statutes, is  
559 amended to read:

560 376.30715 Innocent victim petroleum storage system

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561 restoration.—A contaminated site acquired by the current owner  
 562 prior to July 1, 1990, which has ceased operating as a petroleum  
 563 storage or retail business prior to January 1, 1985, is eligible  
 564 for financial assistance pursuant to s. 376.305(6),  
 565 notwithstanding s. 376.305(6)(a). For purposes of this section,  
 566 the term "acquired" means the acquisition of title to the  
 567 property; however, a subsequent transfer of the property to a  
 568 spouse or child, a surviving spouse or child in trust or free of  
 569 trust, ~~or~~ a revocable trust created for the benefit of the  
 570 settlor, or a corporate entity created by the owner to hold  
 571 title to the site does not disqualify the site from financial  
 572 assistance pursuant to s. 376.305(6) and applicants previously  
 573 denied coverage may reapply. Eligible sites shall be ranked in  
 574 accordance with s. 376.3071(5).

575 Section 13. Section 403.0874, Florida Statutes, is created  
 576 to read:

577 403.0874 Incentive-based permitting program.—

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

580 (2) FINDINGS AND INTENT.—The Legislature finds and  
 581 declares that the department should consider compliance history  
 582 when deciding whether to issue, renew, amend, or modify a permit  
 583 by evaluating an applicant's site-specific and program-specific  
 584 relevant aggregate compliance history. Persons having a history  
 585 of complying with applicable permits or state environmental laws  
 586 and rules are eligible for permitting benefits, including, but  
 587 not limited to, expedited permit application reviews, longer-  
 588 duration permit periods, decreased announced compliance

589 inspections, and other similar regulatory and compliance  
590 incentives to encourage and reward such persons for their  
591 environmental performance.

592 (3) APPLICABILITY.—

593 (a) This section applies to all persons and regulated  
594 activities that are subject to the permitting requirements of  
595 chapter 161, chapter 373, or this chapter, and all other  
596 applicable state or federal laws that govern activities for the  
597 purpose of protecting the environment or the public health from  
598 pollution or contamination.

599 (b) Notwithstanding paragraph (a), this section does not  
600 apply to certain permit actions or environmental permitting laws  
601 such as:

602 1. Environmental permitting or authorization laws that  
603 regulate activities for the purpose of zoning, growth  
604 management, or land use; or

605 2. Any federal law or program delegated or assumed by the  
606 state to the extent that implementation of this section, or any  
607 part of this section, would jeopardize the ability of the state  
608 to retain such delegation or assumption.

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

614 (4) COMPLIANCE HISTORY.—The compliance history period  
615 shall be the 5 years before the date any permit or renewal  
616 application is received by the department. Any person is

617 entitled to the incentives under paragraph (5)(a) if:

618 (a)1. The applicant has conducted the regulated activity  
 619 at the same site for which the permit or renewal is sought for  
 620 at least 4 of the 5 years before the date the permit application  
 621 is received by the department; or

622 2. The applicant has conducted the same regulated activity  
 623 at a different site within the state for at least 4 of the 5  
 624 years before the date the permit or renewal application is  
 625 received by the department; and

626 (b) In the 5 years before the date the permit or renewal  
 627 application is received by the department or water management  
 628 district, the applicant has not been subject to a formal  
 629 administrative or civil judgment or criminal conviction whereby  
 630 an administrative law judge or civil or criminal court found the  
 631 applicant knowingly violated the applicable law or rule and the  
 632 violation was the proximate cause that resulted in significant  
 633 harm to human health or the environment. Administrative  
 634 settlement or consent orders, whether formal or informal, are  
 635 not judgments for purposes of this section unless entered into  
 636 as a result of significant harm to human health or the  
 637 environment.

638 (5) COMPLIANCE INCENTIVES.—

639 (a) An applicant shall request all applicable incentives  
 640 at the time of application submittal. Unless otherwise  
 641 prohibited by state or federal law, rule, or regulation, and if  
 642 the applicant meets all other applicable criteria for the  
 643 issuance of a permit or authorization, an applicant is entitled  
 644 to the following incentives:

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- 645 1. Expedited reviews on permit actions, including, but not  
646 limited to, initial permit issuance, renewal, modification, and  
647 transfer, if applicable. Expedited review means, at a minimum,  
648 that any request for additional information regarding a permit  
649 application shall be issued no later than 15 days after the  
650 application is filed, and final agency action shall be taken no  
651 later than 45 days after the application is deemed complete;
- 652 2. Priority review of permit application;
- 653 3. Reduced number of routine compliance inspections;
- 654 4. No more than two requests for additional information  
655 under s. 120.60; and
- 656 5. Longer permit period durations.
- 657 (b) The department shall identify and make available  
658 additional incentives to persons who demonstrate during a 10-  
659 year compliance history period the implementation of activities  
660 or practices that resulted in:
- 661 1. Reductions in actual or permitted discharges or  
662 emissions;
- 663 2. Reductions in the impacts of regulated activities on  
664 public lands or natural resources;
- 665 3. Implementation of voluntary environmental performance  
666 programs, such as environmental management systems; and
- 667 4. In the 10 years before the date the renewal application  
668 is received by the department, the applicant having not been  
669 subject to a formal administrative or civil judgment or criminal  
670 conviction whereby an administrative law judge or civil or  
671 criminal court found the applicant knowingly violated the  
672 applicable law or rule and the violation was the proximate cause



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673 that resulted in significant harm to human health or the  
674 environment. Administrative settlement or consent orders,  
675 whether formal or informal, are not judgments for purposes of  
676 this section unless entered into as a result of significant harm  
677 to the human health or the environment.

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

681 1. Automatic permit renewals if there are no substantial  
682 deviations or modifications in permitted activities or changed  
683 circumstances; and

684 2. Reduced or waived application fees.

685 (6) RULEMAKING.—The department shall implement rulemaking  
686 within 6 months after the effective date of this act. Such  
687 rulemaking may identify additional incentives and programs not  
688 expressly enumerated under this section, so long as each  
689 incentive is consistent with the Legislature's purpose and  
690 intent of this section. Any rule adopted by the department to  
691 administer this section shall be deemed an invalid exercise of  
692 delegated legislative authority if the department cannot  
693 demonstrate how such rules will produce the compliance  
694 incentives set forth in subsection (5). The department's rules  
695 adopted under this section are binding on the water management  
696 districts and any local government that has been delegated or  
697 assumed a regulatory program to which this section applies.

698 Section 14. Subsection (5) is added to section 161.041,  
699 Florida Statutes, to read:

700 161.041 Permits required.—

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

704           Section 15. Subsection (6) is added to section 373.413,  
 705 Florida Statutes, to read:

706           373.413 Permits for construction or alteration.—

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

710           Section 16. Subsection (11) of section 403.061, Florida  
 711 Statutes, is amended to read:

712           403.061 Department; powers and duties.—The department  
 713 shall have the power and the duty to control and prohibit  
 714 pollution of air and water in accordance with the law and rules  
 715 adopted and promulgated by it and, for this purpose, to:

716           (11) Establish ambient air quality and water quality  
 717 standards for the state as a whole or for any part thereof, and  
 718 also standards for the abatement of excessive and unnecessary  
 719 noise. The department shall ~~is authorized to~~ establish  
 720 reasonable zones of mixing for discharges into waters where  
 721 assimilative capacity in the receiving water is available. Zones  
 722 of discharge to groundwater are authorized to a facility or  
 723 owner's property boundary and extending to the base of a  
 724 specifically designated aquifer or aquifers. Discharges that  
 725 occur within a zone of discharge or on land that is over a zone  
 726 of discharge do not create liability under this chapter or  
 727 chapter 376 for site cleanup and the exceedance of soil cleanup  
 728 target levels is not a basis for enforcement or site cleanup.

