

CHAPTER 2012-94

Committee Substitute for House Bill No. 7003

An act relating to environmental resource permitting; creating s. 373.4131, F.S.; requiring the Department of Environmental Protection, in coordination with the water management districts, to adopt statewide environmental resource permitting rules for activities relating to the management and storage of surface waters; providing rule requirements; preserving an exemption from causes of action under the “Bert J. Harris, Jr., Private Property Rights Protection Act”; providing an exemption from the rulemaking provisions of ch. 120, F.S., for implementation of the rules by water management districts; requiring counties, municipalities, and delegated local programs to amend ordinances and regulations within a specified timeframe to incorporate applicable rules; providing construction; requiring the department and delegated local programs to identify and reconcile certain permitting processes; providing for applicability, effect, and repeal of specified rules; authorizing water management districts to adopt and retain specified rules; authorizing the department to incorporate certain rules; providing a presumption of compliance for specified design, construction, operation, and maintenance of certain stormwater management systems; providing exemptions for specified stormwater management systems and permitted activities; requiring the department to conduct or oversee staff assessment and training; reenacting s. 70.001(12), F.S., relating the “Bert J. Harris, Jr., Private Property Rights Protection Act,” for purposes of a cross-reference in s. 373.4131, F.S.; providing an effective date.

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

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

373.4131 Statewide environmental resource permitting rules.—

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

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

1. Criteria and thresholds for requiring permits.
2. Types of permits.
3. Procedures governing the review of applications and notices, duration and modification of permits, operational requirements, transfers of permits,

provisions for emergencies, and provisions for abandonment and removal of systems.

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

5. Conditions for issuance.

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

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

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

9. An applicant's handbook that, at a minimum, contains general program information, application and review procedures, a specific discussion of how environmental criteria are evaluated, and discussion of storm-water quality and quantity criteria.

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

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

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

3. Implement additional permit streamlining measures.

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

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

(b)1. A county, municipality, or local pollution control program that has a delegation of the environmental resource permit program authority or

proposes to be delegated such authority under s. 373.441 shall without modification incorporate by reference the rules adopted pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

70.001 Private property rights protection.—

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

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

Approved by the Governor April 6, 2012.

Filed in Office Secretary of State April 6, 2012.