

By the Committee on Environmental Preservation and Conservation;
and Senator Jones

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1 A bill to be entitled
2 An act relating to beach management; amending s.
3 161.041, F.S.; specifying that demonstration to the
4 Department of Environmental Protection of the adequacy
5 of a project's design and construction is supported by
6 certain evidence; authorizing the department to issue
7 permits for an incidental take authorization under
8 certain circumstances; requiring the department to
9 adopt certain rules involving the excavation and
10 placement of sediment; requiring the Department of
11 Environmental Protection to justify items listed in a
12 request for additional information; providing
13 legislative intent; exempting certain previously
14 permitted projects from detailed review; requiring
15 that the department amend certain rules to streamline
16 the permitting process for certain projects and
17 activities; providing for the permit life of joint
18 coastal permits; amending s. 161.101, F.S.; requiring
19 the department to maintain certain beach management
20 project information on its website; defining the term
21 "significant change"; requiring the department to
22 notify the Governor's Office and the Legislature
23 concerning any significant changes in project funding
24 levels; amending s. 403.813, F.S.; providing a permit
25 exemption for certain specified exploratory activities
26 relating to beach restoration and nourishment projects
27 and inlet management activities; providing an
28 effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. Section 161.041, Florida Statutes, is amended to
33 read:

34 161.041 Permits required.—

35 (1) If a ~~any~~ person, firm, corporation, county,
36 municipality, township, special district, or ~~any~~ public agency
37 desires to make any coastal construction or reconstruction or
38 change of existing structures, or any construction or physical
39 activity undertaken specifically for shore protection purposes,
40 or other structures and physical activity including groins,
41 jetties, moles, breakwaters, seawalls, revetments, artificial
42 nourishment, inlet sediment bypassing, excavation or maintenance
43 dredging of inlet channels, or other deposition or removal of
44 beach material, or construction of other structures ~~if~~ of a
45 solid or highly impermeable design, upon state sovereignty lands
46 ~~of Florida,~~ below the mean high-water line of any tidal water of
47 the state, a coastal construction permit must be obtained from
48 the department before ~~prior to~~ the commencement of such work.
49 The department may exempt interior tidal waters of the state
50 from the permit requirements of this section. ~~No such~~
51 ~~development shall interfere,~~

52 (a) Except during construction, such development may not
53 interfere with the public use ~~by the public~~ of any area of a
54 beach seaward of the mean high-water line unless the department
55 determines that the ~~such~~ interference is unavoidable for
56 purposes of protecting the beach or an ~~any~~ endangered upland
57 structure. ~~The department may require,~~ As a condition of ~~to~~
58 granting permits under this section, the department may require

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59 the provision of alternative access if ~~when~~ interference with
60 public access along the beach is unavoidable. The width of such
61 alternate access may not be required to exceed the width of the
62 access that will be obstructed as a result of the permit being
63 granted. ~~Application for coastal construction permits as defined~~
64 ~~above shall be made to the department upon such terms and~~
65 ~~conditions as set forth by rule of the department.~~

66 (b) Except for the deepwater ports identified in s.
67 403.021(9) (b), the department shall not issue a ~~any~~ permit for
68 the construction of a coastal inlet jetty or the excavation or
69 maintenance of such an inlet if the activity authorized by the
70 permit will have a significant adverse impact on the sandy
71 beaches of this state without a mitigation program approved by
72 the department. In evaluating the mitigation program, the
73 department shall consider ~~take into consideration~~ the benefits
74 of the long-term sand management plan of the permittee and the
75 overall public benefits of the inlet activity.

76 (2) The department may authorize an excavation or erection
77 of a structure at any coastal location upon receipt of an
78 application from a property or riparian owner and upon
79 consideration of facts and circumstances, including:

80 (a) Adequate engineering data concerning inlet and
81 shoreline stability and storm tides related to shoreline
82 topography;

83 (b) Design features of the proposed structures or
84 activities; and

85 (c) Potential effects ~~impacts~~ of the location of such
86 structures or activities, including potential cumulative effects
87 of any proposed structures or activities upon such beach-dune

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88 system or coastal inlet, which, in the opinion of the
89 department, clearly justify such a permit.

90 (3) The department may require ~~such~~ engineer certifications
91 as necessary to assure the adequacy of the design and
92 construction of permitted projects. Reasonable assurance is
93 demonstrated if the permit applicant provides competent
94 substantial evidence based on plans, studies, and credible
95 expertise that accounts for naturally occurring variables that
96 might reasonably be expected.

97 (4) The department may, as a condition to ~~the~~ granting ~~of~~ a
98 permit under this section, require mitigation, financial, or
99 other assurances acceptable to the department as ~~may be~~
100 necessary to assure performance of the conditions of a permit or
101 enter into contractual agreements to best assure compliance with
102 any permit conditions. Biological and environmental monitoring
103 conditions included in the permit must ~~shall~~ be based upon
104 clearly defined scientific principles. The department may also
105 require notice of the required permit conditions ~~required~~ and
106 the contractual agreements entered into pursuant to ~~the~~
107 ~~provisions of~~ this subsection to be filed in the public records
108 of the county in which the permitted activity is located.

