



# SENATE BILL 472: Coastal Regulatory Reform.

2025-2026 General Assembly

<b>Committee:</b>	House Rules, Calendar, and Operations of the House	<b>Date:</b>	June 24, 2025
<b>Introduced by:</b>	Sens. Jarvis, McInnis, Moffitt	<b>Prepared by:</b>	Chris Saunders
<b>Analysis of:</b>	PCS to Third Edition S472-CSTQ-40		Staff Attorney

**OVERVIEW:** *The Proposed Committee Substitute (PCS) to Senate Bill 472 would do all of the following:*

- *Establish statutory requirements for the Department of Environmental Quality's (DEQ) handling of applications for 401 certifications for projects that are eligible for a Nationwide Permit or Regional General Permit issued by the United States Army Corps of Engineers (USACE).*
- *Establish a permitting process for upland basin marinas that meet certain criteria and expedite processing of 401 Certification permitting for upland basin marina projects.*
- *Specify that man-made ditches may not be designated as areas of environmental concern (AECs) for purposes of the Coastal Area Management Act and are not marshlands for purposes of dredge and fill permits in or about estuarine waters or State-owned lakes.*

*The PCS changes the Third Edition of the bill by giving DEQ 15 days from the end of the public hearing comment period, rather than 5 days, to notify an applicant for a 401 certification that a public hearing is necessary.*

## CURRENT LAW AND BILL ANALYSIS:

**Section 1** of the PCS would establish statutory requirements for DEQ's handling of applications for 401 certifications for projects that are eligible for a Nationwide Permit or Regional General Permit issued by USACE. DEQ would be required to:

- Notify an applicant of the required fee within 5 days of receipt of an application. DEQ's review period would begin on the date the fee is paid.
- Within 30 days of the beginning of the review period, DEQ must (i) determine whether or not the application is complete and notify the applicant accordingly, and (ii) if the Department determines an application is incomplete, specify all such deficiencies in a notice to the applicant. Review of amended applications or supplemental information responses provided by the applicant must occur within 20 business days of receipt. If the Department fails to issue a notice that the application is incomplete within the requisite initial 30-day period, or the supplemental 20-day review period, the application shall be deemed complete.
- Either approve or deny an application within (i) 10 business days of the date the application is deemed complete if no public hearing is held, or (ii) 15 business days of the close of the record if

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a public hearing is held and no additional information is required. Failure of the Department to approve or deny the application within the requisite time period, as applicable, would result in a waiver of the certification requirement by the State, unless the applicant agrees, in writing, to an extension of time, which shall not exceed one year from the State's receipt of the application for certification.

- Issue a certification, with or without conditions or limitations, upon determining that the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements. The Department may include as conditions or limitations in a certification any effluent limitations or other limitations necessary to assure the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements. The Department may not impose any other conditions or limitations in a certification.

DEQ may deny a certification application only if it determines that no reasonable conditions or limitations would provide assurance that the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements.

This section would also direct the Department to process an application for 401 certification for an upland basin under an expedited process, which is currently allowed for maintenance dredging projects partially funded by the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund, certain projects related to electrical generation, and the distribution or transmission of energy or fuel.

This section would be effective when it becomes law and would apply to applications for Section 401 certification pending or submitted on or after that date.

**Section 2** would create a process for permitting of upland basin marinas, defined as marinas constructed by excavating or dredging lands of elevations above the current mean or ordinary high water mark and designed to accommodate more than ten vessels or boat slips. Unless the Director of the Division of Water Resources (DWR) or the Director of the Division of Coastal Management (DCM) finds, based on site-specific technical information, that an applicant for an upland basin marina project cannot comply with criteria listed in the bill, then DWR and DCM must approve the application within 60 days after the applicant submits a completed application and any supplemental information needed to verify compliance with the listed criteria. If the Department fails to act within the 60-day period, the application would be deemed approved.

The criteria with which an upland basin marina project must comply to be permitted under this process include:

- The waters contained in the upland basin marina have a dissolved oxygen content equal to or greater than the dissolved oxygen content of the water located 50 feet +/- 5 feet from the entrance to the upland basin marina before development.
- Financial assurance for the long-term operation and maintenance of any technology required to meet or exceed then-applicable water quality standards.
- Construction of the upland basin marina impacts or removes a total area of coastal wetlands that is no more than 5% of the total area of the proposed upland basin marina waters.
- Construction of the upland basin marina impacts or removes a total linear footage of coastal wetlands fringe that is no more than 10% of the total linear footage of existing coastal wetlands along the shoreline of the property or properties of the permit applicant.

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- The project includes mitigation or has mitigation credits for wetland impacts caused by excavation exceeding 125 linear feet of shoreline in total.
- Compliance with specific use standards established by Coastal Resources Commission (CRC) rules.

Submission of a Major Development Coastal Area Management Act (CAMA) permit application for an upland basin marina project would constitute a complete application for purposes of water quality certification review by the DWR and no further information would be required unless the Director of DWR or DCM objects in writing or requests additional information necessary to evaluate compliance with water quality standards.

An applicant would be allowed to use innovative technology to maintain dissolved oxygen levels if the applicant provides financial assurance. No additional information would be required if the applicant provides a certification from a North Carolina licensed professional engineer that the proposed innovative technology is capable of attaining required dissolved oxygen levels in the upland basin marina.

**Section 3** would define the term "man-made ditches" for purposes of CAMA and would clarify that the CRC may not designate man-made ditches as areas of environmental concern. Man-made ditches also could not be designated as marshlands with respect to permits to dredge or fill in or about estuarine waters or State-owned lakes, excluding man-made ditches from the requirement to obtain a permit before beginning an excavation or filling project.

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

## **BACKGROUND:**

### **401 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.

### **USACE 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

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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 NWP is available [here](#).