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1
2 An act relating to environmental resource permitting;
3 creating s. 373.4131, F.S.; requiring the Department
4 of Environmental Protection, in coordination with the
5 water management districts, to adopt statewide
6 environmental resource permitting rules for activities
7 relating to the management and storage of surface
8 waters; providing rule requirements; preserving an
9 exemption from causes of action under the "Bert J.
10 Harris, Jr., Private Property Rights Protection Act";
11 providing an exemption from the rulemaking provisions
12 of ch. 120, F.S., for implementation of the rules by
13 water management districts; requiring counties,
14 municipalities, and delegated local programs to amend
15 ordinances and regulations within a specified
16 timeframe to incorporate applicable rules; providing
17 construction; requiring the department and delegated
18 local programs to identify and reconcile certain
19 permitting processes; providing for applicability,
20 effect, and repeal of specified rules; authorizing
21 water management districts to adopt and retain
22 specified rules; authorizing the department to
23 incorporate certain rules; providing a presumption of
24 compliance for specified design, construction,
25 operation, and maintenance of certain stormwater
26 management systems; providing exemptions for specified
27 stormwater management systems and permitted
28 activities; requiring the department to conduct or

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29 | oversee staff assessment and training; reenacting s.
30 | 70.001(12), F.S., relating the "Bert J. Harris, Jr.,
31 | Private Property Rights Protection Act," for purposes
32 | of a cross-reference in s. 373.4131, F.S.; providing
33 | an effective date.

34 |
35 | Be It Enacted by the Legislature of the State of Florida:

36 |
37 | Section 1. Section 373.4131, Florida Statutes, is created
38 | to read:

39 | 373.4131 Statewide environmental resource permitting
40 | rules.-

41 | (1) (a) No later than October 1, 2012, the department shall
42 | initiate rulemaking to adopt, in coordination with the water
43 | management districts, statewide environmental resource
44 | permitting rules governing the construction, alteration,
45 | operation, maintenance, repair, abandonment, and removal of any
46 | stormwater management system, dam, impoundment, reservoir,
47 | appurtenant work, works, or any combination thereof, under this
48 | part.

49 | (b) The rules shall provide for statewide, consistent
50 | regulation of activities under this part and shall include, at a
51 | minimum:

- 52 | 1. Criteria and thresholds for requiring permits.
53 | 2. Types of permits.
54 | 3. Procedures governing the review of applications and
55 | notices, duration and modification of permits, operational

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56 requirements, transfers of permits, provisions for emergencies,
57 and provisions for abandonment and removal of systems.

58 4. Exemptions and general permits that do not allow
59 significant adverse impacts to occur individually or
60 cumulatively.

61 5. Conditions for issuance.

62 6. General permit conditions, including monitoring,
63 inspection, and reporting requirements.

64 7. Standardized fee categories for activities under this
65 part to promote consistency. The department and water management
66 districts may amend fee rules to reflect the standardized fee
67 categories but are not required to adopt identical fees for
68 those categories.

69 8. Application, notice, and reporting forms. To the
70 maximum extent practicable, the department and water management
71 districts shall provide for electronic submittal of forms and
72 notices.

73 9. An applicant's handbook that, at a minimum, contains
74 general program information, application and review procedures,
75 a specific discussion of how environmental criteria are
76 evaluated, and discussion of stormwater quality and quantity
77 criteria.

78 (c) The rules shall rely primarily on the rules of the
79 department and water management districts in effect immediately
80 prior to the effective date of this section, except that the
81 department may:

82 1. Reconcile differences and conflicts to achieve a
83 consistent statewide approach.

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84 2. Account for different physical or natural
85 characteristics, including special basin considerations, of
86 individual water management districts.

87 3. Implement additional permit streamlining measures.

88 (d) The application of the rules shall continue to be
89 governed by the first sentence of s. 70.001(12).

90 (2) (a) Upon adoption of the rules, the water management
91 districts shall implement the rules without the need for further
92 rulemaking pursuant to s. 120.54. The rules adopted by the
93 department pursuant to this section shall also be considered the
94 rules of the water management districts. The districts and local
95 governments shall have substantive jurisdiction to implement and
96 interpret rules adopted by the department under this part,
97 consistent with any guidance from the department, in any license
98 or final order pursuant to s. 120.60 or s. 120.57(1)(1).

99 (b)1. A county, municipality, or local pollution control
100 program that has a delegation of the environmental resource
101 permit program authority or proposes to be delegated such
102 authority under s. 373.441 shall without modification
103 incorporate by reference the rules adopted pursuant to this
104 section.