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

734 1. The standard would not be met in the water body in the  
 735 absence of the discharge;

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

738 3. The discharge does not cause a measurable increase in  
 739 the degree of noncompliance with the standard at the boundary of  
 740 the mixing zone; and

741 4. The discharge otherwise complies with the mixing zone  
 742 provisions specified in department rules.

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

745 1. Sources that have received permits from the department  
 746 prior to April 1, 1982, or the date of designation, whichever is  
 747 later;

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

750 3. Discharges of water necessary for water management  
 751 purposes which have been approved by the governing board of a  
 752 water management district and, if required by law, by the  
 753 secretary; and

754 4. The discharge of demineralization concentrate which has  
 755 been determined permissible under s. 403.0882 and which meets  
 756 the specific provisions of s. 403.0882(4)(a) and (b), if the

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757 proposed discharge is clearly in the public interest.

758 (c) The department, by rule, shall establish water quality  
 759 criteria for wetlands which criteria give appropriate  
 760 recognition to the water quality of such wetlands in their  
 761 natural state.

762  
 763 Nothing in this act shall be construed to invalidate any  
 764 existing department rule relating to mixing zones. The  
 765 department shall cooperate with the Department of Highway Safety  
 766 and Motor Vehicles in the development of regulations required by  
 767 s. 316.272(1).

768  
 769 The department shall implement such programs in conjunction with  
 770 its other powers and duties and shall place special emphasis on  
 771 reducing and eliminating contamination that presents a threat to  
 772 humans, animals or plants, or to the environment.

773 Section 17. Subsection (7) of section 403.087, Florida  
 774 Statutes, is amended to read:

775 403.087 Permits; general issuance; denial; revocation;  
 776 prohibition; penalty.—

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

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

783 (b) ~~Has~~ Violated law, department orders, rules, ~~or~~  
 784 regulations, or permit conditions which directly relate to such

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785 permit and has refused to correct or cure such violations when  
 786 requested to do so;

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

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

793 Section 18. Subsection (32) of section 403.703, Florida  
 794 Statutes, is amended to read:

795 403.703 Definitions.—As used in this part, the term:

796 (32) "Solid waste" means sludge unregulated under the  
 797 federal Clean Water Act or Clean Air Act, sludge from a waste  
 798 treatment works, water supply treatment plant, or air pollution  
 799 control facility, or garbage, rubbish, refuse, special waste, or  
 800 other discarded material, including solid, liquid, semisolid, or  
 801 contained gaseous material resulting from domestic, industrial,  
 802 commercial, mining, agricultural, or governmental operations.  
 803 Recovered materials as defined in subsection (24) are not solid  
 804 waste. The term does not include sludge from a waste treatment  
 805 works if the sludge is not discarded.

806 Section 19. Subsections (2) and (3) of section 403.707,  
 807 Florida Statutes, are amended to read:

808 403.707 Permits.—

809 (2) Except as provided in s. 403.722(6), a permit under  
 810 this section is not required for the following, ~~if the activity~~  
 811 ~~does not create a public nuisance or any condition adversely~~  
 812 ~~affecting the environment or public health and does not violate~~

813 ~~other state or local laws, ordinances, rules, regulations, or~~  
 814 ~~orders:~~

815 (a) Disposal by persons of solid waste resulting from  
 816 their own activities on their own property, if such waste is  
 817 ordinary household waste from their residential property or is  
 818 rocks, soils, trees, tree remains, and other vegetative matter  
 819 that normally result from land development operations. Disposal  
 820 of materials that could create a public nuisance or adversely  
 821 affect the environment or public health, such as white goods;  
 822 automotive materials, such as batteries and tires; petroleum  
 823 products; pesticides; solvents; or hazardous substances, is not  
 824 covered under this exemption.

825 (b) Storage in containers by persons of solid waste  
 826 resulting from their own activities on their property, leased or  
 827 rented property, or property subject to a homeowners or  
 828 maintenance association for which the person contributes  
 829 association assessments, if the solid waste in such containers  
 830 is collected at least once a week.

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

833 1. The environmental effects of such disposal on  
 834 groundwater and surface waters are:

835 a.1. Addressed or authorized by a site certification order  
 836 issued under part II or a permit issued by the department under  
 837 this chapter or rules adopted pursuant to this chapter; or

838 b.2. Addressed or authorized by, or exempted from the  
 839 requirement to obtain, a groundwater monitoring plan approved by  
 840 the department. As used in this sub-subparagraph, "addressed by

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841 a groundwater monitoring plan" means the plan is sufficient to  
842 monitor groundwater or surface water for contaminants of  
843 concerns associated with the solid waste being disposed. A  
844 groundwater monitoring plan can be demonstrated to be sufficient  
845 irrespective of whether the groundwater monitoring plan or  
846 disposal is referenced in a department permit or other  
847 authorization.

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

850

851 The disposal of solid waste pursuant to this paragraph does not  
852 create liability under this chapter or chapter 376 for site  
853 cleanup and the exceedance of soil cleanup target levels is not  
854 a basis for enforcement or site cleanup.

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

858 (e) Disposal of solid waste resulting from normal farming  
859 operations as defined by department rule. Polyethylene  
860 agricultural plastic, damaged, nonsalvageable, untreated wood  
861 pallets, and packing material that cannot be feasibly recycled,  
862 which are used in connection with agricultural operations  
863 related to the growing, harvesting, or maintenance of crops, may  
864 be disposed of by open burning if a public nuisance or any  
865 condition adversely affecting the environment or the public  
866 health is not created by the open burning and state or federal  
867 ambient air quality standards are not violated.

868 (f) The use of clean debris as fill material in any area.

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869 However, this paragraph does not exempt any person from  
 870 obtaining any other required permits, and does not affect a  
 871 person's responsibility to dispose of clean debris appropriately  
 872 if it is not to be used as fill material.

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

876 (3) All applicable provisions of ss. 403.087 and 403.088,  
 877 relating to permits, apply to the control of solid waste  
 878 management facilities. Additionally, any permit issued to a  
 879 solid waste management facility shall be for 20 years. This  
 880 provision applies to all solid waste management facilities that  
 881 obtain an operating or construction permit or renew an existing  
 882 operating or construction permit on or after July 1, 2012.

883 Section 20. Subsection (12) is added to section 403.814,  
 884 Florida Statutes, to read:

885 403.814 General permits; delegation.—

886 (12) A general permit shall be granted for the  
 887 construction, alteration, and maintenance of a surface water  
 888 management system serving a total project area of up to 10  
 889 acres. The construction of such a system may proceed without any  
 890 agency action by the department or water management district if:

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

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

894 (c) No activities will impact wetlands or other surface  
 895 waters;

896 (d) No activities are conducted in, on, or over wetlands



897 or other surface waters;

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

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

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

905 380.06 Developments of regional impact.—

906 (24) STATUTORY EXEMPTIONS.—

907 (u) Any proposed solid mineral mine and any proposed  
 908 addition to, expansion of, or change to an existing solid  
 909 mineral mine is exempt from the provisions of this section.  
 910 Proposed changes to any previously approved solid mineral mine  
 911 development-of-regional-impact development orders having vested  
 912 rights is not subject to further review or approval as a  
 913 development of regional impact or notice of proposed change  
 914 review or approval pursuant to subsection (19), except for those  
 915 applications pending as of July 1, 2011, which shall be governed  
 916 by s. 380.115(2). Notwithstanding the foregoing, however,  
 917 pursuant to s. 380.115(1), previously approved solid mineral  
 918 mine development-of-regional-impact development orders shall  
 919 continue to enjoy vested rights and continue to be effective  
 920 unless rescinded by the developer.

