

1
2 An act relating to Florida's coasts and public
3 beaches; amending s. 380.20, F.S.; revising
4 those sections of Florida Statutes which
5 comprise the Florida Coastal Management Act;
6 amending s. 380.205, F.S.; providing
7 definitions; transferring the state coastal
8 management program functions from the
9 Department of Community Affairs to the
10 Department of Environmental Protection;
11 amending s. 380.21, F.S.; clarifying
12 legislative intent for the Coastal Zone
13 Management Program; amending s. 380.22, F.S.;
14 clarifying the duties and authority of the lead
15 agency; amending s. 380.23, F.S.; clarifying
16 procedures for the granting or denial of a
17 state license for a federally licensed or
18 permitted activity; amending s. 380.285, F.S.;
19 authorizing the Department of Environmental
20 Protection to assist in the study,
21 preservation, and funding of lighthouses on the
22 Florida coast; transferring the powers, duties,
23 functions, rules, records, personnel, property,
24 and unexpended balances of appropriations,
25 allocations, and other funds of the Coastal
26 Management Program from the Department of
27 Community Affairs to the Department of
28 Environmental Protection by type two transfer;
29 amending s. 403.061, F.S.; allowing the
30 Department of Environmental Protection to serve
31 as the single point of contact for performing

1 specified responsibilities, including
2 administration and operation of the Florida
3 State Clearinghouse; creating s. 380.276, F.S.;
4 providing for a cooperative effort among state
5 agencies and local governments to plan for and
6 assist in the display of uniform warning and
7 safety flags and the placement of specified
8 uniform notification signs; providing that the
9 Department of Environmental Protection shall
10 direct and coordinate a program for the display
11 and placement of such flags and signs;
12 providing for the development of the program;
13 providing program components and requirements;
14 authorizing the department to coordinate the
15 implementation of the program with specified
16 entities; providing for rules; limiting the
17 liability of participating governmental
18 entities; providing an effective date.

19

20 Be It Enacted by the Legislature of the State of Florida:

21

22 Section 1. Section 380.20, Florida Statutes, is
23 amended to read:24 380.20 Short title.--Sections 380.205-380.27
25 ~~380.205-380.24~~ may be cited as the "Florida Coastal Management
26 Act."27 Section 2. Section 380.205, Florida Statutes, is
28 amended to read:29 380.205 Definitions.--As used in ss. 380.205-380.27
30 ~~380.21-380.24~~:

31

1 (1) "Department" means the Department of Environmental
2 Protection ~~Community Affairs~~.

3 (2) "Coastal zone" means that area of land and water
4 from the territorial limits seaward to the most inland extent
5 of marine influences. However, for planning and developing
6 coordinated projects and initiatives for coastal resource
7 protection and management, the department shall consider the
8 coastal zone to be the geographical area encompassed by the 35
9 Florida coastal counties listed in the Final Environmental
10 Impact Statement for the Florida Coastal Management Program
11 and the adjoining territorial sea. It is not the intent of
12 this definition to limit the authority currently exercised
13 under the federal law and the federally approved Florida
14 Coastal Management Program by which projects landward and
15 seaward of the 35 coastal counties are reviewed for
16 consistency with the Florida Coastal Management Program.

17 (3) "Coastal Zone Management Act" means the Coastal
18 Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464).

19 Section 3. Subsections (1), (2), and (3) of section
20 380.21, Florida Statutes, are amended to read:

21 380.21 Legislative intent.--

22 (1) The Legislature finds that:

23 (a) The coast is rich in a variety of natural,
24 commercial, recreational, ecological, industrial, and
25 aesthetic resources, including, but not limited to, "energy
26 facilities," as that term is defined in s. 304~~(5)~~ of the
27 ~~federal~~ Coastal Zone Management Act of ~~1972~~, of immediate
28 potential value to the present and future well-being of the
29 residents of this state.

30
31

1 (b) It is in the state and national interest to
2 protect, maintain, and develop these resources through
3 coordinated management.

