

By Senator Simmons

9-00612D-18

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1 A bill to be entitled
2 An act relating to state assumption of federal section
3 404 dredge and fill permitting authority; creating s.
4 373.4146, F.S.; defining the term "state assumed
5 waters"; providing the Department of Environmental
6 Protection with the power and authority to adopt rules
7 to assume and implement the section 404 dredge and
8 fill permitting program pursuant to the federal Clean
9 Water Act; specifying that certain rules, standards,
10 or other requirements are not effective or enforceable
11 until such assumption is approved; providing
12 legislative intent; providing applicability of other
13 state law regulating discharges; specifying the
14 applicability of certain exemptions; specifying
15 department authority upon assumption of the section
16 404 dredge and fill permitting program; specifying
17 certain procedures for permit applications; exempting
18 the department from certain permitting timeframe
19 limitations upon such assumption; specifying the
20 maximum dredge and fill permit period for activities
21 in state assumed waters; specifying certain procedures
22 for permit reissuance; requiring the department to
23 adopt rules to create an expedited permit review
24 process; specifying applicability of certain
25 administrative procedures; authorizing the department
26 to delegate certain activities; specifying that the
27 department must retain the authority to review,
28 modify, revoke, or rescind any permit authorizing
29 activities in state assumed waters which is issued by

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30 a delegated entity; providing an effective date.

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

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34 Section 1. Section 373.4146, Florida Statutes, is created
35 to read:

36 373.4146 State assumption of the federal Clean Water Act,
37 section 404 dredge and fill permitting program.-

38 (1) As used in this section, the term "state assumed
39 waters" means waters of the United States that the state assumes
40 permitting authority over pursuant to s. 404 of the Clean Water
41 Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,
42 and rules promulgated thereunder, for the purposes of permitting
43 the discharge of dredge or fill material.

44 (2) The department has the power and authority to assume,
45 in accordance with 40 C.F.R. part 233, the dredge and fill
46 permitting program established in s. 404 of the Clean Water Act,
47 Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and
48 rules promulgated thereunder. The department may adopt any
49 federal requirements, criteria, or regulations necessary to
50 obtain assumption, including, but not limited to, the guidelines
51 specified in 40 C.F.R. part 230 and the public interest review
52 criteria in 33 C.F.R. s. 320.4(a). Any rule, standard, or other
53 requirement adopted pursuant to the authority granted in this
54 subsection for purposes of obtaining assumption may not become
55 effective or otherwise enforceable until the United States
56 Environmental Protection Agency has approved the state's
57 assumption application. This legislative authority is intended
58 to be sufficient to enable the department to assume and

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59 implement the federal section 404 dredge and fill permitting
60 program in conjunction with the environmental resource
61 permitting program established in this chapter.

62 (3) To the extent that state law applies and does not
63 conflict with the federal requirements identified in subsection
64 (2), the application of such state law to further regulate
65 discharges in state assumed waters is not prohibited. Provisions
66 of state law which conflict with the federal requirements
67 identified in subsection (2) do not apply to state administered
68 section 404 permits.

69 (4) A state administered section 404 permit is not required
70 for activities as specified in 33 U.S.C. s. 1344(f), 40 C.F.R.
71 s. 232.3, or 33 C.F.R. s. 323.4. The exemptions established in
72 ss. 373.406, 373.4145, and 403.813 still apply to environmental
73 resource permits. However, the exemptions identified in ss.
74 373.406, 373.4145, and 403.813 may not be applied to state
75 administered section 404 permits.

76 (5) Upon state assumption of the section 404 dredge and
77 fill permitting program pursuant to subsection (2):

78 (a) The department must grant or deny an application for a
79 state administered section 404 permit within the time allowed
80 for permit review under 40 C.F.R. part 233, subparts D and F.
81 The department is specifically exempted from the time
82 limitations provided in ss. 120.60 and 373.4141 for state
83 administered section 404 permits.

84 (b) All state administered section 404 permits issued under
85 this section must be for a period of no more than 5 years. Upon
86 an applicant's submittal of a timely application for reissuance,
87 a state administered section 404 permit does not expire until

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88 the department takes final action upon the application or until
89 the last day for seeking judicial review of the agency order or
90 a later date fixed by order of the reviewing court. If the
91 department fails to render a permitting decision within the time
92 allowed by s. 404 of the Clean Water Act, Pub. L. No. 92-500, as
93 amended, 33 U.S.C. ss. 1251 et seq., 40 C.F.R. part 233,
94 subparts D and F, or a memorandum of agreement executed by the
95 department and the United States Environmental Protection
96 Agency, whichever is shorter, the applicant may apply for an
97 order from the circuit court requiring the department to render
98 a decision within a specified time. The department must adopt by
99 rule an expedited permit review process that is consistent with
100 federal law for the reissuance of state administered section 404
101 permits where there have been no material changes in the scope
102 of the project as originally permitted, site and surrounding
103 environmental conditions have not changed, and the applicant
104 does not have a history of noncompliance with the existing
105 permit. The decision by the department to approve the reissuance
106 of any state administered section 404 permit issued pursuant to
107 this section is subject to ss. 120.569 and 120.57 only with
108 respect to any material permit modification or material changes
109 in the scope of the project as originally permitted.

110 (c) The department may delegate administration of the state
111 administered section 404 permitting program if such delegation
112 is in accordance with federal law. The department must retain
113 the authority to review, modify, revoke, or rescind a state
114 administered section 404 permit issued by any delegated entity
115 to ensure consistency with federal law.

116 Section 2. This act shall take effect upon becoming a law.