

# Chapter 96-370

## Committee Substitute for House Bill No. 1887

An act relating to air and water resources; amending ss. 373.019 and 403.031, F.S.; deleting obsolete language and conforming the definitions of "state water policy"; amending s. 373.406, F.S.; providing an exemption from regulation under part IV of chapter 373, F.S.; amending s. 373.414, F.S.; clarifying criteria relating to review of certain surface water and wetlands activities; providing for review of certain activities under certain rules; revising an exemption; creating s. 373.4141, F.S.; providing procedures and timeframes for approval of permits under said part; amending s. 373.4145, F.S.; providing that permit applications under said part pending in the Northwest Florida Water Management District on a specified date are subject to certain grandfathering provisions; creating s. 373.428, F.S.; providing that activities permitted under said part are subject to federal consistency review with regard to the state's coastal management program; amending s. 403.061, F.S.; providing for legislative approval prior to certain interstate agreements relating to ozone precursor pollutants; providing for future repeal of certain rulemaking procedures of the Departments of Environmental Protection and Agriculture and Consumer Services; amending s. 403.0872, F.S.; deleting a future repeal date; providing an effective date.

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

Section 1. Subsection (16) of section 373.019, Florida Statutes, is amended to read:

### 373.019. Definitions

When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the following words shall, unless the context clearly indicates otherwise, mean:

(16) "State water policy" means the comprehensive statewide policy as adopted by the department pursuant to ss. 373.026 and 403.061 setting forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources. The waters of the state are among its most basic resources. Such waters should be managed to conserve and protect water resources and to realize the full beneficial use of these resources. ~~The Land Use and Water Planning task force was established by chapter 93-206, Laws of Florida, to formulate recommendations to the Legislature on the relationship between district water management plans, the growth management portion of the state~~

~~comprehensive plan, regional policy plans, and local comprehensive plans. In order to provide for consistency between growth management policy and water management policy the task force shall make recommendations to the 1995 Legislature on the mechanisms and procedures for establishing and amending water policy. In an attempt to consider these recommendations and receive the benefit of a review by House and Senate natural resources committees, the amendments to chapter 17 40, Florida Administrative Code, adopted by the Environmental Regulation Commission on December 1, 1993, shall not become effective until July 1, 1995.~~

Section 2. Subsection (6) of section 373.406, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to said section to read:

#### 373.406. Exemptions

The following exemptions shall apply:

(6) Any district or the department may exempt from regulation under this part those activities that the district or department determines will have only minimal or insignificant individual or cumulative adverse impacts on the water resources of the district. The district and the department are authorized to determine, on a case-by-case basis, whether a specific activity comes within this exemption. Requests to qualify for this exemption shall be submitted in writing to the district or department, and such activities shall not be commenced without a written determination from the district or department confirming that the activity qualifies for the exemption.

Section 3. Paragraph (a) of subsection (12) and subsection (13) of section 373.414, Florida Statutes, are amended to read:

373.414. Additional criteria for activities in surface waters and wetlands

(12)(a) Activities approved in a conceptual, general, or individual permit issued pursuant to rules adopted pursuant to this part and which were either permitted under rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or exempt from regulation under such rules, all prior to the effective date of rules adopted pursuant to subsection (9), shall be exempt from the rules adopted pursuant to subsection (9). This exemption shall be for the plans, terms, and conditions approved in the permit issued under rules adopted pursuant to this part or in any permit issued under rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as

amended, and shall be valid for the term of such permits. This exemption shall also apply to any modification of the plans, terms, and conditions of the permit, including new activities, within the geographical area to which the permit issued under rules adopted pursuant to this part applies; however, this exemption shall not apply to a modification that would extend the permitted time limit for construction beyond 2 additional years, or to any modification which is reasonably expected to lead to substantially different water resource impacts. This exemption shall also apply to any modification which lessens the impact to water resources. A modification of the permit qualifying for this exemption shall be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, as applicable, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such modifications reviewed under the rules adopted under this part, as amended in accordance with subsection (9).

(13) Any declaratory statement issued by the department under s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, or by a water management district under s. 373.421, in response to a petition filed on or before June 1, 1994, shall continue to be valid for the duration of such declaratory statement. Any such petition pending on June 1, 1994, shall be exempt from the methodology ratified in s. 373.4211, but the rules of the department or the relevant water management district, as applicable, in effect prior to the effective date of s. 373.4211, shall apply. Until May 1, 1998, activities within the boundaries of an area subject to a petition pending on June 1, 1994, and prior to final agency action on such petition, shall be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9). In the event that a jurisdictional declaratory statement pursuant to the vegetative index in effect prior to the effective date of chapter 84-79, Laws of Florida, has been obtained and is valid prior to the effective date of the rules adopted under subsection (9) or July 1, 1994, whichever is later, and the affected lands are part of a project for which a master development order has been issued pursuant to s. 380.06(21), the declaratory statement shall remain valid for the duration of the buildout period of the project. Any jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in rule 17-4.022, Florida Administrative Code, on April 1, 1985, shall remain in effect for a period of 5 years following the effective date of this act if proof of such validation is submitted to the department prior to January 1, 1995. In the event that a jurisdictional determination has been revalidated by the

department pursuant to this subsection and the affected lands are part of a project for which a development order has been issued pursuant to s. 380.06(15), a final development order to which s. 163.3167(8) applies has been issued, or a vested rights determination has been issued pursuant to s. 380.06(20), the jurisdictional determination shall remain valid until the completion of the project, provided proof of such validation and documentation establishing that the project meets the requirements of this sentence are submitted to the department prior to January 1, 1995. Activities proposed within the boundaries of a valid declaratory statement issued pursuant to a petition submitted to either the department or the relevant water management district prior to June 1, 1994, or a revalidated jurisdictional determination, prior to its expiration shall continue thereafter to be exempt from the methodology ratified in s. 373.4211 and to be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9).