921  
 922 If a use is exempt from review as a development of regional  
 923 impact under paragraphs (a)-(s), but will be part of a larger  
 924 project that is subject to review as a development of regional

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925 impact, the impact of the exempt use must be included in the  
 926 review of the larger project, unless such exempt use involves a  
 927 development of regional impact that includes a landowner,  
 928 tenant, or user that has entered into a funding agreement with  
 929 the Office of Tourism, Trade, and Economic Development under the  
 930 Innovation Incentive Program and the agreement contemplates a  
 931 state award of at least \$50 million.

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

934 380.0657 Expedited permitting process for economic  
 935 development projects.—

936 (1) The Department of Environmental Protection and, as  
 937 appropriate, the water management districts created under  
 938 chapter 373 shall adopt programs to expedite the processing of  
 939 wetland resource and environmental resource permits for economic  
 940 development projects that have been identified by a municipality  
 941 or county as meeting the definition of target industry  
 942 businesses under s. 288.106, or any inland multimodal facility,  
 943 receiving or sending cargo to or from Florida ports, with the  
 944 exception of those projects requiring approval by the Board of  
 945 Trustees of the Internal Improvement Trust Fund.

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

949 403.973 Expedited permitting; amendments to comprehensive  
 950 plans.—

951 (3)(a) The secretary shall direct the creation of regional  
 952 permit action teams for the purpose of expediting review of

953 permit applications and local comprehensive plan amendments  
 954 submitted by:

955 1. Businesses creating at least 50 jobs or a commercial or  
 956 industrial development project that will be occupied by  
 957 businesses that would individually or collectively create at  
 958 least 50 jobs; or

959 2. Businesses creating at least 25 jobs if the project is  
 960 located in an enterprise zone, or in a county having a  
 961 population of fewer than 75,000 or in a county having a  
 962 population of fewer than 125,000 which is contiguous to a county  
 963 having a population of fewer than 75,000, as determined by the  
 964 most recent decennial census, residing in incorporated and  
 965 unincorporated areas of the county.

966 (4) The regional teams shall be established through the  
 967 execution of a project-specific memoranda of agreement developed  
 968 and executed by the applicant and the secretary, with input  
 969 solicited from ~~the office and~~ the respective heads of the  
 970 Department of Community Affairs, the Department of  
 971 Transportation and its district offices, the Department of  
 972 Agriculture and Consumer Services, the Fish and Wildlife  
 973 Conservation Commission, appropriate regional planning councils,  
 974 appropriate water management districts, and voluntarily  
 975 participating municipalities and counties. The memoranda of  
 976 agreement should also accommodate participation in this  
 977 expedited process by other local governments and federal  
 978 agencies as circumstances warrant.

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

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981 shall, in cooperation with local governments and participating  
 982 state agencies, create a standard form memorandum of agreement.  
 983 The standard form of the memorandum of agreement shall be used  
 984 only if the local government participates in the expedited  
 985 review process. In the absence of local government  
 986 participation, only the project-specific memorandum of agreement  
 987 executed pursuant to subsection (4) applies. A local government  
 988 shall hold a duly noticed public workshop to review and explain  
 989 to the public the expedited permitting process and the terms and  
 990 conditions of the standard form memorandum of agreement.

991 (10) The memoranda of agreement may provide for the waiver  
 992 or modification of procedural rules prescribing forms, fees,  
 993 procedures, or time limits for the review or processing of  
 994 permit applications under the jurisdiction of those agencies  
 995 that are members of the regional permit action team ~~party to the~~  
 996 ~~memoranda of agreement~~. Notwithstanding any other provision of  
 997 law to the contrary, a memorandum of agreement must to the  
 998 extent feasible provide for proceedings and hearings otherwise  
 999 held separately ~~by the parties to the memorandum of agreement~~ to  
 1000 be combined into one proceeding or held jointly and at one  
 1001 location. Such waivers or modifications shall not be available  
 1002 for permit applications governed by federally delegated or  
 1003 approved permitting programs, the requirements of which would  
 1004 prohibit, or be inconsistent with, such a waiver or  
 1005 modification.

1006 (11) The ~~standard form for~~ memoranda of agreement shall  
 1007 include guidelines to be used in working with state, regional,  
 1008 and local permitting authorities. Guidelines may include, but

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1009 are not limited to, the following:

1010 (a) A central contact point for filing permit applications  
1011 and local comprehensive plan amendments and for obtaining  
1012 information on permit and local comprehensive plan amendment  
1013 requirements;

1014 (b) Identification of the individual or individuals within  
1015 each respective agency who will be responsible for processing  
1016 the expedited permit application or local comprehensive plan  
1017 amendment for that agency;

1018 (c) A mandatory preapplication review process to reduce  
1019 permitting conflicts by providing guidance to applicants  
1020 regarding the permits needed from each agency and governmental  
1021 entity, site planning and development, site suitability and  
1022 limitations, facility design, and steps the applicant can take  
1023 to ensure expeditious permit application and local comprehensive  
1024 plan amendment review. As a part of this process, the first  
1025 interagency meeting to discuss a project shall be held within 14  
1026 days after the secretary's determination that the project is  
1027 eligible for expedited review. Subsequent interagency meetings  
1028 may be scheduled to accommodate the needs of participating local  
1029 governments that are unable to meet public notice requirements  
1030 for executing a memorandum of agreement within this timeframe.  
1031 This accommodation may not exceed 45 days from the secretary's  
1032 determination that the project is eligible for expedited review;

1033 (d) The preparation of a single coordinated project  
1034 description form and checklist and an agreement by state and  
1035 regional agencies to reduce the burden on an applicant to  
1036 provide duplicate information to multiple agencies;

1037 (e) Establishment of a process for the adoption and review  
 1038 of any comprehensive plan amendment needed by any certified  
 1039 project within 90 days after the submission of an application  
 1040 for a comprehensive plan amendment. However, the memorandum of  
 1041 agreement may not prevent affected persons as defined in s.  
 1042 163.3184 from appealing or participating in this expedited plan  
 1043 amendment process and any review or appeals of decisions made  
 1044 under this paragraph; and

1045 (f) Additional incentives for an applicant who proposes a  
 1046 project that provides a net ecosystem benefit.

1047 (15) The secretary ~~office~~, working with the agencies  
 1048 providing cooperative assistance and input regarding the  
 1049 memoranda of agreement, shall review sites proposed for the  
 1050 location of facilities eligible for the Innovation Incentive  
 1051 Program under s. 288.1089. Within 20 days after the request for  
 1052 the review by the secretary ~~office~~, the agencies shall provide  
 1053 to the secretary ~~office~~ a statement as to each site's necessary  
 1054 permits under local, state, and federal law and an  
 1055 identification of significant permitting issues, which if  
 1056 unresolved, may result in the denial of an agency permit or  
 1057 approval or any significant delay caused by the permitting  
 1058 process.

1059 (17) The secretary ~~office~~ shall be responsible for  
 1060 certifying a business as eligible for undergoing expedited  
 1061 review under this section. Enterprise Florida, Inc., a county or  
 1062 municipal government, or the Rural Economic Development  
 1063 Initiative may recommend to the secretary ~~Office of Tourism,~~  
 1064 ~~Trade, and Economic Development~~ that a project meeting the

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1065 minimum job creation threshold undergo expedited review.