4 (c) State land and water management policies should,
5 to the maximum possible extent, be implemented by local
6 governments through existing processes for the guidance of
7 growth and development.

8 (2) The Legislature therefore grants authorization for
9 the department to maintain and update ~~compile~~ a program based
10 on existing statutes and existing rules and submit
11 applications ~~an application~~ to the appropriate federal agency
12 as a basis for receiving ~~administrative~~ funds under the
13 ~~federal~~ Coastal Zone Management Act ~~of 1972~~. It is the
14 further intent of the Legislature that enactment of this
15 legislation shall not amend existing statutes or provide
16 additional regulatory authority to any governmental body
17 except as otherwise provided by s. 380.23. The enactment of
18 this legislation shall not in any other way affect any
19 existing statutory or regulatory authority.

20 (3)(a) The Legislature finds that the coastal zone is
21 rich in a variety of natural, commercial, recreational,
22 ecological, industrial, and aesthetic resources of immediate
23 and potential value to the present and future well-being of
24 the residents of this state which will be irretrievably lost
25 or damaged if not properly managed. The participation by
26 citizens of the state is ~~will be~~ an important factor in
27 developing, adopting, amending, and implementing a program
28 plan for management of the coastal zone, and management of the
29 state's coastal zone requires ~~will require~~ a highly
30 coordinated effort among state, regional, and local officials
31 and agencies.

1 (b) The state coastal zone management program plan
2 ~~shall be a part of the state comprehensive plan. It shall~~
3 ~~contain each of the program elements a boundary, policies,~~
4 ~~goals, and programs~~ necessary to comply with the requirements
5 of the ~~federal~~ Coastal Zone Management Act of 1972, ~~as amended~~
6 ~~(16 U.S.C. ss. 1451-1464)~~, specifically delineating the role
7 of state, regional, and local agencies in implementing the
8 program plan; and it shall provide that the appeal of any
9 regulatory decision, other than those appeals provided for by
10 existing law, shall be to the Governor and Cabinet.

11 Section 4. Section 380.22, Florida Statutes, is
12 amended to read:

13 380.22 Lead agency authority and duties.--

14 (1) The department shall be the lead agency pursuant
15 to the Coastal Zone Management Act ~~16 U.S.C. ss. 1451 et seq.,~~
16 and shall compile and submit to the appropriate federal agency
17 applications ~~an application~~ to receive funds pursuant to the
18 ~~s. 306 of the federal~~ Coastal Zone Management Act of 1972, ~~as~~
19 ~~amended (16 U.S.C. ss. 1451-1464)~~. The ~~application for federal~~
20 ~~approval of the~~ state's program shall include program policies
21 that only reference existing statutes and existing
22 implementing administrative rules. In the event the
23 ~~application or the~~ program submitted pursuant to this
24 subsection is rejected by the appropriate federal agency
25 because of failure of this act, the existing statutes, or the
26 existing implementing administrative rules to comply with the
27 requirements of the federal Coastal Zone Management Act of
28 1972, as amended, no state coastal management program shall
29 become effective without prior legislative approval. The
30 coastal management ~~application or~~ program may be amended from
31

1 time to time to include changes in statutes and rules adopted
2 pursuant to statutory authority other than this act.

3 (2) The department shall also have authority to:

4 (a) Establish advisory councils with sufficient
5 geographic balance to ensure statewide representation.

6 (b) Coordinate central files and clearinghouse
7 procedures for coastal resource data information and encourage
8 the use of compatible information and standards.

9 (c) Provide to the extent practicable financial,
10 technical, research, and legal assistance to effectuate the
11 purposes of this act.

12 (d) Review rules of other affected agencies to
13 determine consistency with the program and to report any
14 inconsistencies to the Legislature.

15 (3) The department shall adopt by rule procedures and
16 criteria for the evaluation of subgrant applications that seek
17 to receive a portion of those funds allotted to the state
18 under the federal Coastal Zone Management Act.

