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HB 7043

2018 Legislature

1
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

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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
 30 | a delegated entity; providing an effective date.

31 |
 32 | Be It Enacted by the Legislature of the State of Florida:

33 |
 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

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

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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
 85 under this section must be for a period of no more than 5 years.
 86 Upon an applicant's submittal of a timely application for
 87 reissuance, a state administered section 404 permit does not
 88 expire until the department takes final action upon the
 89 application or until the last day for seeking judicial review of
 90 the agency order or a later date fixed by order of the reviewing
 91 court. If the department fails to render a permitting decision
 92 within the time allowed by s. 404 of the Clean Water Act, Pub.
 93 L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., 40 C.F.R.
 94 part 233, subparts D and F, or a memorandum of agreement
 95 executed by the department and the United States Environmental
 96 Protection Agency, whichever is shorter, the applicant may apply
 97 for an order from the circuit court requiring the department to
 98 render a decision within a specified time. The department must
 99 adopt by rule an expedited permit review process that is
 100 consistent with federal law for the reissuance of state

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101 administered section 404 permits where there have been no
102 material changes in the scope of the project as originally
103 permitted, site and surrounding environmental conditions have
104 not changed, and the applicant does not have a history of
105 noncompliance with the existing permit. The decision by the
106 department to approve the reissuance of any state administered
107 section 404 permit issued pursuant to this section is subject to
108 ss. 120.569 and 120.57 only with respect to any material permit
109 modification or material changes in the scope of the project as
110 originally permitted.

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

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