Section 4. Section 373.4141, Florida Statutes, is created to read:

373.4141. Permits; processing

(1) Within 30 days after receipt of an application for a permit under this part, the department or the water management district shall review the application and shall request submittal of all additional information the department or the water management district is permitted by law to require. If the applicant believes any request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department or water management district shall review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department or water management district for such additional information is not authorized by law or rule, the department or water management district, at the applicant's request, shall proceed to process the permit application.

(2) A permit shall be approved or denied within 90 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

Section 5. Paragraph (d) is added to subsection (5) of section 373.4145, Florida Statutes, to read:

373.4145. Interim part IV permitting program for the Northwest Florida Water Management District

(5) Within the geographical jurisdiction of the Northwest Florida Water Management District, the methodology for determining the landward extent of surface waters of the state under chapter 403 in effect prior to the effective date of the methodology ratified in s. 373.4211 shall apply to:

(d) Applications for activities permitted under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the 1983 Florida Statutes, as amended, which were pending on June 15, 1994, unless the application elects to have applied the delineation methodology ratified in s. 373.4211.

Section 6. Section 373.428, Florida Statutes, is created to read:

373.428. Federal consistency

When an activity regulated under this part is subject to federal consistency review under s. 380.23, the final agency action on a permit application submitted under this part shall constitute the state's determination as to whether the activity is consistent with the federally approved Florida Coastal Management Program. Agencies with authority to review and comment on such activity pursuant to the Florida Coastal Management Program shall review such activity for consistency with only those statutes and rules incorporated into the Florida Coastal Management Program and implemented by that agency. An agency which submits a determination of inconsistency to the permitting agency shall be an indispensable party to any administrative or judicial proceeding in which such determination is an issue, shall be responsible for defending its determination in such proceedings, and shall be liable for any damages, costs, and attorneys' fees should any be awarded in an appropriate action as a consequence of such determination.

Section 7. Subsection (14) of section 403.031, Florida Statutes, is amended to read:

403.031. Definitions

In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(14) "State water policy" means the comprehensive statewide policy as adopted by the department pursuant to ss. 373.026 and 403.061, setting forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources. The waters of the state are among its most basic resources. Such waters should ~~shall~~ be managed to conserve and protect water resources and to realize the full beneficial use of these resources. ~~The Land Use and Water Planning task force was established by chapter 93-206, Laws of Florida, to formulate recommendations to the Legislature on the relationship between district water management plans, the growth management portion of the state comprehensive plan, regional policy plans, and local comprehensive plans. In order to provide for consistency between growth management policy and water management policy the task force shall make recommendations to the 1995 Legislature on the mechanisms and procedures for establishing and amending water policy. In an attempt to consider these recommendations and receive the benefit of a review by House and Senate natural resource committees, the amendments to chapter 17-40, Florida Administrative Code, adopted by the Environmental Regulation Commission on December 1, 1993, shall not become effective until July 1, 1995.~~

Section 8. Subsection (21) of section 403.061, Florida Statutes, is amended to read:

403.061. Department; powers and duties

The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(21) Advise, consult, cooperate, and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department. However, the secretary of the department shall not enter into any interstate agreement relating to the transport of ozone precursor pollutants, nor modify its rules based upon a recommendation from the Ozone Transport Assessment Group or any other such organization that is not an official subdivision of the United States Environmental Protection Agency but which studies issues related to the transport of ozone precursor pollutants, without prior review and specific legislative approval.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Note: FL ST §§ 120.54, 403.805

Section 9. Section 8 of chapter 95-295, Laws of Florida, is amended to read:

Section 8. Sections 5 and 6 ~~4 and 5~~ of this act shall stand repealed on October 1, 1998, and shall be reviewed by the Legislature prior to that date.

Section 10. Subsection (14) of section 403.0872, Florida Statutes, is amended to read:

403.0872. Operation permits for major sources of air pollution; annual operation license fee

Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section, which is the only department operation permit for a major source of air pollution required for such source. Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the following procedures and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail:

(14) In order to ensure statewide consistency in the permitting of major sources, a local pollution control program may not issue permits under this section for sources that belong to Major Group 26, Paper and Allied Products; for sources that belong to Major Group 28, Chemicals and Allied Products; or for sources that belong to Industry Number 2061, Cane Sugar, Except Refining, as defined in the Standard Industrial Classification Manual, 1987. ~~This subsection expires July 1, 1997.~~

Section 11. This act shall take effect upon becoming a law.

Became a law without the Governor's approval June 1, 1996.

Filed in Office Secretary of State May 31, 1996.