AMENDED

April 26, 2011

**H. 3587**

Introduced by Reps. Edge, Viers, Hardwick, Hearn, Clemmons, Barfield, Hayes and Loftis

S. Printed 4/26/11--S.

Read the first time March 8, 2011.

**A** **BILL**

TO AMEND SECTION 48‑39‑130, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXEMPTIONS FROM PERMITS REQUIRED TO UTILIZE CRITICAL AREAS, SO AS TO ADD AN EXEMPTION FOR MAINTENANCE DREDGING BY COUNTIES OR MUNICIPALITIES OF CERTAIN CANALS IF THE DREDGING IS AUTHORIZED BY THE UNITED STATES ARMY CORPS OF ENGINEERS AND TO PROVIDE THAT ALL OTHER DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CERTIFICATIONS FOR SUCH DREDGING ARE WAIVED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 48‑39‑10 of the 1976 Code is amended by adding:

“( ) ‘Maintenance dredging’ means excavation to restore the depth of underwater lands or restore channels, basins, canals, or similar waterway accesses to depths and dimensions that support and maintain prior or existing levels of use that previously have been dredged pursuant to a license issued by the department or an exemption as provided in Section 48-39-130(D)(10) as added by Act \_\_\_ of 2011.”

SECTION 2. Section 48‑39‑130(D) of the 1976 Code is amended by adding:

“(10) Dredging in existing navigational canal community developments by counties or municipalities of manmade, predominately armored, recreational use canals and essential access canals conveyed to the State or dedicated to the public for that purpose between 1965 and the effective date of this act if the maintenance dredging is authorized by a permit from the United States Army Corps of Engineers pursuant to the Federal Clean Water Act, as amended, or the Rivers and Harbors Act of 1899. All other department administered certifications for such dredging are deemed waived.”

SECTION 3. Section 48‑39‑150(F) of the 1976 Code is amended to read:

“(F) ~~Work~~ Except for maintenance dredging permits, work authorized by permits issued under this chapter must be completed within five years after the date of issuance. Maintenance dredging permitted under this chapter must be completed within ten years after the date of issuance. The time limit may be extended for good cause showing that due diligence toward completion of the work has been made as evidenced by significant work progress. An extension only may be granted if the permitted project meets the policies and regulations in force when the extension is requested or the permittee agrees to accept additional conditions which would bring the project into compliance. The time periods required by this subsection must be tolled during the pendency of an administrative or a judicial appeal of the permit issuance.”

SECTION 4. The Department of Health and Environmental Control shall promulgate regulations, pursuant to Chapter 23, Title 1, to provide for maintenance dredging as defined in Section 48‑39‑10. The maintenance dredging regulations must:

(1) take into account the fact that areas subject to maintenance dredging have previously been impacted and should be evaluated on the incremental impact of the maintenance dredging on existing conditions;

(2) require the submission of a dredging program document depicting the estimated dimensions, including the existing and proposed depths and location of the general areas proposed to be dredged; the estimated quantity of material to be dredged; the proposed methods and techniques to accomplish the dredging; and the anticipated dredge material placement information at approved dredge disposal locations;

(3) require that, to the extent practicable and reasonable, such maintenance dredging should be timed to minimize interference with and impacts to aquatic life designated as a threatened or endangered species;

(4) require that such maintenance dredging should not cause significant erosion above the ordinary high water mark;

(5) provide that the department must send notice of the expiration of any maintenance dredging permit to the permittee no later than thirty days prior to such permit’s expiration;

(6) provide that the department may issue a five‑year extension for any department permit for maintenance dredging as defined in Section 48‑39‑10 existing as of the effective date of the regulation.

The regulations should not exceed the scope or stringency of any applicable federal regulations to maintenance dredging and should, to the maximum extent possible, avoid duplication of analysis or evaluation of considerations subject to review by the United States Army Corps of Engineers pursuant to a Clean Water Act Section 404 permit for the same maintenance dredging project.

SECTION 5. Section 48‑39‑130(D)(10) of the 1976 Code is repealed on July 1, 2026. Any maintenance dredging occurring after July 1, 2026 in areas that were dredged pursuant to Section 48‑39‑130(D) must be performed pursuant to the provisions contained in Chapter 39, Title 48 and the maintenance dredging regulations promulgated pursuant to this act.

SECTION 6. Nothing in this act shall be construed to expand or increase the department’s jurisdiction or to require permits for activities or projects that are not currently subject to regulation by the department. Except for the extension of the permit duration for maintenance dredging permits to ten years, nothing in this act shall be construed to impact any pending request or application for any license or approval from the department.

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. This act takes effect upon approval of the Governor.

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