



# SENATE BILL 472: Amend 401 Certification Process.

2025-2026 General Assembly

<b>Committee:</b>	Senate Agriculture, Energy, and Environment. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	April 9, 2025
<b>Introduced by:</b>	Sens. Jarvis, McInnis, Moffitt	<b>Prepared by:</b>	Jennifer McGinnis
<b>Analysis of:</b>	Second Edition		Staff Attorney

## OVERVIEW: *Senate Bill 472 would:*

- *Require the Department of Environmental Quality (Department) to: (i) begin review of applications for water quality certifications immediately upon receipt; and (ii) inform an applicant of the requisite fee within five business days after receipt of the application.*
- *Require the Department to request that the U.S. Army Corps of Engineers (Corps) approve a modification to the Programmatic Agreement executed between the agencies to reflect the review and decision timelines for water quality certifications set forth in the Administrative Code.*
- *Require the Department to adopt rules to establish an expedited review process for water quality certifications for projects that have received a nationwide permit issued by the Corps. Under the expedited process the Department would be required to review and approve or deny an application for a water quality certification within five business days of receipt of the application and the fee.*

## CURRENT LAW:

[Rules governing 401 certifications under the Administrative Code](#) currently provide:

- An application fee is required at the time an application is submitted.
- The Department must issue a certification, deny the application, provide notice of hearing, or request additional information within 60 calendar days after receipt of an application for certification. Failure to take one of these actions within 60 calendar days results in a waiver of the certification requirement by the Director, except in certain circumstances.

The statutes currently set forth the following fees for water quality certifications:

- The fee for a major water quality certification involving one acre or more of wetland fill or 150 feet or more of stream impact is \$767.00.
- The fee for a minor water quality certification involving less than one acre of wetland fill or less than 150 feet of stream impact is \$323.00.
- An applicant for a Coastal Area Management Act (CAMA) permit for which a water quality certification is required must pay a fee established by the Secretary of Environmental Quality, but the fee may not exceed the greater of the fee for a CAMA permit or the fee for a major or minor water quality certification.

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## **BILL ANALYSIS:** The bill would:

- Require the Department to: (i) begin review of applications for water quality certifications immediately upon receipt; and (ii) inform an applicant of the requisite fee within five business days after receipt of the application. A certification could not be issued until the applicant has paid the requisite fee.
- Require the Department to request that the Corps approve a modification to the Programmatic Agreement executed between the agencies to reflect the review and decision timelines for water quality certifications set forth in 15A NCAC 02H .0507.
- Require the Department to adopt rules to establish an expedited review process for water quality certifications for projects that have received a nationwide permit issued by the Corps. Under the expedited process the Department would be required to review and approve or deny an application for a water quality certification within five business days of receipt of the application and fee.

This provision would have a delayed effective date, contingent on approval of the United States Environmental Protection Agency (USEPA). The Department would be required, no later than August 1, 2025, to prepare and submit the proposed changes to USEPA for approval. The provision would become effective on the later of:

- October 1, 2025.
- The first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that USEPA has approved the proposed changes.

If USEPA approves, the Department would also be required to request that the Corps approve a corresponding modification to the Programmatic Agreement executed between the agencies.

## **BACKGROUND:**

### **401 water quality certifications:**

Under [Section 401 of the Clean Water Act \(Section 401\)](#), a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a state where a discharge from the activity would originate issues or waives a Section 401 water quality certification, which concerns whether the discharge will comply with applicable water quality standards, effluent limitations, toxic pollutants restrictions and other appropriate water quality requirements under state and federal law. Section 401 provides that if a state "fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year)" after receipt of a certification request, the certification is deemed waived by the state. A state may not only waive, deny, or grant certification, but also grant certification with conditions.

Examples of permits for activities that trigger 401 certification requirements include:

- Clean Water Act Section 404 permits issued by the Corps involving the discharge of dredged or fill material.
- Federal Energy Regulatory Commission (FERC) licenses for hydropower facilities and natural gas pipelines.

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## **Corps' nationwide permits:**

Per the Corps' website, the agency "issues nationwide permits (NWP) to authorize certain activities that require Department of the Army permits under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The NWPs authorize activities that have minimal individual and cumulative adverse effects on the aquatic environment. The NWPs authorize a variety of activities, such as aids to navigation, utility lines, bank stabilization activities, road crossings, stream and wetland restoration activities, residential developments, mining activities, commercial shellfish aquaculture activities, and agricultural activities." A list of NWPs is available [here](#).

**EFFECTIVE DATE:** Except as otherwise provided, the bill would be effective when it becomes law.