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Abstract

With the enactment of the Warren S. Henderson Wetlands Protection Act of 1984 the Florida Legislature took a first step toward comprehensive wetlands protection, joining seven other states that have enacted comprehensive wetlands legislation.

KEYWORDS: Wetlands protection, Warren, Act

I. Introduction

With the enactment of the Warren S. Henderson Wetlands Protection Act of 1984 the Florida Legislature took a first step toward comprehensive wetlands protection, joining seven other states that have enacted comprehensive wetlands legislation. While the passage of the Act is in itself recognition of the importance of wetlands to Florida, the language of the Act reflects the influence of other strong competing interests.

"Wetlands" are variously defined, typically calling for saturated soil conditions and a prevalence of vegetation adapted for life under those conditions. They are unquestionably important to the health and welfare of future generations. Wetlands are especially valuable re-

1. FLA. STAT. §§ 403.91-.929 (Supp. 1984), entitled the Warren S. Henderson Wetlands Protection Act of 1984 [hereinafter cited as the Wetlands Protection Act].


3. See FLA. STAT. § 403.817 (1983) (The Vegetative Index is ratified by FLA. STAT. § 403.8171 (Supp. 1984). The Department of Environmental Regulation's (DER) dredge and fill authority is based on a Vegetative Index which identifies plant species which are indicative of wetlands. See also 33 C.F.R. § 323.2(c) (1982), which defines wetlands as "[t]hose areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas."

4. S. REP. NO. 370, 95th Cong., 1st Sess. 10 (1977). Senator Muskie's report favoring the passage of S. 1952, Clean Water Act of 1977, stated that "[t]here is no question that the systematic destruction of the Nation's wetlands is causing serious, permanent ecological damage. The wetlands and bays, estuaries and deltas are the Nation's most biologically active areas." See also E. ODUM, WATER RESOURCES ASSOCIATION, PROCEEDINGS OF THE NATIONAL SYMPOSIUM ON WETLANDS (1978).
sources due to their biological productivity, water storage capacity, ability to reduce flood damage, recharge aquifers, and remove organic pollutants by natural processes. With more than ten million acres of wetlands in Florida, wetlands are, as the legislature recognized through the Act, a major component of the essential characteristics that make Florida an attractive place to live, performing economic and recreational functions that would be costly to replace should their vital character be lost.

While Florida’s Wetlands Protection Act purports to regulate the uncontrolled development of wetlands, the Act may include sufficient exemptions to hamper its effectiveness. This note will chart the history of wetlands legislation in Florida leading up to the adoption of the Wetlands Protection Act, analyze this Act in light of its expressed purposes, and make recommendations for possible changes which may increase the protection of wetlands in Florida.

II. History of Environmental Protection in Florida

The Preamble to the Wetlands Protection Act reflects a historical indifference to the protection of the environment. This indifference,...


8. Id. The preamble to the Wetlands Protection Act states: Whereas, the economic, urban, and agricultural development of this state has necessitated the alteration, drainage, and development of wetlands. While state policy permitting the uncontrolled development of wetlands may have been appropriate in the past, the continued elimination or disturbance of wetlands in an uncontrolled manner will cause extensive damage to the economic and recreational values which Florida’s remaining wetlands provide. . . .


Florida Wetlands Act

however, began to change for the first time in 1968 when, as a part of a considerable Constitutional revision, the Florida Constitution was amended to include article II, section 7: "Natural resources and scenic beauty—It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise."  

During and after the period of development of the 1968 Constitutional revisions, the legislature passed legislation attempting to control air, water, noise and solid waste pollution. In addition, the legislature enacted laws to regulate water consumption and supply. Also, the United States Congress passed several laws relating to the environment whose administration were the primary responsibility of the states: the Federal Water Pollution Control Act amendments of 1972, the Clean Air Act, and the Safe Drinking Water Act.  