19 (4) The department shall establish a county-based
20 process for identifying, and setting priorities for acquiring,
21 coastal properties in coordination with the ~~Land~~ Acquisition
22 and Restoration ~~Management~~ Advisory Council, or its successor,
23 so these properties may be acquired as part of the state's
24 land acquisition programs. This process shall include the
25 establishment of criteria for prioritizing coastal
26 acquisitions which, in addition to recognizing pristine
27 coastal properties and coastal properties of significant or
28 important environmental sensitivity, recognize hazard
29 mitigation, beach access, beach management, urban recreation,
30 and other policies necessary for effective coastal management.

31

1 (5) In addition to other criteria established by
2 statute or rule, the following criteria shall be considered
3 when establishing priorities for public acquisition of coastal
4 property:

5 (a) The value of acquiring coastal high-hazard
6 parcels, consistent with hazard mitigation and postdisaster
7 redevelopment policies, in order to minimize the risk to life
8 and property and to reduce the need for future disaster
9 assistance.

10 (b) The value of acquiring beachfront parcels,
11 irrespective of size, to provide public access and
12 recreational opportunities in highly developed urban areas.

13 (c) The value of acquiring identified parcels the
14 development of which would adversely affect coastal resources.

15 (6) ~~The department, in coordination with the Florida~~
16 ~~Coastal Management Citizen's Advisory Committee,~~ shall develop
17 and implement a strategy to enhance citizen awareness and
18 involvement in Florida's coastal management programs.

19 Section 5. Section 380.23, Florida Statutes, is
20 amended to read:

21 380.23 Federal consistency.--

22 (1) When a federally licensed or permitted ~~an~~ activity
23 ~~requires a permit or license~~ subject to federal consistency
24 review requires a state license, the issuance or renewal of a
25 state license shall automatically constitute the state's
26 concurrence that the licensed activity or use, as licensed, is
27 consistent with the federally approved program. When a
28 federally licensed or permitted ~~an~~ activity ~~requires a permit~~
29 ~~or license~~ subject to federal consistency review requires a
30 state license, the denial of a state license shall
31 automatically constitute the state's finding that the proposed

1 activity or use is not consistent with the state's federally
2 approved program, unless the United States Secretary of
3 Commerce determines that such activity or use is in the
4 national interest as provided in the ~~federal~~ Coastal Zone
5 Management Act ~~of 1972~~.

6 (2)(a) Where federal licenses, permits, activities,
7 and projects listed in subsection (3) are subject to federal
8 consistency review and are seaward of the jurisdiction of the
9 state, or there is no state agency with sole jurisdiction, the
10 department shall be responsible for the consistency review and
11 determination; however, the department shall not make a
12 determination that the license, permit, activity, or project
13 is consistent if any other state agency with significant
14 analogous responsibility makes a determination of
15 inconsistency. All decisions and determinations under this
16 subsection shall be appealable to the Governor and Cabinet.

17 (b) However, effective October 1, 1992, if a finding
18 or recommendation of inconsistency has been made by a state
19 agency with regard to federal activities and projects listed
20 under paragraphs (3)(a) and (b) and the inconsistency cannot
21 be resolved by the department, the department shall refer such
22 finding or recommendation to the Governor for final
23 determination. The Governor shall review the comments,
24 findings, or recommendations of all participating agencies and
25 shall affirm the finding or recommendation of inconsistency
26 unless the Governor determines that the federal activity or
27 project is consistent with the enforceable social, economic,
28 and environmental policies of the coastal management program.
29 Any permitting, licensing, or proprietary authority of an
30 agency shall not be preempted or otherwise limited by any
31 provision of this paragraph. Consistency determinations made

1 pursuant to this paragraph shall not be appealable to the
2 Governor or Cabinet.

3 (3) Consistency review shall be limited to review of
4 the following activities, uses, and projects to ensure that
5 such activities and uses are conducted in accordance with the
6 state's coastal management program:

7 (a) Federal development projects and activities of
8 federal agencies which significantly affect coastal waters and
9 the adjacent shorelands of the state.

