CHAPTER 2018-88

House Bill No. 7043

An act relating to state assumption of federal section 404 dredge and fill permitting authority; creating s. 373.4146, F.S.; defining the term "state assumed waters"; providing the Department of Environmental Protection with the power and authority to adopt rules to assume and implement the section 404 dredge and fill permitting program pursuant to the federal Clean Water Act; specifying that certain rules, standards, or other requirements are not effective or enforceable until such assumption is approved; providing legislative intent; providing applicability of other state law regulating discharges; specifying the applicability of certain exemptions; specifying department authority upon assumption of the section 404 dredge and fill permitting program; specifying certain procedures for permit applications; exempting the department from certain permitting timeframe limitations upon such assumption; specifying the maximum dredge and fill permit period for activities in state assumed waters; specifying certain procedures for permit reissuance; requiring the department to adopt rules to create an expedited permit review process; specifying applicability of certain administrative procedures; authorizing the department to delegate certain activities; specifying that the department must retain the authority to review, modify, revoke, or rescind any permit authorizing activities in state assumed waters which is issued by a delegated entity; providing an effective date.

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

Section 1. Section 373.4146, Florida Statutes, is created to read:

373.4146 State assumption of the federal Clean Water Act, section 404 dredge and fill permitting program.—

(1) As used in this section, the term "state assumed waters" means waters of the United States that the state assumes permitting authority over pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and rules promulgated thereunder, for the purposes of permitting the discharge of dredge or fill material.

(2) The department has the power and authority to assume, in accordance with 40 C.F.R. part 233, the dredge and fill permitting program established in s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and rules promulgated thereunder. The department may adopt any federal requirements, criteria, or regulations necessary to obtain assumption, including, but not limited to, the guidelines specified in 40 C.F.R. part 230 and the public interest review criteria in 33 C.F.R. s. 320.4(a). Any rule, standard, or other requirement adopted pursuant to the authority granted in this subsection for purposes of obtaining assumption may not become effective or otherwise enforceable

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until the United States Environmental Protection Agency has approved the state's assumption application. This legislative authority is intended to be sufficient to enable the department to assume and implement the federal section 404 dredge and fill permitting program in conjunction with the environmental resource permitting program established in this chapter.

(3) To the extent that state law applies and does not conflict with the federal requirements identified in subsection (2), the application of such state law to further regulate discharges in state assumed waters is not prohibited. Provisions of state law which conflict with the federal requirements identified in subsection (2) do not apply to state administered section 404 permits.

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

(5) Upon state assumption of the section 404 dredge and fill permitting program pursuant to subsection (2):

(a) The department must grant or deny an application for a state administered section 404 permit within the time allowed for permit review under 40 C.F.R. part 233, subparts D and F. The department is specifically exempted from the time limitations provided in ss. 120.60 and 373.4141 for state administered section 404 permits.

(b) All state administered section 404 permits issued under this section must be for a period of no more than 5 years. Upon an applicant's submittal of a timely application for reissuance, a state administered section 404 permit does not expire until the department takes final action upon the application or until the last day for seeking judicial review of the agency order or a later date fixed by order of the reviewing court. If the department fails to render a permitting decision within the time allowed by s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., 40 C.F.R. part 233, subparts D and F, or a memorandum of agreement executed by the department and the United States Environmental Protection Agency, whichever is shorter, the applicant may apply for an order from the circuit court requiring the department to render a decision within a specified time. The department must adopt by rule an expedited permit review process that is consistent with federal law for the reissuance of state administered section 404 permits where there have been no material changes in the scope of the project as originally permitted, site and surrounding environmental conditions have not changed, and the applicant does not have a history of noncompliance with the existing permit. The decision by the department to approve the reissuance of any state administered section 404 permit issued pursuant to this section is subject to ss. 120.569 and 120.57 only with respect to any material permit

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modification or material changes in the scope of the project as originally permitted.

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

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

Approved by the Governor March 23, 2018.

Filed in Office Secretary of State March 23, 2018.

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