The difficulty with efforts to protect the environment following the Constitutional amendment and the federal legislation was the lack of coordination between the various agencies of state government in the absence of comprehensive legislation. This created impediments to effective regulation and frustration for those interests being regulated. Despite efforts at reorganizing state agencies in 1969, the responsibility for environmental protection remained divided between four different agencies. With additional environmental legislation during the early 1980s, the process of environmental protection in Florida became more coordinated.
1970's, problems caused by overlapping agency responsibility, lack of accountability, and permit processing delays created great pressure to consolidate environmental regulation.22

The Florida legislature made two unsuccessful efforts to consolidate control between 1971 and 1974.23 A year later the legislature enacted the Environmental Reorganization Act of 1975.24 This Act created the Department of Environmental Regulation (DER) by absorbing the Department of Pollution Control, with its responsibility for air, water, noise, solid waste and power plant siting, and by assuming responsibility for navigable waters permitting from the Trustees of the Internal Improvement Trust Fund, the public drinking water supply oversight from the Department of Health and Rehabilitative Services, and water management responsibilities from the Department of Natural Resources.25

Because the widely divergent geography of Florida creates significantly different water use and management requirements, the Environmental Reorganization Act of 1975 provided that the DER delegate "to the greatest extent practicable" its water management power under Florida Statutes Chapter 373.26 In requiring this delegation, the legislature desired to better regulate differing geographical water use demands through regional water management. While the Act made mandatory the delegation of responsibility for enforcement of Chapter 373 to the water management districts, it did not give explicit directions to the DER under section 403.812 of the Florida Statutes to delegate water quality management. The implication was that water management districts were responsible for permitting quantitative water use while the DER remained responsible for water quality,27 unless a valid

Department of Health and Rehabilitative Services, and the Department of Natural Resources.

22. Id.
23. Id.
25. Landers, supra note 20, at 270.
27. Wershow, Legal Implications of Water Management for Florida's Future, 54 FLA. B.J. 527, 527-28 (1980). FLA. STAT. § 373.016(3) directs that "to the greatest extent practicable, such power should be delegated to the governing board of a water management district" and makes no reference to water quality standards in FLA. STAT. § 403.812. That statute provides that the water quality functions of the department may be delegated when the secretary determines that a water management district has the financial and technical capability to carry out these functions. Hence, the legislature seems to create a bifurcation between the functions of water quantity management
delegation was made by the DER to those districts which the secretary
determined had the financial and technical capability to carry out
water quality management.\textsuperscript{28}

This lack of clear delineation of responsibilities between the water
management districts and the DER became apparent when water man-
agement districts began writing water quality standards into their regu-
lations without a valid delegation of authority, creating the potential
for confusion among regulatees.\textsuperscript{29} The historical concern that a bifur-
cated system of enforcement results in confusion to regulated inter-
ests\textsuperscript{30} continues to play a role in water management in Florida. As de-
tailed below, some provisions of Florida's Wetlands Protection Act
again raise this issue by arguably fostering this confusion.

\section*{III. The Development of Wetlands Protection in Florida}

The process of recognizing the growing need for wetlands protec-
tion has been a long one. As an understanding of the impact of the loss
of wetlands\textsuperscript{31} increased, so too did the need to provide measures for
protecting them. In 1973, the Florida Wildlife Federation hosted a wet-
lands legislative conference which resulted in the development of "A
Statement on Wetlands Protection."\textsuperscript{32} This Statement outlined five
goals which would provide greater protection for wetlands: 1) explicit
criterion to define the lands to be protected; 2) explicit specifications as
to uses which are prohibited and those that are not; 3) measures for
bringing lands into public ownership where necessary to carry out the
purposes of the act; 4) strong enforcement sanctions, and 5) funding
measures necessary to carry out the purposes of the act.\textsuperscript{33}