109 (5) Notwithstanding any other provision of law, the
110 department may issue permits pursuant to this part in advance of
111 the issuance of an incidental take authorization provided under
112 the Endangered Species Act and its implementing regulations if
113 the permits and authorizations include a condition that requires
114 that such authorized activities not begin until the incidental
115 take authorization is issued.

116 (6) The department shall adopt rules to address standard

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117 mixing zone criteria and antidegradation requirements for
118 turbidity generation for beach management and inlet bypassing
119 permits that involve the excavation and placement of sediment in
120 order to reduce or eliminate the need for variances. In
121 processing variance requests, the department must consider the
122 legislative declaration that, pursuant to s. 161.088, beach
123 nourishment projects are in the public interest.

124 (7) Application for permits shall be made to the department
125 upon such terms and conditions as set forth by rule.

126 (a) If, as part of the permit process, the department
127 requests additional information, it must cite applicable
128 statutory and rule provisions that justify any item listed in a
129 request for additional information.

130 (b) The department may not issue guidelines that are
131 enforceable as standards for beach management, inlet management,
132 and other erosion control projects without adopting such
133 guidelines by rule.

134 (8) The Legislature intends to simplify and expedite the
135 permitting process for the periodic maintenance of previously
136 permitted and constructed beach nourishment and inlet management
137 projects under the joint coastal permit process. A detailed
138 review of a previously permitted project is not required if
139 there have been no substantial changes in project scope and past
140 performance of the project indicates that the project has
141 performed according to design expectations. The department shall
142 amend chapters 62B-41 and 62B-49, Florida Administrative Code,
143 to streamline the permitting process for periodic beach
144 maintenance projects and inlet sand bypassing activities.

145 (9) Joint coastal permits issued for activities falling

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146 under this section and part IV of chapter 373 must allow for two
147 maintenance or dredging disposal events or a permit life of 15
148 years, whichever is greater.

149 Section 2. Subsection (20) of section 161.101, Florida
150 Statutes, is amended to read:

151 161.101 State and local participation in authorized
152 projects and studies relating to beach management and erosion
153 control.-

154 (20) The department shall maintain active ~~a current~~ project
155 listings on its website by fiscal year in order to provide
156 transparency regarding those projects receiving funding and the
157 funding amounts, and to facilitate legislative reporting and
158 oversight. In consideration of this intent: listing and may, in
159 ~~its discretion and dependent upon the availability of local~~
160 ~~resources and changes in the criteria listed in subsection (14),~~
161 ~~revise the project listing.~~

162 (a) The department shall notify the Executive Office of the
163 Governor and the Legislature regarding any significant changes
164 in the funding levels of a given project as initially requested
165 in the department's budget submission and subsequently included
166 in approved annual funding allocations. The term "significant
167 change" means those changes exceeding 25 percent of a project's
168 original allocation. If there is surplus funding, notification
169 shall be provided to the Executive Office of the Governor and
170 the Legislature to indicate whether additional dollars are
171 intended to be used for inlet management pursuant to s. 161.143,
172 offered for reversion as part of the next appropriations
173 process, or used for other specified priority projects on active
174 project lists.

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175 (b) A summary of specific project activities for the
176 current fiscal year, funding status, and changes to annual
177 project lists shall be prepared by the department and included
178 with the department's submission of its annual legislative
179 budget request.

180 (c) A local project sponsor may at any time release, in
181 whole or in part, appropriated project dollars by formal
182 notification to the department, which shall notify the Executive
183 Office of the Governor and the Legislature. Notification must
184 indicate how the project dollars are intended to be used.

185 Section 3. Paragraph (v) is added to subsection (1) of
186 section 403.813, Florida Statutes, to read:

187 403.813 Permits issued at district centers; exceptions.—

188 (1) A permit is not required under this chapter, chapter
189 373, chapter 61-691, Laws of Florida, or chapter 25214 or
190 chapter 25270, 1949, Laws of Florida, for activities associated
191 with the following types of projects; however, except as
192 otherwise provided in this subsection, nothing in this
193 subsection relieves an applicant from any requirement to obtain
194 permission to use or occupy lands owned by the Board of Trustees
195 of the Internal Improvement Trust Fund or any water management
196 district in its governmental or proprietary capacity or from
197 complying with applicable local pollution control programs
198 authorized under this chapter or other requirements of county
199 and municipal governments:

200 (v) Notwithstanding any other provision in this chapter,
201 chapter 373, or chapter 161, a permit or other authorization is
202 not required for the following exploratory activities associated
203 with beach restoration and nourishment projects and inlet

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204 management activities:

205 1. The collection of geotechnical, geophysical, and
206 cultural resource data, including surveys, mapping, acoustic
207 soundings, benthic and other biologic sampling, and coring.

208 2. Oceanographic instrument deployment, including temporary
209 installation on the seabed of coastal and oceanographic data
210 collection equipment.

211 3. Incidental excavation associated with any of the
212 activities listed under subparagraph 1. or subparagraph 2.

213 Section 4. This act shall take effect July 1, 2012.