10 (b) Federal assistance projects which significantly
11 affect coastal waters and the adjacent shorelands of the state
12 and which are reviewed as part of the review process developed
13 pursuant to Presidential Executive Order 12372 ~~OMB Circular~~
14 ~~A-95~~.

15 (c) Federally licensed or permitted activities
16 affecting land or water uses when such activities are in or
17 seaward of the jurisdiction of local governments required to
18 develop a coastal zone protection element as provided in s.
19 380.24 and when such activities involve:

20 1. Permits and licenses required under ~~ss. 10 and 11~~
21 ~~of the Rivers and Harbors Act of 1899, 33 U.S.C. ss. 401 et~~
22 ~~seq.~~, as amended.

23 2. Permits and licenses required under ~~s. 103 of the~~
24 ~~Marine Protection, Research and Sanctuaries Act of 1972, 33~~
25 ~~U.S.C. ss. 1401-1445 and 16 U.S.C. ss. 1431-1445, as amended.~~

26 3. Permits and licenses required under ~~ss. 201, 402,~~
27 ~~403, 404, and 405 of the Federal Water Pollution Control Act~~
28 ~~of 1972, 33 U.S.C. ss. 1251 et seq.~~, as amended, unless such
29 permitting activities ~~pursuant to such sections~~ have been
30 delegated to the state pursuant to said act.

31

1 ~~4. Permits required under the Marine Protection,~~
2 ~~Research and Sanctuaries Act of 1972, as amended, 33 U.S.C.~~
3 ~~ss. 1401, 1402, 1411-1421, and 1441-1444.~~

4 ~~5. Permits for the construction of bridges and~~
5 ~~causeways in navigable waters required pursuant to 33 U.S.C.~~
6 ~~s. 401, as amended.~~

7 4.6. Permits and licenses relating to the
8 transportation of hazardous substance materials or
9 transportation and dumping which are issued pursuant to the
10 Hazardous Materials Transportation Act, 49 U.S.C. ss. 1501, et
11 seq. 1801-1812, as amended, or 33 U.S.C. s. 1321 ~~419~~, as
12 amended.

13 ~~5.7.~~ Permits and licenses required under 15 ~~43~~ U.S.C.
14 ss. 717-717w, 3301-3432, 42 U.S.C. ss. 7101-7352, and 43
15 U.S.C. 1331-1356 ~~s. 717~~ for construction and operation of
16 interstate gas pipelines and storage facilities.

17 ~~8. Permits required under 15 U.S.C. s. 717, as~~
18 ~~amended, for construction and operation of facilities needed~~
19 ~~to import and export natural gas.~~

20 6.9. Permits and licenses required for the siting and
21 construction of any new electrical power plants as defined in
22 s. 403.503(12), as amended.

23 ~~7.10.~~ Permits and licenses required for drilling and
24 mining on public lands.

25 8.11. Permits and licenses for areas leased under the
26 OCS Lands Act, 43 U.S.C. ss. 1331 et seq., as amended,
27 including leases and approvals ~~under 43 U.S.C. s. 1331, as~~
28 ~~amended~~, of exploration, development, and production plans.

29 9.12. Permits for pipeline rights-of-way for oil and
30 gas transmissions.

31

1 ~~10.13.~~ Permits and licenses required for deepwater
2 ports under 33 U.S.C. s. 1503, as amended.

3 ~~11.14.~~ Permits required for the taking of marine
4 mammals under the Marine Mammal Protection Act of 1972, as
5 amended, 16 U.S.C. 1374 ~~s. 104.~~

6 (d) Federal activities within the territorial limits
7 of neighboring states when the Governor and the department
8 determine that significant individual or cumulative impact to
9 the land or water resources of the state would result from the
10 activities.

11 (4) The department is authorized to adopt rules
12 establishing procedures for conducting consistency reviews of
13 activities, uses, and projects for which consistency review is
14 required pursuant to subsections (1), (2), and (3). Such rules
15 shall include ~~by rule adopt~~ procedures for the expeditious
16 handling of emergency repairs to existing facilities for which
17 consistency review is required ~~pursuant to subsections (1),~~
18 ~~(2), and (3).~~ The department is also authorized to adopt rules
19 prescribing the data and information needed for the review of
20 consistency certifications and determinations.