and water quality management which has created some overlapping and confusion
when water management districts adopted regulations relating to quality.
\textsuperscript{29} \textit{Wershow, supra} note 27, at 528.
\textsuperscript{30} Letter from Randall E. Denker to Johnny Jones, Executive Director, Florida
Wildlife Federation (May 9, 1984).
\textsuperscript{31} Address by Victoria Tschinkel, Secretary of DER, Florida Wildlife Federa-
tion Annual Meeting (Sept. 8, 1984). Florida has lost 40\% of its wetlands from 1900-
1973. For the period since 1952, Florida has lost 1.5 million acres of wetlands.
\textsuperscript{32} Florida Wildlife Federation Wetlands Legislative Conference, A Statement
on Wetlands Protection (Sept. 6-8, 1973).
\textsuperscript{33} \textit{Id.} at 3. In addition, the Conference stated:
[The] power to regulate should be backed up by the power to obtain the
fee or lesser estate as required in wetlands by negotiation, gift, or the exer-
cise of the power of eminent domain in cases where the regulation is held.
Of these goals, the Florida legislature addressed that of compensating owners for a "taking" due to a reduction of property values caused by permit denial in 1978. The passage of Florida Statutes section 380.085 allowed, among other things, for the payment of appropriate damages. Since then, courts reviewing the taking issue have recognized that restrictions on land use which deny the highest and best use are not takings, and that "[a]n owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others." So, while there were measures to bring lands into public ownership, and judicial determinations that limit public compensation to only that environmentally sensitive property where the regulations preclude all economically reasonable uses, there was no comprehensive legislation to address the additional identified goals geared to the actual protection of the wetlands. Not until eleven years after the Conference did the Florida legis-

by a court to be invalid in application and the administering agency determines that the taking is necessary to carry out the purposes of the act. . . . In addition, special wetlands tax incentives, analogous to greenbelt laws as applied to agricultural lands, should be provided to encourage the retention and protection of wetlands in private ownership. The wetlands tax incentives should apply as appropriate to all regulated wetlands.

Id.

34. FLA. STAT. § 380.085 (1983) allows any person substantially affected by final agency action to initiate an action in circuit court after exhausting Chapter 120 administrative remedies. If the court decides that an agency action is an unreasonable exercise of the state's police power, constituting a taking without just compensation, the court will remand the matter to the agency. The agency must then take one of three actions: (1) agree to issue the permit, (2) agree to pay appropriate damages, or (3) agree to modify its decision to remedy its unreasonable action. See also Rhodes, Compensating Police Power Takings: Chapter 78-85, Laws of Florida, 52 FLA. B.J. 741 at 743 (1978).


36. Id.

37. Graham, 399 So. 2d at 1382. See also Deltona Corp. v. United States, 657 F.2d 1184, 1193 (1981), cert. denied, 455 U.S. 1017 (1982). Both of these cases are similar to Just v. Marinette County, 56 Wis. 2d 7, 201 N.W.2d 761 (1972), a landmark Wisconsin Supreme Court decision involving interdependent wetlands, swamps, water quality, and natural resources such as fish and wildlife habitat. That case denied an owner's absolute right to change the natural condition of his land if that change creates a public harm.

38. Graham, 399 So. 2d at 1382.

39. See supra note 37.
IV. The Warren S. Henderson Wetlands Protection Act of 1984

Undoubtedly, the passage of the Wetlands Protection Act enhances Florida’s ability to protect wetlands. Key achievements of the Act include: 1) increased jurisdiction over wetlands by the addition of over two hundred species to the Vegetative Index, the DER’s principal method of jurisdiction determination; 2) expansion of the DER’s criteria for granting or denying permits, including the ability to consider fish and wildlife habitat; 3) the clarification of the DER’s jurisdiction during times of drought; 4) consideration of the cumulative impact of projects in granting or denying permits; 5) the naming of the Ever-
glades as waters of the state; and the ability of the DER to consider mitigation in the permitting process.

The Wetlands Protection Act is long and complex. It addresses a biologically complicated issue through legislation which is, in its own right, procedurally and politically complicated. While Florida has gained much through passage of the Act, the complexities of negotiating such an Act led to the creation of statutory exemptions which may not be consistent with the express legislative intent or the public interest.

Florida's Wetlands Protection Act clearly represents a compromise between very strong development, mining and agricultural interests on the one hand and environmentalists on the other. Despite the compromises necessary to insure the passage of the bill, the Wetlands Protection Act is largely a success. Considering the fact that the DER and environmental groups have been trying without success to win legislative passage of just one of the concepts, the fish and wildlife permit criterion, the Act's drafters consider the comprehensive Wetlands Protection Act an extremely significant accomplishment.
Drafters of the Wetlands Protection Act set for themselves five goals, which are somewhat different from those expressed by the 1973 Florida Wildlife Federation Conference, yet similar in their desire to begin comprehensive wetlands protection efforts. Those goals were: 1) the creation of legislative intent recognizing the importance of wetlands; 2) the combining of Florida Statute Chapters 253 and 403; 3) the creation of new permitting criteria, principally the impact of proposed projects upon fish and wildlife habitat; 4) defining the Everglades as named waters of the State; and 5) the adoption of the amended Vegetative Index.