1066 (18) The secretary office, working with the Rural Economic  
 1067 Development Initiative and the regional permit action team  
 1068 ~~agencies participating in the memoranda of agreement~~, shall  
 1069 provide technical assistance in preparing permit applications  
 1070 and local comprehensive plan amendments for counties having a  
 1071 population of fewer than 75,000 residents, or counties having  
 1072 fewer than 125,000 residents which are contiguous to counties  
 1073 having fewer than 75,000 residents. Additional assistance may  
 1074 include, but not be limited to, guidance in land development  
 1075 regulations and permitting processes, working cooperatively with  
 1076 state, regional, and local entities to identify areas within  
 1077 these counties which may be suitable or adaptable for  
 1078 preclearance review of specified types of land uses and other  
 1079 activities requiring permits.

1080 Section 24. Subsection (10) of section 163.3180, Florida  
 1081 Statutes, is amended to read:

1082 163.3180 Concurrency.—

1083 (10) (a) Except in transportation concurrency exception  
 1084 areas, with regard to roadway facilities on the Strategic  
 1085 Intermodal System designated in accordance with s. 339.63, local  
 1086 governments shall adopt the level-of-service standard  
 1087 established by the Department of Transportation by rule.  
 1088 However, if the Office of Tourism, Trade, and Economic  
 1089 Development concurs in writing with the local government that  
 1090 the proposed development is for a qualified job creation project  
 1091 under s. 288.0656 or s. 403.973, the affected local government,  
 1092 after consulting with the Department of Transportation, may

1093 provide for a waiver of transportation concurrency for the  
 1094 project. For all other roads on the State Highway System, local  
 1095 governments shall establish an adequate level-of-service  
 1096 standard that need not be consistent with any level-of-service  
 1097 standard established by the Department of Transportation. In  
 1098 establishing adequate level-of-service standards for any  
 1099 arterial roads, or collector roads as appropriate, which  
 1100 traverse multiple jurisdictions, local governments shall  
 1101 consider compatibility with the roadway facility's adopted  
 1102 level-of-service standards in adjacent jurisdictions. Each local  
 1103 government within a county shall use a professionally accepted  
 1104 methodology for measuring impacts on transportation facilities  
 1105 for the purposes of implementing its concurrency management  
 1106 system. Counties are encouraged to coordinate with adjacent  
 1107 counties, and local governments within a county are encouraged  
 1108 to coordinate, for the purpose of using common methodologies for  
 1109 measuring impacts on transportation facilities for the purpose  
 1110 of implementing their concurrency management systems.

1111 (b) There shall be a limited exemption from the Strategic  
 1112 Intermodal System adopted level-of-service standards for new or  
 1113 redevelopment projects consistent with the local comprehensive  
 1114 plan as inland multimodal facilities receiving or sending cargo  
 1115 for distribution and providing cargo storage, consolidation,  
 1116 repackaging, and transfer of goods, and which may, if developed  
 1117 as proposed, include other intermodal terminals, related  
 1118 transportation facilities, warehousing and distribution  
 1119 facilities, and associated office space, light industrial,  
 1120 manufacturing, and assembly uses. The limited exemption applies



1121 if the project meets all of the following criteria:

1122 1. The project will not cause the adopted level-of-service  
 1123 standards for the Strategic Intermodal System facilities to be  
 1124 exceeded by more than 150 percent within the first 5 years of  
 1125 the project's development.

1126 2. The project, upon completion, would result in the  
 1127 creation of at least 50 full-time jobs.

1128 3. The project is compatible with existing and planned  
 1129 adjacent land uses.

1130 4. The project is consistent with local and regional  
 1131 economic development goals or plans.

1132 5. The project is proximate to regionally significant road  
 1133 and rail transportation facilities.

1134 6. The project is proximate to a community having an  
 1135 unemployment rate, as of the date of the development order  
 1136 application, which is 10 percent or more above the statewide  
 1137 reported average.

1138 Section 25. Subsections (1) and (2), paragraph (c) of  
 1139 subsection (3), and subsection (4) of section 373.4137, Florida  
 1140 Statutes, are amended to read:

1141 373.4137 Mitigation requirements for specified  
 1142 transportation projects.—

1143 (1) The Legislature finds that environmental mitigation  
 1144 for the impact of transportation projects proposed by the  
 1145 Department of Transportation or a transportation authority  
 1146 established pursuant to chapter 348 or chapter 349 can be more  
 1147 effectively achieved by regional, long-range mitigation planning  
 1148 rather than on a project-by-project basis. It is the intent of

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1149 | the Legislature that mitigation to offset the adverse effects of  
 1150 | these transportation projects be funded by the Department of  
 1151 | Transportation and be carried out by the water management  
 1152 | districts, through including the use of privately owned  
 1153 | mitigation banks where available or, if a privately owned  
 1154 | mitigation bank is not available, through any other mitigation  
 1155 | options that satisfy state and federal requirements established  
 1156 | ~~pursuant to this part.~~

1157 |           (2) Environmental impact inventories for transportation  
 1158 | projects proposed by the Department of Transportation or a  
 1159 | transportation authority established pursuant to chapter 348 or  
 1160 | chapter 349 shall be developed as follows:

1161 |           (a) By July 1 of each year, the Department of  
 1162 | Transportation or a transportation authority established  
 1163 | pursuant to chapter 348 or chapter 349 which chooses to  
 1164 | participate in this program shall submit to the water management  
 1165 | districts a list copy of its projects in the adopted work  
 1166 | program and an environmental impact inventory of habitats  
 1167 | addressed in the rules adopted pursuant to this part and s. 404  
 1168 | of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted  
 1169 | by its plan of construction for transportation projects in the  
 1170 | next 3 years of the tentative work program. The Department of  
 1171 | Transportation or a transportation authority established  
 1172 | pursuant to chapter 348 or chapter 349 may also include in its  
 1173 | environmental impact inventory the habitat impacts of any future  
 1174 | transportation project. The Department of Transportation and  
 1175 | each transportation authority established pursuant to chapter  
 1176 | 348 or chapter 349 may fund any mitigation activities for future

1177 projects using current year funds.

1178 (b) The environmental impact inventory shall include a  
 1179 description of these habitat impacts, including their location,  
 1180 acreage, and type; state water quality classification of  
 1181 impacted wetlands and other surface waters; any other state or  
 1182 regional designations for these habitats; and a list ~~survey~~ of  
 1183 threatened species, endangered species, and species of special  
 1184 concern affected by the proposed project.