105 2. A county, municipality, or local pollution control
106 program that has a delegation of the environmental resource
107 permit program authority under s. 373.441 must amend its local
108 ordinances or regulations to incorporate by reference the
109 applicable rules adopted pursuant to this section within 12
110 months after the effective date of the rules.

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111 3. Consistent with s. 373.441, this section does not
112 prohibit a county, municipality, or local pollution control
113 program from adopting or implementing regulations that are
114 stricter than those adopted pursuant to this section.

115 4. The department and each local program with the
116 authority to implement or seeking to implement a delegation of
117 environmental resource permit program authority under s. 373.441
118 shall identify and reconcile any duplicative permitting
119 processes as part of the delegation.

120 (c) Until the rules adopted pursuant to this section
121 become effective, existing rules adopted pursuant to this part
122 remain in full force and effect. Existing rules that are
123 superseded by the rules adopted pursuant to this section may be
124 repealed without further rulemaking pursuant to s. 120.54 by
125 publication of a notice of repeal in the Florida Administrative
126 Weekly and subsequent filing of a list of the rules repealed
127 with the Department of State.

128 (3) (a) The water management districts, with department
129 oversight, may continue to adopt rules governing design and
130 performance standards for stormwater quality and quantity, and
131 the department may incorporate the design and performance
132 standards by reference for use within the geographic
133 jurisdiction of each district.

134 (b) If a stormwater management system is designed in
135 accordance with the stormwater treatment requirements and
136 criteria adopted by the department or a water management
137 district under this part, the system design is presumed not to

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138 cause or contribute to violations of applicable state water
139 quality standards.

140 (c) If a stormwater management system is constructed,
141 operated, and maintained for stormwater treatment in accordance
142 with a valid permit or exemption under this part, the stormwater
143 discharged from the system is presumed not to cause or
144 contribute to violations of applicable state water quality
145 standards.

146 (4) Notwithstanding the adoption of rules pursuant to this
147 section, the following activities shall continue to be governed
148 by the rules adopted by the department, the water management
149 districts, and delegated local programs under this part in
150 effect before the effective date of the rules adopted pursuant
151 to this section, unless the applicant elects review in
152 accordance with the rules adopted pursuant to this section:

153 (a) The operation and maintenance of any stormwater
154 management system, dam, impoundment, reservoir, appurtenant
155 work, works, or any combination thereof legally in existence
156 before the effective date of the rules adopted pursuant to this
157 section if the terms and conditions of the permit, exemption, or
158 other authorization for such activity continue to be met.

159 (b) The activities determined in writing by the
160 department, a water management district, or a local government
161 delegated local pollution control program authority under s.
162 373.441 to be exempt from the permitting requirements of this
163 part, including self-certifications submitted to the department,
164 a water management district, or a delegated local government

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165 before the effective date of the rules adopted pursuant to this
166 section.

167 (c) The activities approved in a permit issued pursuant to
168 this part and the review of activities proposed in a permit
169 application that is complete before the effective date of the
170 rules adopted pursuant to this section. This paragraph applies
171 to any modification of the plans, terms, and conditions of the
172 permit, including new activities, within the geographical area
173 to which the permit applies and to any modification that lessens
174 or does not increase impacts. However, this paragraph does not
175 apply to a modification that is reasonably expected to lead to
176 additional or substantially different impacts.

177 (5) To ensure consistent implementation and interpretation
178 of the rules adopted pursuant to this section, the department
179 shall conduct or oversee regular assessment and training of its
180 staff and the staffs of the water management districts and local
181 governments delegated local pollution control program authority
182 under s. 373.441.

183 Section 2. For the purpose of a cross-reference in section
184 373.4131, Florida Statutes, as created by this act, subsection
185 (12) of section 70.001, Florida Statutes, is reenacted to read:

186 70.001 Private property rights protection.—

187 (12) No cause of action exists under this section as to
188 the application of any law enacted on or before May 11, 1995, or
189 as to the application of any rule, regulation, or ordinance
190 adopted, or formally noticed for adoption, on or before that
191 date. A subsequent amendment to any such law, rule, regulation,
192 or ordinance gives rise to a cause of action under this section

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193 | only to the extent that the application of the amendatory
194 | language imposes an inordinate burden apart from the law, rule,
195 | regulation, or ordinance being amended.

196 | Section 3. This act shall take effect July 1, 2012.