Addressing these goals is a significant accomplishment. Fully achieving wetlands protection will require additional legislative action.

A. Legislative Intent

While the Florida legislature failed to follow the lead of most other states in enacting their intent as an integral part of their comprehensive wetlands legislation, the intent is nonetheless clear. The language of the preamble to the Act recognizes the economic and recreational values of the wetlands. That language also commits the state to the establishment of reasonable regulatory programs for the preservation and protection of Florida's remaining wetlands consistent with balancing other vital interests of the state.


51. Conference, supra note 32.
52. Mills, supra note 50.
53. Id.
55. See supra notes 7 & 8 and accompanying text.
56. Id.
57. 1984 Fla. Sess. Law Serv. 84-79 (West). In pertinent part the preamble reads:

"Whereas, it is the policy of this state to establish reasonable regulatory programs which provide for the preservation and protection of Florida's remaining wetlands to the greatest extent practicable, consistent with private property rights and the balancing of other state vital interests. . . ."
In addition to the Act's language, the Conference Committee incorporated the legislature's intent into its report to ensure the application of the preamble to the amended legislation. Although this language may be clear enough to support administering agencies against challenges to their authority under the Act, the legislature's failure to enact its intent may be read by some to exhibit a lack of sincerity to provide the level of wetlands protection needed in Florida. While the lack of an enacted intent distinguishes Florida from the majority of other states that have passed comprehensive wetlands legislation, only future challenges to authority given by the Act will determine whether this omission is significant. To avoid any possibility of future difficulties related to the lack of express statutory intent, the legislature should enact its intent, making it a part of the substance of the Act.

B. The Stormwater Ditch Exemption

Section 403.913(4) exempts owners of land within a water management district that has been delegated stormwater permitting authority by the DER from obtaining a dredge and fill permit for irrigation or drainage ditches constructed in the uplands. This exemption extends

Id.


59. Interview with Johnny Jones, Executive Director, Florida Wildlife Federation, in West Palm Beach, Fla. (Aug. 29, 1984).


61. FLA. STAT. § 403.913(4) (Supp. 1984), reads:

Within those areas of the state where a water management district has been delegated stormwater permitting by the department, no dredge or fill permit shall be required for the construction of, and dredging and filling in, irrigation or drainage ditches constructed in the uplands, including those connecting otherwise isolated areas owned entirely by one person and dominated by the plant indicator species adopted pursuant to s. 403.817. This exemption shall only apply to ditches where the point of connection to other waters of the state is no more than 35 square feet in total cross-sectional area and normally having a water depth of no more than 3 feet. The total cross-sectional area at the point of connection to other waters of the state shall be maintained by the landowner so as not to exceed the design limitations of this exemption. This exemption does not authorize dredging in waters of the state other than ditches as described herein. All applicable permits, except dredge and fill permits, shall be required for
to otherwise isolated areas owned entirely by one person and dominated
by those plant species which are not indicative of wetlands.62 The ex-
emption is lost if the point of connection to other waters of the state is
more than thirty-five square feet in total cross-sectional area and the
ditch has a normal water depth of more than three feet.63 The legis-
lature created the stormwater ditch exemption to reverse a 1981 adminis-
trative law decision64 which made artificial waterways and de minimis
connections, waters of the state.65

Stormwater discharges pose a potentially serious source of pollu-
tants into Florida’s waters.66 The difficulty with maintaining consistent
enforcement is a potential problem in protecting wetlands. In some re-
gions of the state, stormwater discharge permitting is delegated to
water management districts67 by the DER. In other regions,
stormwater permitting is retained by the DER. Because of the possibil-
ity of inconsistent regional regulation, this bifurcation has the potential
to become reminiscent of the historical reasons for the original consoli-
dation of environmental enforcement under one agency.

Sensitivity to the need for consistency is a central theme of Gover-
nor Graham’s Directive to the Water Management Districts of June 4,

Id.