1185 (3)

1186 (c) Except for current mitigation projects in the  
 1187 monitoring and maintenance phase and except as allowed by  
 1188 paragraph (d), the water management districts may request a  
 1189 transfer of funds from an escrow account no sooner than 30 days  
 1190 prior to the date the funds are needed to pay for activities  
 1191 associated with development or implementation of the approved  
 1192 mitigation plan described in subsection (4) for the current  
 1193 fiscal year, including, but not limited to, design, engineering,  
 1194 production, and staff support. Actual conceptual plan  
 1195 preparation costs incurred before plan approval may be submitted  
 1196 to the Department of Transportation or the appropriate  
 1197 transportation authority each year with the plan. The conceptual  
 1198 plan preparation costs of each water management district will be  
 1199 paid from mitigation funds associated with the environmental  
 1200 impact inventory for the current year. The amount transferred to  
 1201 the escrow accounts each year by the Department of  
 1202 Transportation and participating transportation authorities  
 1203 established pursuant to chapter 348 or chapter 349 shall  
 1204 correspond to a cost per acre of \$75,000 multiplied by the

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1205 | projected acres of impact identified in the environmental impact  
 1206 | inventory described in subsection (2). However, the \$75,000 cost  
 1207 | per acre does not constitute an admission against interest by  
 1208 | the state or its subdivisions nor is the cost admissible as  
 1209 | evidence of full compensation for any property acquired by  
 1210 | eminent domain or through inverse condemnation. Each July 1, the  
 1211 | cost per acre shall be adjusted by the percentage change in the  
 1212 | average of the Consumer Price Index issued by the United States  
 1213 | Department of Labor for the most recent 12-month period ending  
 1214 | September 30, compared to the base year average, which is the  
 1215 | average for the 12-month period ending September 30, 1996. Each  
 1216 | quarter, the projected acreage of impact shall be reconciled  
 1217 | with the acreage of impact of projects as permitted, including  
 1218 | permit modifications, pursuant to this part and s. 404 of the  
 1219 | Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer  
 1220 | of funds shall be adjusted accordingly to reflect the acreage of  
 1221 | impacts as permitted. The Department of Transportation and  
 1222 | participating transportation authorities established pursuant to  
 1223 | chapter 348 or chapter 349 are authorized to transfer such funds  
 1224 | from the escrow accounts to the water management districts to  
 1225 | carry out the mitigation programs. Environmental mitigation  
 1226 | funds that are identified or maintained in an escrow account for  
 1227 | the benefit of a water management district may be released if  
 1228 | the associated transportation project is excluded in whole or  
 1229 | part from the mitigation plan. For a mitigation project that is  
 1230 | in the maintenance and monitoring phase, the water management  
 1231 | district may request and receive a one-time payment based on the  
 1232 | project's expected future maintenance and monitoring costs. Upon

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1233 disbursement of the final maintenance and monitoring payment,  
 1234 the department or the participating transportation authorities'  
 1235 obligation will be satisfied, the water management district will  
 1236 have continuing responsibility for the mitigation project, and  
 1237 the escrow account for the project established by the Department  
 1238 of Transportation or the participating transportation authority  
 1239 may be closed. Any interest earned on these disbursed funds  
 1240 shall remain with the water management district and must be used  
 1241 as authorized under this section.

1242 (4) Prior to March 1 of each year, each water management  
 1243 district, in consultation with the Department of Environmental  
 1244 Protection, the United States Army Corps of Engineers, the  
 1245 Department of Transportation, participating transportation  
 1246 authorities established pursuant to chapter 348 or chapter 349,  
 1247 and other appropriate federal, state, and local governments, and  
 1248 other interested parties, including entities operating  
 1249 mitigation banks, shall develop a plan for the primary purpose  
 1250 of complying with the mitigation requirements adopted pursuant  
 1251 to this part and 33 U.S.C. s. 1344. In developing such plans,  
 1252 the districts shall utilize sound ecosystem management practices  
 1253 to address significant water resource needs and shall focus on  
 1254 activities of the Department of Environmental Protection and the  
 1255 water management districts, such as surface water improvement  
 1256 and management (SWIM) projects and lands identified for  
 1257 potential acquisition for preservation, restoration or  
 1258 enhancement, and the control of invasive and exotic plants in  
 1259 wetlands and other surface waters, to the extent that such  
 1260 activities comply with the mitigation requirements adopted under

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1261 this part and 33 U.S.C. s. 1344. In determining the activities  
 1262 to be included in such plans, the districts shall ~~also consider~~  
 1263 ~~the purchase of~~ credits from public or private mitigation banks  
 1264 permitted under s. 373.4136 and associated federal authorization  
 1265 and shall include such purchase as a part of the mitigation plan  
 1266 when such purchase would offset the impact of the transportation  
 1267 project, ~~provide equal benefits to the water resources than~~  
 1268 ~~other mitigation options being considered, and provide the most~~  
 1269 ~~cost-effective mitigation option.~~ The mitigation plan shall be  
 1270 submitted to the water management district governing board, or  
 1271 its designee, for review and approval. At least 14 days prior to  
 1272 approval, the water management district shall provide a copy of  
 1273 the draft mitigation plan to any person who has requested a  
 1274 copy.

1275 (a) For each transportation project with a funding request  
 1276 for the next fiscal year, the mitigation plan must include a  
 1277 brief explanation of why a mitigation bank was or was not chosen  
 1278 as a mitigation option, including an estimation of identifiable  
 1279 costs of the mitigation bank and nonbank options to the extent  
 1280 practicable.

1281 (b) Specific projects may be excluded from the mitigation  
 1282 plan, in whole or in part, and shall not be subject to this  
 1283 section upon the election agreement of the Department of  
 1284 Transportation, ~~or~~ a transportation authority if applicable, or  
 1285 ~~and~~ the appropriate water management district ~~that the inclusion~~  
 1286 ~~of such projects would hamper the efficiency or timeliness of~~  
 1287 ~~the mitigation planning and permitting process.~~ The water  
 1288 ~~management district may choose to exclude a project in whole or~~

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1289 ~~in part if the district is unable to identify mitigation that~~  
 1290 ~~would offset impacts of the project.~~

1291 Section 26. Subsection (5) is added to section 526.203,  
 1292 Florida Statutes, to read:

1293 526.203 Renewable fuel standard.—

1294 (5) This section does not prohibit the sale of unblended  
 1295 fuels for the uses exempted under subsection (3).

1296 Section 27. The uniform mitigation assessment rules  
 1297 adopted by the Department of Environmental Protection in chapter  
 1298 62-345, Florida Administrative Code, as of January 1, 2011, to  
 1299 fulfill the mandate of s. 373.414(18), Florida Statutes, are  
 1300 changed as follows:

1301 (1) Rule 62-345.100(11), Florida Administrative Code, is  
 1302 added to read: "(11) The Department of Environmental Protection  
 1303 shall be responsible for ensuring statewide coordination and  
 1304 consistency in the application of this rule by providing  
 1305 training and guidance to other relevant state agencies, water  
 1306 management districts, and local governments. Not less than every  
 1307 two years, the Department of Environmental Protection shall  
 1308 coordinate with the water management districts to verify  
 1309 consistent application of the methodology. To ensure that this  
 1310 rule is interpreted and applied uniformly, any interpretation or  
 1311 application of this rule by any agency or local government that  
 1312 differs from the Department of Environmental Protection's  
 1313 interpretation or application of this rule is incorrect and  
 1314 invalid. The Department of Environmental Protection's  
 1315 interpretation, application, and implementation of this rule  
 1316 shall be the only acceptable method."

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1317        (2) Rule 62-345.200(12), Florida Administrative Code, is  
1318 changed to read: "(12) "Without preservation assessment" means  
1319 a reasonably anticipated use of the assessment area, and the  
1320 temporary or permanent effects of those uses on the assessment  
1321 area, considering the protection provided by existing easements,  
1322 regulations, and land use restrictions. Reasonably anticipated  
1323 uses include those activities that have been previously  
1324 implemented within the assessment area or adjacent to the  
1325 assessment area, or are considered to be common uses in the  
1326 region without the need for additional authorizations or zoning,  
1327 land use code, or comprehensive plan changes."

