

By the Committee on Budget Subcommittee on General Government
Appropriations; and Senator Detert

601-02812-12

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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; requiring counties,
14 municipalities, and delegated local pollution control
15 programs to incorporate by reference certain rules;
16 requiring counties, municipalities, and delegated
17 local pollution control programs to amend ordinances
18 and regulations within a specified timeframe to
19 incorporate applicable rules; allowing counties,
20 municipalities, and delegated local pollution control
21 programs to have stricter regulations; requiring
22 reconciliation of duplicative permitting processes;
23 authorizing water management districts to adopt and
24 retain specified rules; authorizing the department to
25 incorporate certain rules; providing a presumption of
26 compliance for specified design, construction,
27 operation, and maintenance of certain stormwater
28 management systems; providing exemptions for specified
29 stormwater management systems and permitted

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30 activities; requiring the department to conduct or
31 oversee staff assessment and training; reenacting s.
32 70.001(12), F.S., relating to the "Bert J. Harris,
33 Jr., Private Property Rights Protection Act," for
34 purposes of a cross-reference in s. 373.4131, F.S.;
35 providing an effective date.
36

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

38
39 Section 1. Section 373.4131, Florida Statutes, is created
40 to read:

41 373.4131 Statewide environmental resource permitting
42 rules.-

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

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

54 1. Criteria and thresholds for requiring permits.

55 2. Types of permits.

56 3. Procedures governing the review of applications and
57 notices, duration and modification of permits, operational
58 requirements, transfers of permits, provisions for emergencies,

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59 and provisions for abandonment and removal of systems.

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

63 5. Conditions for issuance.

64 6. General permit conditions, including monitoring,
65 inspection, and reporting requirements.

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

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

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

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

84 1. Reconcile differences and conflicts to achieve a
85 consistent statewide approach.

86 2. Account for different physical or natural
87 characteristics, including special basin considerations, of

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88 individual water management districts.

89 3. Implement additional permit streamlining measures.

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

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

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

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

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

116 4. The department and each local program that is authorized

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117 to implement or that seeks to implement a delegation of
118 authority for an environmental resource permit program under s.
119 373.441 shall identify and reconcile any duplicative permitting
120 processes as part of the delegation.

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

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

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

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

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146 standards.

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

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

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

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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 the
188 application of any law enacted on or before May 11, 1995, or as
189 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
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.