

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

BILL: SB 956

INTRODUCER: Senator Bean

SUBJECT: Department of Environmental Protection

DATE: March 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 956 authorizes the Department of Environmental Protection (DEP) to grant areawide and general permits for coastal construction activities. The bill requires the DEP to promote the public use of aquatic preserves by authorizing privileges, leases, or concessions. The bill also allows the DEP to receive gifts and donations for the administration, development, improvement, promotion, and maintenance of aquatic preserves, as well as for the future acquisition or development of aquatic preserves.

II. Present Situation:

Coastal Construction Control Line

Florida's coastline spans more than 1,260 miles, 825 miles of which is considered sandy beaches fronting the Atlantic Ocean, the Gulf of Mexico and the Straits of Florida.¹ Florida's beach and dune system are vital components of the delicate coastal ecosystem, providing habitat to hundreds of species of plants and animals. The beach and dune system is also critical in protecting uplands and coastal development during storm events.² Florida's beaches are a primary tourist destination, attracting 38 million visitors in 2012 and providing \$55 billion in sales to the state's economy.³

In 1965, the Legislature enacted the Florida Beaches and Shores Preservation Act (Act). The Act authorized the Department of Natural Resources (DNR) to regulate construction and physical

¹ DEP, *Statistical Abstract, Geographical Summary*, <http://www.dep.state.fl.us/secretary/stats/geographical.htm> (last visited Mar. 10, 2014).

² DEP, *Beaches and Coastal Systems*, <http://dep.state.fl.us/beaches/> (last visited Mar. 10, 2014).

³ Florida Shore and Beach Preservation Association, *Healthy Beaches Drive Florida's Economy*, available at <http://www.fsbpa.com/EconomicFactSheet.pdf> (last visited Mar. 10, 2014).

activity on or seaward of the state's beaches and required individuals, municipalities, and counties to obtain a permit for any coastal construction seaward of the mean high water line.⁴

In 1970, the Legislature established a setback line for coastal construction and excavation. The coastal construction setback line prohibited coastal construction and excavation within 50 feet of the mean high water line at any riparian coastal location fronting the Gulf of Mexico and Atlantic Ocean. The law provided waivers and variances for the setback requirement and provided an exemption for shore protection structures.⁵

Section 161.053, F.S., enacted in 1971, required setback lines on a county by county basis along the sandy beaches of the Atlantic Ocean and the Gulf of Mexico. The DNR was required to conduct a comprehensive engineering study and topographic survey to establish the setback lines necessary for the protection of upland properties and to control coastal erosion. The law required that a public hearing be held for each setback line established and that the established setback lines be recorded in the public records of the county and municipality affected.⁶

In 1978, s. 161.052, F.S., was amended to change the construction setback lines to Coastal Construction Control Lines (CCCLs) and provided the DNR with authority to issue permits for construction activities that previously required a waiver or variance.

The CCCL requirements, established in s. 161.053, F.S., were significantly amended in 1996, to exempt proposed construction located seaward of the CCCL and landward of existing armoring from specific siting and design criteria. The law also allowed the DEP to grant areawide permits to local governments, governmental agencies, and utilities for specific activities, including, but not limited to, road repairs, utility repairs and replacements, beach cleaning, and emergency response. To qualify for an areawide permit, the statute requires that the activities "will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites."⁷ The DEP is authorized to establish rules and criteria to administer this section; however, rules have not been adopted for areawide permits.

Section 161.053, F.S., also provides the DEP with the authority to issue general permits. General permits may be issued where a general permit line has been established and the activity "will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites."⁸ Activities that may be authorized under a general permit include: dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other nonhabitable structures. A single-family habitable structure may qualify for a general permit as long as it does not advance the existing line of construction and satisfies all siting and design requirements. Multi-family habitable structures do not qualify for a general permit. The DEP adopted Rule 62B-34, F.A.C., to establish the criteria and guidelines for the issuance of a general permit.

⁴ Chapter 65-408, Laws of Fla.

⁵ Chapter 70-231, Laws of Fla.

⁶ Chapter 71-136, Laws of Fla.

⁷ Chapter 96-371, Laws of Fla.

⁸ Rule 62B-34.010(7), F.A.C., defines the general permit line as "the line that defines the seaward limit where General Permits can be issued for activities authorized by this rule chapter, is established pursuant to the provisions of s. 161.053(18), F.S., and is recorded in the official records of the county."

Aquatic Preserves

The Florida Aquatic Preserve Act was enacted in 1975 to set aside and protect state-owned submerged lands that have “exceptional biological, aesthetic, and scientific value.”⁹ There are 41 aquatic preserves protecting approximately 2.2 million acres in Florida.¹⁰

Aquatic preserves serve many valuable ecological and economic functions. The aquatic preserves provide nurseries for juvenile fish and other aquatic life, maintain water quality, and provide habitat for shorebirds. The aquatic preserves are also valuable tourist destinations, providing a host of outdoor activities such as fishing, diving, snorkeling, swimming, bird watching, and boating.¹¹

The DEP is responsible for managing the state’s aquatic preserves by maintaining a healthy balance of resource protection and promoting public access to the preserves.¹² The DEP adopted Rules 18-18 and 18-20, F.A.C., which specify the additional resource protections, management criteria, and regulations related to human activity that are permitted within an aquatic preserve.