1328        (3) Rule 62-345.300(1), Florida Administrative Code, is  
1329 changed to read: "(1) When an applicant proposes mitigation for  
1330 impacts to wetlands and surface waters as part of an  
1331 environmental resource permit or wetland resource permit  
1332 application, the applicant will be responsible for preparing and  
1333 submitting the necessary supporting information for the  
1334 application of Rules 62-345.400-62-345.600, F.A.C., of this  
1335 chapter and the reviewing agency will be responsible for  
1336 verifying this information , contacting the applicant to address  
1337 any insufficiencies or need for clarification, and approving the  
1338 amount of mitigation necessary to offset the proposed impacts.  
1339 When an applicant submits a mitigation bank or regional  
1340 mitigation permit application, the applicant will be responsible  
1341 for preparing and submitting the necessary supporting  
1342 information for the application of Rules 62-345.400-.600,  
1343 F.A.C., of this chapter and the reviewing agency will be  
1344 responsible for verifying this information, contacting the



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1345 applicant to address any insufficiencies or need for  
 1346 clarification, and approving the potential amount of mitigation  
 1347 to be provided by the bank or regional mitigation area. If an  
 1348 applicant submits either Part I or Part II or both, the  
 1349 reviewing agency shall notify the applicant of any inadequacy in  
 1350 the submittal or disagreement with the information provided.

1351 (4) Rule 62-345.300(3) (a), Florida Administrative Code, is  
 1352 changed to read: "(a) Conduct qualitative characterization of  
 1353 both the impact and mitigation assessment areas (Part I) that  
 1354 identifies the assessment area's native community type and the  
 1355 functions to fish and wildlife and their habitat, describes the  
 1356 current condition and functions provided by the assessment area,  
 1357 and summarizes the project condition of the assessment area. The  
 1358 purpose of Part I is to provide a framework for comparison of  
 1359 the assessment area to the optimal condition and  
 1360 location/landscape setting of that native community type.  
 1361 Another purpose of this part is to note any relevant factors of  
 1362 the assessment area that are discovered by site inspectors,  
 1363 including use by listed species."

1364 (5) Rule 62-345.300(3) (c), Florida Administrative Code, is  
 1365 changed to read: "(c) Adjust the gain in ecological value from  
 1366 either upland or wetland preservation in accordance with  
 1367 subsection 62-345.500(3), F.A.C. when preservation is the only  
 1368 mitigation activity proposed (absent creation, restoration, or  
 1369 enhancement activities) at a specified assessment area."

1370 (6) The introductory paragraph of rule 62-345.400, Florida  
 1371 Administrative Code, is changed to read: "An impact or  
 1372 mitigation assessment area must be described with sufficient

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1373 detail to provide a frame of reference for the type of community  
1374 being evaluated and to identify the functions that will be  
1375 evaluated. When an assessment area is an upland proposed as  
1376 mitigation, functions must be related to the benefits provided  
1377 by that upland to fish and wildlife of associated wetlands or  
1378 other surface waters. Information for each assessment area must  
1379 be sufficient to identify the functions beneficial to fish and  
1380 wildlife and their habitat that are characteristic of the  
1381 assessment area's native community type, based on currently  
1382 available information, such as current and historic aerial  
1383 photographs, topographic maps, geographic information system  
1384 data and maps, site visits, scientific articles, journals, other  
1385 professional reports, field verification when needed, and  
1386 reasonable scientific judgment. For wetlands and other surface  
1387 waters, other than those created for mitigation, that have been  
1388 created on sites where such did not exist before the creation,  
1389 such as borrow pits, ditches, and canals, refer to the native  
1390 community type or surface water body to which it is most  
1391 analogous in function for the given landscape position. For  
1392 altered natural communities or surface waterbodies, refer to the  
1393 native community type or surface water body present in the  
1394 earliest available aerial photography except that if the  
1395 alteration has been of such a degree and extent that a clearly  
1396 defined different native community type is now present and self-  
1397 sustaining, in which case the native community type shall be  
1398 identified as the one the present community most closely  
1399 resembles. In determining the historic native community type,  
1400 all currently available information shall be used to ensure the

1401 highest degree of accuracy. The information provided by the  
 1402 applicant for each assessment area must address the following,  
 1403 as applicable:"

1404 (7) Rule 62-345.500(1)(a), Florida Administrative Code, is  
 1405 changed to read: "(a) Current condition or, in the case of  
 1406 preservation only mitigation, without preservation - The current  
 1407 condition of an assessment area is scored using the information  
 1408 in this part to determine the degree to which the assessment  
 1409 area currently provides the relative value of functions  
 1410 identified in Part I for the native community type. In the case  
 1411 of preservation-only mitigation, the "without preservation"  
 1412 assessment utilizes the information in this part to determine  
 1413 the degree to which the assessment area could provide the  
 1414 relative value of functions identified in Part I for the native  
 1415 community type assuming the area is not preserved. For  
 1416 assessment areas where previous impacts that affect the current  
 1417 condition are temporary in nature, consideration will be given  
 1418 to the inherent functions of these areas relative to seasonal  
 1419 hydrologic changes, and expected vegetation regeneration and  
 1420 projected habitat functions if the use of the area were to  
 1421 remain unchanged. When evaluating impacts to a previously  
 1422 permitted mitigation site that has not achieved its intended  
 1423 function, the reviewing agency shall consider the functions the  
 1424 mitigation site was intended to offset and any delay or  
 1425 reduction in offsetting those functions that may be caused by  
 1426 the project. Previous construction or alteration undertaken in  
 1427 violation of Part IV, Chapter 373, F.S., or Sections 403.91-  
 1428 .929, F.S. (1984 Supp.), as amended, or rule, order or permit

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1429 adopted or issued thereunder, will not be considered as having  
1430 diminished the condition and relative value of a wetland or  
1431 surface water, when assigning a score under this part. When  
1432 evaluating wetlands or other surface waters that are within an  
1433 area that is subject to a recovery strategy pursuant to Chapter  
1434 40D-80, F.A.C., impacts from water withdrawals will not be  
1435 considered when assigning a score under this part."

1436 (8) Rule 62-345.500(1)(b), Florida Administrative Code, is  
1437 changed to read: "(b) "With mitigation" or "with impact" - The  
1438 "with mitigation" and "with impact" assessments are based on the  
1439 reasonably expected outcome, which may represent an increase,  
1440 decrease, or no change in value relative to current conditions.  
1441 For the "with impact" and "with mitigation" assessments, the  
1442 evaluator will assume that all other necessary regulatory  
1443 authorizations required for the proposed project have been  
1444 obtained and that construction will be consistent with such  
1445 authorizations. The "with mitigation" assessment will be scored  
1446 only when reasonable assurance has been provided that the  
1447 proposed plan can be conducted. When scoring the "with  
1448 mitigation" assessment for assessment areas involving  
1449 enhancement, restoration, or creation activities and that are  
1450 proposed to be placed under a conservation easement or other  
1451 similar land protection mechanism, the with mitigation score  
1452 shall reflect the combined preservation and  
1453 enhancement/restoration/creation value of the specified  
1454 assessment area, and the Preservation Adjustment Factor shall  
1455 not apply to these mitigation assessments."

1456 (9) Rule 62-345.500(2), Florida Administrative Code, is

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1457 changed to read: "(2) Uplands function as the contributing  
1458 watershed to wetlands and are necessary to maintain the  
1459 ecological value of associated wetlands or other surface waters.  
1460 Upland mitigation assessment areas shall be scored using the  
1461 landscape support/location and community structure indicators  
1462 listed in subsection 62-345.500(6), F.A.C. Scoring of these  
1463 indicators for the upland assessment areas shall be based on the  
1464 degree to which the relative value of functions of the upland  
1465 assessment area provide benefits to the fish and wildlife of the  
1466 associated wetlands or other surface waters, considering the  
1467 native community type, current condition, and anticipated  
1468 ecological value of the uplands and associated wetlands and  
1469 other surface waters.

