

By Senator Detert

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1                                   A bill to be entitled  
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 and delegated local  
14          programs; requiring counties, municipalities, and  
15          delegated local programs to amend ordinances and  
16          regulations within a specified timeframe to conform  
17          with the rules; providing for applicability, effect,  
18          and repeal of specified rules; authorizing water  
19          management districts to adopt and retain specified  
20          rules; authorizing the department to incorporate  
21          certain rules; providing a presumption of compliance  
22          for specified design, construction, operation, and  
23          maintenance of certain stormwater management systems;  
24          providing exemptions for specified stormwater  
25          management systems and permitted activities; requiring  
26          the department to conduct or oversee staff assessment  
27          and training; reenacting s. 70.001(12), F.S., relating  
28          to the "Bert J. Harris, Jr., Private Property Rights  
29          Protection Act," for purposes of a cross-reference in

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30 s. 373.4131, F.S.; providing an effective date.

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

33  
34 Section 1. Section 373.4131, Florida Statutes, is created  
35 to read:

36 373.4131 Statewide environmental resource permitting  
37 rules.-

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

46 (b) The rules shall provide for statewide, consistent  
47 regulation of activities under this part and shall include, at a  
48 minimum:

49 1. Criteria and thresholds for requiring permits.

50 2. Types of permits.

51 3. Procedures governing the review of applications and  
52 notices, duration and modification of permits, operational  
53 requirements, transfers of permits, provisions for emergencies,  
54 and provisions for abandonment and removal of systems.

55 4. Exemptions and general permits that do not allow  
56 significant adverse impacts to occur individually or  
57 cumulatively.

58 5. Conditions for issuance.

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59 6. General permit conditions, including monitoring,  
60 inspection, and reporting requirements.

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

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

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

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

79 1. Reconcile differences and conflicts to achieve a  
80 consistent statewide approach.

81 2. Account for different physical or natural  
82 characteristics, including special basin considerations, of  
83 individual water management districts.

84 3. Implement additional permit streamlining measures.

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

87 (2) (a) Upon adoption of the rules, the water management

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88 districts and local governments delegated local pollution  
89 control program authority under s. 373.441 shall implement the  
90 rules without the need for further rulemaking pursuant to s.  
91 120.54. The rules adopted by the department pursuant to this  
92 section shall also be considered the rules of the water  
93 management districts and local governments delegated local  
94 pollution control program authority under s. 373.441. The  
95 districts and local governments shall have substantive  
96 jurisdiction to implement and interpret rules adopted by the  
97 department under this part, consistent with any guidance from  
98 the department, in any license or final order pursuant to s.  
99 120.60 or s. 120.57(1)(1).

100 (b)1. A county, municipality, or local pollution control  
101 program that has a delegation of local pollution control program  
102 authority or proposes to be delegated such authority under s.  
103 373.441 shall without modification incorporate by reference and  
104 use the rules adopted pursuant this section when reviewing and  
105 taking action on the department's behalf on a delegated  
106 permitting, compliance, or enforcement matter under this part.

107 2. A county, municipality, or local pollution control  
108 program that has a delegation of local pollution control program  
109 authority under s. 373.441 must amend its local ordinances or  
110 regulations to conform to the requirements of this section  
111 within 12 months after the effective date of the rules adopted  
112 pursuant to this section.

113 3. The department and each local program with the authority  
114 to implement or seeking to implement a delegation of local  
115 pollution control program authority under s. 373.441 shall  
116 identify and reconcile any duplicative permitting as part of the

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117 delegation.

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

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

132 (b) If a stormwater management system is designed in  
133 accordance with the stormwater treatment requirements and  
134 criteria adopted by the department or a water management  
135 district under this part, the system design is presumed not to  
136 cause or contribute to violations of applicable state water  
137 quality standards.

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

144 (4) Notwithstanding the adoption of rules pursuant to this  
145 section, the following activities shall continue to be governed

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146 by the rules adopted by the department, the water management  
147 districts, and delegated local programs under this part in  
148 effect before the effective date of the rules adopted pursuant  
149 to this section, unless the applicant elects review in  
150 accordance with the rules adopted pursuant to this section:

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

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

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

174 (5) To ensure consistent implementation and interpretation

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175 of the rules adopted pursuant to this section, the department  
176 shall conduct or oversee regular assessment and training of its  
177 staff and the staffs of the water management districts and local  
178 governments delegated local pollution control program authority  
179 under s. 373.441.

180 Section 2. For the purpose of a cross-reference in section  
181 373.4131, Florida Statutes, as created by this act, subsection  
182 (12) of section 70.001, Florida Statutes, is reenacted to read:

183 70.001 Private property rights protection.-

184 (12) No cause of action exists under this section as to the  
185 application of any law enacted on or before May 11, 1995, or as  
186 to the application of any rule, regulation, or ordinance  
187 adopted, or formally noticed for adoption, on or before that  
188 date. A subsequent amendment to any such law, rule, regulation,  
189 or ordinance gives rise to a cause of action under this section  
190 only to the extent that the application of the amendatory  
191 language imposes an inordinate burden apart from the law, rule,  
192 regulation, or ordinance being amended.

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