III. Effect of Proposed Changes:

Section 1 amends s. 161.053, authorizing the DEP to grant areawide permits for dune restorations and on-grade dune walkovers. The bill authorizes the DEP to grant general permits for swimming pools that do not advance the existing line of construction and comply with siting and design requirements. The bill provides for maintenance of existing coastal armoring structures to be authorized under a general permit.

Section 2 creates s. 258.435, promoting the use of aquatic preserves and their associated uplands. The bill authorizes the DEP to grant a privilege, lease, or concession for the accommodation of visitors to the aquatic preserve as long as the privilege, lease, or concession does not interfere with the public’s access to the preserve.

The bill specifies that a privilege, lease, or concession may be granted without advertisement or without a competitive bidding process. However, the privilege, lease, or concession may not be assigned or transferred by the recipient without consent from the DEP.

The bill also allows the DEP to receive gifts and donations in order to promote the use of aquatic preserves. The funds received are to be deposited into the Land Acquisition Trust Fund and appropriated to the DEP for the administration, development, improvement, promotion, and maintenance of the preserves and their associated uplands. The gifts and donations may also be used for future acquisitions or development of aquatic preserves and their associated uplands.

Section 3 provides an effective date of July 1, 2014.

⁹ Sections 258.35-258.394 and 258.40-258.46, F.S.

¹⁰ DEP, *Florida’s Aquatic Preserves*, <http://www.dep.state.fl.us/coastal/programs/aquatic.htm> (last visited Mar. 3, 2014).

¹¹ DEP, *Florida’s Aquatic Preserves, Protecting Our Most Valued Resource: A Program Overview*, available at http://www.dep.state.fl.us/coastal/downloads/Aquatic_Preserve_Overview_Jun06.pdf (last visited Mar. 3, 2014).

¹² Sections 258.35-258.394 and 258.40-258.46, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector could anticipate a reduction in permit fees due to the decrease in required individual permits.¹³

Private entities that enter into agreements with the DEP to provide vending services, accommodations, and recreational opportunities within an aquatic preserve will experience an indeterminate positive fiscal impact.¹⁴

C. Government Sector Impact:

The DEP will experience a reduction in revenue from reduced permit fees. Activities that currently require administrative permits may now qualify for general permits or areawide permits. The DEP estimates approximately \$66,000 in lost revenues based on the number of permit applications and permit application fees from 2013.¹⁵ Conversely, local governments applying for coastal construction permits will realize a cost savings as the number of required individual permits is decreased.

The state will realize an indeterminate positive fiscal impact from promoting the public use of aquatic preserves and their associated uplands. The DEP Agency Analysis includes examples of revenue generated from agreements with private entities. At Little St. George Island, the DEP contracts with a concessionaire to provide an “all inclusive” primitive camping experience. The five year agreement allows the state to receive 13 percent of all gross receipts, excluding sales tax, providing approximately \$148,000 over

¹³ DEP, *Senate Bill 956 Agency Analysis*, 7 (Mar. 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁴ *Id.* at 5-6.

¹⁵ *Id.*

five years. At St. Joseph Bay Aquatic Preserve, the DEP contracts with a private entity to provide kayak and paddle boat excursions. The five year agreement allows for the state to receive 10 percent of gross revenue per year, providing approximately \$50,000 over the next five years.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill allows dune restoration to be authorized under an areawide permit, which may be an expansion of the original intent of an areawide permit. The statute states that an areawide permit may be granted to local governments, governmental agencies, and utility companies as long as the activity does “not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.” The DEP has not defined “dune restoration” in statute or rule; therefore, it is unclear if this type of activity will cause measureable interference with the beach dune system and marine turtles. The DEP has not adopted rules to establish the criteria and guidelines for areawide permit applications; therefore, the impacts of expanding the types of activities authorized under a general permit are unknown.

The bill allows swimming pools to be granted under a general permit as long as they do not advance the existing line of construction and “will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.” Rule 62B-33.002(60)(c) F.A.C., specifies that a structure is considered a “major structure” if “as a result of design, location, or size [it] could cause an adverse impact to the beach and dune system.” Rule 62B-33.002(60)(c)1, F.A.C., clarifies a swimming pool is considered a “nonhabitable major structure.” The swimming pool provision in the bill conflicts with the swimming pool criteria established in rule. Furthermore, the bill does not clearly state that swimming pools must be associated with single-family habitable structures.

Swimming pools associated with single-family homes produce an illuminating artificial light that may interfere with sea turtle nesting as sea turtles prefer to nest on darker beaches and avoid nesting in areas with artificial lights.¹⁷ The Florida Fish and Wildlife Conservation Commission (FWC) is responsible for reviewing and commenting on administrative permits for coastal construction activities and reviewing beach lighting ordinances. Authorizing a swimming pool under a general permit as opposed to an administrative permit eliminates FWC’s involvement in the permitting process, which could result in measureable impacts to sea turtles.

VIII. Statutes Affected:

This bill substantially amends section 161.053 of the Florida Statutes.

¹⁶ *Id.*

¹⁷ Univ. of Fla., Levin College of Law, *The Sea Turtle Friendly Lighting Initiative*, available at http://www.law.ufl.edu/pdf/academics/clinics/conservation-clinic/Legal_and_Biological_Introduction.pdf (last visited Mar. 11, 2014).

This bill creates section 258.435 of the Florida Statutes.

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