62. Id.
63. Id.
64. Letter from State Senator Pat Neal, Chairman of the Committee on Natural
65. Occidental Chemical Co. v. State of Florida Department of Environmental
Regulation, Case No. 77-2051, Fla. Admin. Law Reports 1029-A (1980). This admin-
istrative decision involved a dispute as to the DER’s jurisdiction over Roaring Creek
under applicable statutes and regulations. While the intent of legislators may have been
to clarify and limit the DER’s jurisdiction in similar situations, the addition of wet-
lands plant species to the Vegetative Index and the enactment of criterion allowing
consideration of wildlife habitat in the permitting process would seem to nega-
tive that intention.
66. E.P.A. OFFICE OF ENFORCEMENT AND COMPLIANCE MONITORING, PUB. NO.
EPA-330/1-84-001, SOUTH FLORIDA DRINKING WATER INVESTIGATION BROWARD,
67. Mills, supra note 50. Only the South Florida Water Management District
and the Southwest Florida Water Management District have received stormwater per-
mitting delegations.
relating to the implementation of programs required by the Act. The Directive mandates that there be rules established by every water management district by October 1, 1984. This requirement creates a "safety net" such that no major areas or activities that are currently protected by the DER and exempted by the water management districts shall be unregulated by that date. Specifically, the Governor directs the water management district boards to manage and protect wetlands in their agricultural regulatory program consistent with how other industries are regulated by environmental agencies. This Directive also requires the protection of water quality, consistent agricultural programs, including uniform rules, permitting, mitigation, enforcement and coordination efforts by all water management districts.

While the Governor's Directive is a positive step toward consistent wetlands protection efforts, the water management districts and the DER should have been similarly statutorily mandated to develop model rules for the implementation of the Act so that continued consistency is assured. Furthermore, the legislature should statutorily establish guidelines or criterion applicable to both agencies to reduce the difficulties inherent in a bifurcated system of enforcement.

C. Mining Exemption

Section 403.913(8) provides an exemption for existing sand, limerock, or limestone mining activity from the more stringent requirements of the Act. Arguably, there is no environmental reason for this
exemption. Mining activities pose great potential for contamination of groundwater supplies\(^7\) by reducing the effectiveness of the wetland’s aquifer recharge and pollution filtration capabilities. As an example, continued destruction of wetlands through mining in Dade County further exposes the Biscayne Aquifer to direct contamination from pollutants.\(^7\) The Aquifer is the sole source of drinking water for millions of people living in the south Florida area,\(^7\) and the “health” of the Aquifer is a matter of serious concern to the people of south Florida.\(^7\)

Despite the threat to the Aquifer, section 403.913(8) of the Wetlands Protection Act\(^8\) permits mining activity to continue to be regulated pursuant to the department’s dredge and fill jurisdiction as it existed prior to January 24, 1984, for a period of ten years from the effective date of the Act, provided such activity is continuous and carried out on land contiguous to mining operations existent on or before the effective date of the Act.\(^8\) Although sponsors of the Act believe that limerock mining operations pose no significant threat to the environment,\(^8\) the removal of the wetlands filtering capacity may expose south Florida’s water supply to increased pollution.\(^8\)

Until there is a clear consensus on the effect of limerock mining on groundwater supplies, with its concurrent effect of wetlands destruction, the legislature should have chosen to regulate mining interests using the same standards for existing mining operations as are applicable to new ones. Since there is no apparent environmental reason for this exemption, one may assume that its inclusion was a “tradeoff” to ensure the Act’s approval by mining and development interests. It re-


77. Id.

78. Id. at 354.

79. See *supra* note 74.

80. FLA. STAT. § 403.913(8) (Supp. 1984): “Such sand, limerock, or limestone mining activity shall continue to be regulated pursuant to the department’s dredge and fill jurisdiction as it existed prior to January 24, 1984, for a period of 10 years. . . .” Id.

81. See *supra* notes 50 & 64.

82. Tripp and Jaffe, *supra* note 75; see also J. Kusler, *supra* note 60, at 42; and see E. Odum, *supra* note 4.
mains to be seen if the people of south Florida have lost more than they have gained through the Act.