1470 (a) For upland preservation, the without preservation  
1471 assessment utilizes the information in this part to determine  
1472 the degree to which the assessment area could provide the  
1473 relative value of functions identified in Part I for the native  
1474 community type (to include benefits to fish and wildlife of the  
1475 associated wetlands or other surface waters) assuming the upland  
1476 area is not preserved. The gain in ecological value is  
1477 determined by the mathematical difference between the score of  
1478 the upland assessment area with the proposed preservation  
1479 measure and the upland assessment area without the proposed  
1480 preservation measure. When the community structure is scored as  
1481 "zero", then the location and landscape support shall also be  
1482 "zero". However, an increase in the location and landscape  
1483 support score can also occur when the community structure is  
1484 scored other than "zero". The resulting delta is then multiplied

1485 by the preservation adjustment factor contained in subsection  
 1486 62-345.500(3), F.A.C.

1487 (b) For upland enhancement or restoration, the current  
 1488 condition of an assessment area is scored using the information  
 1489 in this part to determine the degree to which the assessment  
 1490 area currently provides the relative value of functions  
 1491 identified in Part I for the native community type (to include  
 1492 benefits to fish and wildlife of the associated wetlands or  
 1493 other surface waters). The value provided shall be determined by  
 1494 the mathematical difference between the score of the upland  
 1495 assessment area with the proposed restoration or enhancement  
 1496 measure and the current condition of the upland assessment area.

1497 (c) For uplands proposed to be converted to wetlands or  
 1498 other surface waters through creation or restoration measures,  
 1499 the upland areas shall be scored as "zero" in their current  
 1500 condition. Only the "with mitigation" assessment shall be scored  
 1501 in accordance with the indicators listed in subsection 62-  
 1502 345.500(6), F.A.C."

1503 (10) Rule 62-345.500(3), Florida Administrative Code, is  
 1504 changed to read: "(3)(a) When an assessment area's mitigation  
 1505 plan consists of preservation only (absent creation,  
 1506 restoration, or enhancement activities), the "with mitigation"  
 1507 assessment shall consider the potential of the assessment area  
 1508 to perform current functions in the long term, considering the  
 1509 protection mechanism proposed, and the "without preservation"  
 1510 assessment shall evaluate the assessment area's functions  
 1511 considering the reasonably anticipated use of the assessment  
 1512 area and the temporary or permanent effects of those uses in the

1513 assessment area considering the protection provided by existing  
1514 easements, regulations, and land use restrictions. The gain in  
1515 ecological value is determined by the mathematical difference  
1516 between the Part II scores for the "with mitigation" and  
1517 "without preservation" (the delta) multiplied by a preservation  
1518 adjustment factor. The preservation adjustment factor shall be  
1519 scored on a scale from 0.2 (minimum preservation value) to 1  
1520 (optimal preservation value), on one-tenth increments. The score  
1521 shall be calculated using the scoring method set forth in the  
1522 "Preservation Adjustment Factor Worksheet" for each of the  
1523 following considerations:

1524 1. The extent to which proposed management activities  
1525 within the preserve area promote natural ecological conditions  
1526 such as fire patterns or the exclusion of invasive exotic  
1527 species.

1528 2. The ecological and hydrological relationship between  
1529 wetlands, other surface waters, and uplands to be preserved.

1530 3. The scarcity of the habitat provided by the proposed  
1531 preservation area and the degree to which listed species use the  
1532 area.

1533 4. The proximity of the area to be preserved to areas of  
1534 national, state, or regional ecological significance, such as  
1535 national or state parks, Outstanding Florida Waters, and other  
1536 regionally significant ecological resources or habitats, such as  
1537 lands acquired or to be acquired through governmental or non-  
1538 profit land acquisition programs for environmental conservation,  
1539 and whether the areas to be preserved include corridors between  
1540 these habitats.

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1541 5. The extent and likelihood of potential adverse impacts  
1542 if the assessment area were not preserved.

1543 (b) Each of these considerations shall be scored on a  
1544 relative scale of zero (0) to two-tenths (0.2) based on the  
1545 value provided [optimal (0.2), low to moderate (0.1), and no  
1546 value (0)] and summed together to calculate the preservation  
1547 adjustment factor. The minimum value to be assigned to a  
1548 specified assessment area will be 0.2. The preservation  
1549 adjustment factor is multiplied by the mitigation delta assigned  
1550 to the preservation proposal to yield an adjusted mitigation  
1551 delta for preservation."

1552 (11) Rule 62-345.500(6)(a), Florida Administrative Code,  
1553 is changed to read: "(6) Three categories of indicators of  
1554 wetland function (landscape support, water environment and  
1555 community structure) listed below are to be scored to the extent  
1556 that they affect the ecological value of the assessment area.  
1557 Upland mitigation assessment areas shall be scored for landscape  
1558 support/location and community structure only.

1559 (a) Landscape Support/Location - The value of functions  
1560 provided by an assessment area to fish and wildlife are  
1561 influenced by the landscape attributes of the assessment area  
1562 and its relationship with surrounding areas. While the  
1563 geographic location of the assessment area does not change, the  
1564 ecological relationship between the assessment area and  
1565 surrounding landscape may vary from the current condition to the  
1566 "with impact" and "with mitigation" conditions. Additionally,  
1567 the assessment area may be located within a regional corridor or  
1568 in proximity to areas of national, state, or regional



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1569 significance, and the "with mitigation" condition may serve to  
1570 complement the regional ecological value identified for these  
1571 areas. Many species that nest, feed, or find cover in a specific  
1572 habitat or habitat type are also dependent in varying degrees  
1573 upon other habitats, including upland, wetland, and other  
1574 surface waters, that are present in the regional landscape. For  
1575 example, many amphibian species require small isolated wetlands  
1576 for breeding pools and for juvenile life stages, but may spend  
1577 the remainder of their adult lives in uplands or other wetland  
1578 habitats. If these habitats are unavailable or poorly connected  
1579 in the landscape or are degraded, then the value of functions  
1580 provided by the assessment area to the fish and wildlife  
1581 identified in Part I is reduced. The assessment area shall also  
1582 be considered to the extent that fish and wildlife utilizing the  
1583 area have the opportunity to access other habitats necessary to  
1584 fulfill their life history requirements. The availability,  
1585 connectivity, and quality of offsite habitats, and offsite land  
1586 uses which might adversely impact fish and wildlife utilizing  
1587 these habitats, are factors to be considered in assessing the  
1588 landscape support of the assessment area. The location of the  
1589 assessment area shall be considered relative to offsite and  
1590 upstream hydrologic contributing areas and to downstream and  
1591 other connected waters to the extent that the diversity and  
1592 abundance of fish and wildlife and their habitats is affected in  
1593 these areas. The opportunity for the assessment area to provide  
1594 offsite water quantity and quality benefits to fish and wildlife  
1595 and their habitats downstream and in connected waters is  
1596 assessed based on the degree of hydrologic connectivity between

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1597 these habitats and the extent to which offsite habitats are  
1598 affected by discharges from the assessment area. It is  
1599 recognized that isolated wetlands lack surface water connections  
1600 to downstream waters and as a result, do not perform certain  
1601 functions (e.g., detrital transport) to benefit downstream fish  
1602 and wildlife; for such wetlands, this consideration does not  
1603 apply.

