

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  
 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

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.

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

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.