D. Agricultural Exemption

Perhaps the most serious potential problem with the Wetlands Protection Act is its exemption for agricultural interests. Agricultural practices are the principal threat to wetlands in many areas of the country, and Florida is no exception. The fact that agricultural interests in Florida are politically powerful can be demonstrated through their exemption from other environmental legislation. This influence over the legislature heightens concerns of environmentalists who see agricultural development of wetlands as a precursor to more intense and more ecologically destructive development. As the legislature considered the Wetlands Protection Act, agricultural interests actively lobbied against increased DER agricultural jurisdiction. During the course of negotiations, even with the DER willing to write special lan-

83. FLA. STAT. § 403.927(2) (Supp. 1984), states:
Agricultural activities and agricultural water management systems are authorized by this section and shall not be subject to the provisions of s. 403.087 or this part or ss. 403.91-403.929, nor shall the department enforce water quality standards within an agricultural water management system. The department may require a stormwater permit or appropriate discharge permit at the ultimate point of discharge from one or a group of connected agricultural water management systems. Impacts of agricultural activities and agricultural water management systems on groundwater quality shall be regulated by water management districts.

Id.

84. J. KUSLER, supra note 60, at 41.
Drainage destroys wetland vegetation and wildlife. Diking interferes with wetland water and nutrient supplies. Other impacts include nutrient enrichment from agricultural runoff (fertilizers, manure), sedimentation from the erosion and discharge of soil into waterways, introduction of toxic chemicals from agricultural pesticides and herbicides, disturbance of wetland water supplies by agricultural pumping, and destruction of wetland vegetation and wildlife by plowing, harvesting and other practices.

Id.

85. Agricultural interests have been previously exempted from FLA. STAT. § 380.06.
86. See supra note 59.
87. Farm Bureau, Wetlands Bill Gives Ag A Cleaner Bill of Health, FloridAgriculture, May 1, 1984, at 1, col. 1.
guage into the Act, agricultural interests "bolted." They refused to consider DER regulation and expressed a desire to be regulated by water management districts with whom they were already being regulated. To salvage the Act, the DER and the water management districts developed a workable compromise. That compromise is section 403.927 of the Wetlands Protection Act.

Section 403.927 exempts agricultural activities from the provisions of the Act and directs the creation of agricultural water management systems under Florida statutes governing activities of water management districts. The water management districts are responsible for water quantity and water quality management for both surface and groundwater. The DER may only require a stormwater permit or appropriate discharge permit at the ultimate point of discharge from one or a group of connected agricultural water management systems.

Mandating responsibility for the management of agricultural activities to the water management districts under the statute governing the activities of water management districts, without first establishing similar criteria to that created for the DER, recreates the same opportunity for confusion amongst regulatees discussed earlier in this note. At the very least, this mandate creates a bifurcated system of agricultural regulation whereby the water management districts regulate agricultural activities and the DER regulates discharges from those activities with no statutory assurance of compatible guidelines. The possibility that at some future time the absence of common statutory direction will provide the necessary ambiguity to permit a policy change by the executive branch, reversing the present policy, is a serious potential problem.

Therefore, the effectiveness of the water management districts in regulating agricultural water management activities will depend upon the quality of the rules promulgated by the water management districts in carrying out their mandated responsibilities. As noted earlier, Governor Graham has directed water management districts to promulgate

88. Tschinkei, supra note 31.
89. Id.
90. FLA. STAT. § 403.927 (Supp. 1984).
91. Id.
92. Id. The statute creating and governing the activities of the water management districts is FLA. STAT. § 373 (1983) (Florida Water Resources Act of 1972).
93. See supra note 61.
94. See supra note 29.
95. See supra note 50.
equivalent standards to those of the DER. Responses to the Directive have been varied by the water management districts, largely dependent upon how far they had progressed prior to the Act and subsequent Directive in implementing Part IV authority under Chapter 373.\textsuperscript{96} For example, the South Florida Water Management District had extensive Part IV implementation prior to the enactment of the Wetlands Protection Act.\textsuperscript{97} The impact of the Act on its regulations has been minimal.\textsuperscript{98} The Southwest Florida Water Management District had just begun Part IV implementation prior to the Act and as a result was required to expedite the development of their regulations, drawing largely from regulations established by the South Florida Water Management District.\textsuperscript{99}

On the other hand, the Suwannee River Water Management District, in reaction to the Act and the Governor’s Directive has developed only interim regulations for surface water management associated with agriculture and forestry to provide the minimum required “safety net” until a comprehensive surfacewater management permitting program as contemplated in Part IV of Chapter 373 can be enacted.\textsuperscript{100} The disparity between the comprehensive of water management district regulation of surface water activities is in part due to the geographical difference between north and south Florida. The Suwannee River Water Management District serves an area in which the DER received only twelve permit applications per year\textsuperscript{101} for activities to be similarly permitted by the water management district under the Wetlands Protection Act. However the difference in the quantity of these activities should not reduce in any way the quality of enforcement efforts. The legislature failed to statutorily mandate the necessary equivalent requirements for both the DER and water management districts and equivalent requirements between and among the various water management districts.