1604 1. A score of (10) means the assessment area, in  
1605 combination with the surrounding landscape, provides full  
1606 opportunity for the assessment area to perform beneficial  
1607 functions at an optimal level. The score is based on reasonable  
1608 scientific judgment and characterized by a predominance of the  
1609 following, as applicable:

1610 a. Habitats outside the assessment area represent the full  
1611 range of habitats needed to fulfill the life history  
1612 requirements of all wildlife listed in Part I and are available  
1613 in sufficient quantity to provide optimal support for these  
1614 wildlife.

1615 b. Invasive exotic or other invasive plant species are not  
1616 present in the proximity of the assessment area.

1617 c. Wildlife access to and from habitats outside the  
1618 assessment area is not limited by distance to these habitats and  
1619 is unobstructed by landscape barriers.

1620 d. Functions of the assessment area that benefit  
1621 downstream fish and wildlife are not limited by distance or  
1622 barriers that reduce the opportunity for the assessment area to  
1623 provide these benefits.

1624 e. Land uses outside the assessment area have no adverse

1625 impacts on wildlife in the assessment area as listed in Part I.

1626 f. The opportunity for the assessment area to provide  
1627 benefits to downstream or other hydrologically connected areas  
1628 is not limited by hydrologic impediments or flow restrictions.

1629 g. Downstream or other hydrologically connected habitats  
1630 are critically or solely dependent on discharges from the  
1631 assessment area and could suffer severe adverse impacts if the  
1632 quality or quantity of these discharges were altered.

1633 h. For upland mitigation assessment areas, the uplands  
1634 provide a full suite of ecological values so as to provide  
1635 optimal protection and support of wetland functions.

1636 2. A score of (7) means that, compared to the optimal  
1637 condition of the native community type, the opportunity for the  
1638 assessment area to perform beneficial functions in combination  
1639 with the surrounding landscape is limited to 70% of the optimal  
1640 ecological value. The score is based on reasonable scientific  
1641 judgment and characterized by a predominance of the following,  
1642 as applicable:

1643 a. Habitats outside the assessment area are available in  
1644 sufficient quantity and variety to provide optimal support for  
1645 most, but not all, of the wildlife listed in Part I, or certain  
1646 wildlife populations may be limited due to the reduced  
1647 availability of habitats needed to fulfill their life history  
1648 requirements.

1649 b. Some of the plant community composition in the  
1650 proximity of the assessment area consists of invasive exotic or  
1651 other invasive plant species, but cover is minimal and has  
1652 minimal adverse effect on the functions provided by the

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1653 assessment area.

1654 c. Wildlife access to and from habitats outside the  
1655 assessment area is partially limited, either by distance or by  
1656 the presence of barriers that impede wildlife movement.

1657 d. Functions of the assessment area that benefit fish and  
1658 wildlife downstream are somewhat limited by distance or barriers  
1659 that reduce the opportunity for the assessment area to provide  
1660 these benefits.

1661 e. Land uses outside the assessment area have minimal  
1662 adverse impacts on fish and wildlife identified in Part I.

1663 f. The opportunity for the assessment area to provide  
1664 benefits to downstream or other hydrologically connected areas  
1665 is limited by hydrologic impediments or flow restrictions such  
1666 that these benefits are provided with lesser frequency or lesser  
1667 magnitude than would occur under optimal conditions.

1668 g. Downstream or other hydrologically connected habitats  
1669 derive significant benefits from discharges from the assessment  
1670 area and could suffer substantial adverse impacts if the quality  
1671 or quantity of these discharges were altered.

1672 h. For upland mitigation assessment areas, the uplands  
1673 provide significant, but suboptimal ecological values and  
1674 protection of wetland functions.

1675 3. A score of (4) means that, compared to the optimal  
1676 condition of the native community type, the opportunity for the  
1677 assessment area to perform beneficial functions in combination  
1678 with the surrounding landscape is limited to 40% of the optimal  
1679 ecological value. The score is based on reasonable scientific  
1680 judgment and characterized by a predominance of the following,

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1681 as applicable:

1682 a. Availability of habitats outside the assessment area is  
1683 fair, but fails to provide support for some species of wildlife  
1684 listed in Part I, or provides minimal support for many of the  
1685 species listed in Part I.

1686 b. The majority of the plant community composition in the  
1687 proximity of the assessment area consists of invasive exotic or  
1688 other invasive plant species that adversely affect the functions  
1689 provided by the assessment area.

1690 c. Wildlife access to and from habitats outside the  
1691 assessment area is substantially limited, either by distance or  
1692 by the presence of barriers which impede wildlife movement.

1693 d. Functions of the assessment area that benefit fish and  
1694 wildlife downstream are limited by distance or barriers that  
1695 substantially reduce the opportunity for the assessment area to  
1696 provide these benefits.

1697 e. Land uses outside the assessment area have significant  
1698 adverse impacts on fish and wildlife identified in Part I.

1699 f. The opportunity for the assessment area to provide  
1700 benefits to downstream or other hydrologically connected areas  
1701 is limited by hydrologic impediments or flow restrictions, such  
1702 that these benefits are rarely provided or are provided at  
1703 greatly reduced levels compared to optimal conditions.

1704 g. Downstream or other hydrologically connected habitats  
1705 derive minimal benefits from discharges from the assessment area  
1706 but could be adversely impacted if the quality or quantity of  
1707 these discharges were altered.

1708 h. For upland mitigation assessment areas, the uplands

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1709 provide minimal ecological values and protection of wetland  
1710 functions.

1711 4. A score of (0) means that the assessment area, in  
1712 combination with the surrounding landscape, provides no habitat  
1713 support for wildlife utilizing the assessment area and no  
1714 opportunity for the assessment area to provide benefits to fish  
1715 and wildlife outside the assessment area. The score is based on  
1716 reasonable scientific judgment and characterized by a  
1717 predominance of the following, as applicable:

1718 a. No habitats are available outside the assessment area  
1719 to provide any support for the species of wildlife listed in  
1720 Part I.

1721 b. The plant community composition in the proximity of the  
1722 assessment area consists predominantly of invasive exotic or  
1723 other invasive plant species such that little or no function is  
1724 provided by the assessment area.

1725 c. Wildlife access to and from habitats outside the  
1726 assessment area is precluded by barriers or distance.

1727 d. Functions of the assessment area that would be expected  
1728 to benefit fish and wildlife downstream are not present.

1729 e. Land uses outside the assessment area have a severe  
1730 adverse impact on wildlife in the assessment area as listed in  
1731 Part I.

1732 f. There is negligible or no opportunity for the  
1733 assessment area to provide benefits to downstream or other  
1734 hydrologically connected areas due to hydrologic impediments or  
1735 flow restrictions that preclude provision of these benefits.

1736 g. Discharges from the assessment area provide negligible

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1737 or no benefits to downstream or hydrologically connected areas  
1738 and these areas would likely be unaffected if the quantity or  
1739 quality of these discharges were altered.

1740 h. For upland mitigation assessment areas, the uplands  
1741 provide no ecological value or protection of wetland functions."

1742 (12) The Department of Environmental Protection is  
1743 directed to make additional changes to the worksheet portions of  
1744 chapter 62-345, Florida Administrative Code, as needed to  
1745 conform to the changes set forth in this section.

1746 (13) Any entity holding a mitigation bank permit may apply  
1747 to the relevant agency to have such mitigation bank reassessed  
1748 pursuant to the changes to chapter 62-345, Florida  
1749 Administrative Code, set forth in this section, if such  
1750 application is filed with that agency no later than September  
1751 30, 2011.

1752 Section 28. This act shall take effect July 1, 2011.