Although the Governor’s Directive\textsuperscript{102} provides guidelines for the development of consistent district rules, in so doing, the directive accen-

\begin{itemize}
\item \textsuperscript{96} Interview with Irene Quincey, attorney, South Florida Water Management District, in West Palm Beach, Fla. (Aug. 29, 1984).
\item \textsuperscript{97} \textit{Id}.
\item \textsuperscript{98} \textit{Id}.
\item \textsuperscript{99} Proposed rules for Chap. 40-44, 10 Fla. Admin. Weekly 2258 (July 20, 1984).
\item \textsuperscript{100} \textit{Id.} at 2250.
\item \textsuperscript{101} \textit{Id}.
\item \textsuperscript{102} \textit{See supra} note 68.
\end{itemize}
tuates the Act's statutory deficiencies. This directive is clearly an effort to address the need for consistency among regulators which the legislature failed to address through the Act. To avoid the consequences of the kind of uncoordinated efforts which have historically plagued environmental legislation in Florida, the legislature should establish statutory guidelines under either Florida Statutes Chapter 373 or section 403.061, similar to those required in the Governor's Directive.

V. The Future of Wetlands Protection in Florida

Florida's Wetlands Protection Act is a step in the right direction. Issues relating to wildlife, pollution of groundwaters and the destruction of the environment which go to the vital character of Florida are consistently before the public.\textsuperscript{103} With the ever increasing demands placed on Florida's finite resources by a burgeoning population, there should be little doubt that further restrictions will be necessary to protect wetlands.

The Act creates a wetlands monitoring system\textsuperscript{104} to provide reliable information regarding the magnitude of the loss of wetlands in Florida. It is difficult to assess both the impact of this Act on the protection of wetlands, and the need for additional protective measures without such a system. The wetlands' monitoring system will determine the general location and acreages of wetland areas in the state\textsuperscript{105} and identify the impact to, and losses of, wetlands due to permitting practices of the DER and water management districts or from unregulated or exempted activities.\textsuperscript{106} The DER will provide this information yearly to the legislature.\textsuperscript{107} Over time, this information will become an important indicator of the need for additional wetlands protection legislation.


\textsuperscript{104} FLA. STAT. § 403.929 (Supp. 1984) establishes a wetlands monitoring system which will determine the general locations and acreages of wetlands, identify impacts to and losses of wetlands due to DER or water management district permitting as well as from unregulated or exempted activities and changes in natural conditions and report this information to the legislature annually.

\textsuperscript{105} \textit{Id.}

\textsuperscript{106} \textit{Id.}

\textsuperscript{107} \textit{Id.}
VI. Conclusion

The importance of wetlands to Florida can not be overstated. Through the Warren S. Henderson Wetlands Protection Act of 1984, the legislature has recognized their importance and taken steps to provide for wetlands protection. In doing so, however, the legislature has allowed exemptions which may hinder the effectiveness of the Act. To strengthen the Act, the legislature should consider statutorily mandating criterion applicable to both the DER and water management districts for the stormwater ditch exemption. It should mandate consistency between the DER and water management districts as to the quality of enforcement efforts, especially in light of the agricultural exemption. Additionally, because of the great potential for damage to groundwater supplies, especially in south Florida, all mining operations should be required to comply with the more restrictive provisions of the Act.

The legislatively created wetlands monitoring system will provide the kind of information necessary to determine the need for more stringent controls over wetlands development. The question remains, however, whether prior to the time when reliable information is available irreparable damage to the environment will occur. The potential for this possibility may be lessened if the Florida legislature considers the issues raised here and responds with corrective legislation.

V. Donald Hilley