21 (5) In any coastal management program submitted to the
22 appropriate federal agency for its approval pursuant to this
23 act, the department shall specifically waive its right to
24 determine the consistency with the coastal management program
25 of all federally licensed or permitted activities not
26 specifically listed in subsection (3).

27 (6) Agencies authorized to review and comment on the
28 consistency of federal activities subject to state review
29 under the Florida Coastal Management Program are those
30 agencies charged with the implementation of the statutes and
31 rules included in the federally approved program. Each agency

1 shall be afforded an opportunity to provide the department or
2 the state licensing agency with its comments and determination
3 regarding the consistency of the federal activity with the
4 statutes and rules included in the federally approved program
5 implemented by the agency. An agency that submits a
6 determination of inconsistency to the department or a state
7 licensing agency shall be an indispensable party to any
8 administrative or judicial proceeding in which such
9 determination is an issue, shall be responsible for defending
10 its determination in such proceedings, and shall be liable for
11 any damages, costs, and attorney's fees awarded in the action
12 as a consequence of such determination.

13 (7)(6) Agencies shall not review for federal
14 consistency purposes an application for a federally licensed
15 or permitted activity if the activity is vested, exempted, or
16 excepted under its own regulatory authority.

17 (8)(7) The department shall review the items listed in
18 subsection (3) to determine if in certain circumstances such
19 items would constitute minor permit activities. If the
20 department determines that the list contains minor permit
21 activities, it may by rule establish a program of general
22 concurrence pursuant to federal regulation which shall allow
23 similar minor activities, in the same geographic area, to
24 proceed without prior department review for federal
25 consistency.

26 ~~(8) This section shall not apply to the review of~~
27 ~~federally licensed or permitted activities for which permit~~
28 ~~applications are filed with the appropriate federal agency~~
29 ~~prior to approval of the state coastal management program by~~
30 ~~the appropriate federal agency pursuant to 16 U.S.C. ss. 1451~~
31 ~~et seq.~~

1 Section 6. Section 380.285, Florida Statutes, is
2 amended to read:

3 380.285 Lighthouses; study; preservation; funding.--

4 ~~(1) The Coastal Management Program of the Department~~
5 of Community Affairs and the Division of Historical Resources
6 of the Department of State shall undertake a study of the
7 lighthouses in the state. The study must determine the
8 location, ownership, condition, and historical significance of
9 all lighthouses in the state and ensure that all historically
10 significant lighthouses are nominated for inclusion on the
11 National Register of Historic Places. The study must assess
12 the condition and restoration needs of historic lighthouses
13 and develop plans for appropriate future public access and
14 use. ~~The Coastal Management Program and the Division of~~
15 Historical Resources shall take a leadership role in
16 implementing plans to stabilize lighthouses and associated
17 structures and to preserve and protect them from future
18 deterioration. When possible, the lighthouses and associated
19 buildings should be made available to the public for
20 educational and recreational purposes. ~~The Department of~~
21 ~~Community Affairs should consider these responsibilities to be~~
22 ~~a priority of the Florida Coastal Management Program, and~~
23 ~~implementation of this act should be a priority in the use of~~
24 ~~coastal management funds.~~

25 ~~(2) The Department of Community Affairs and the~~
26 Department of State shall request in its ~~their~~ annual
27 legislative budget requests ~~request~~ funding necessary to carry
28 out the duties and responsibilities specified in this act.
29 Funds for the rehabilitation of lighthouses should be
30 allocated through matching grants-in-aid to state and local
31 government agencies and to nonprofit organizations. The

1 Department of Environmental Protection ~~Community Affairs~~ may
2 assist the Division of Historical Resources in projects to
3 accomplish the goals and activities described in this section
4 ~~lighthouse identification, assessment, restoration, and~~
5 ~~interpretation.~~

6 Section 7. As described in the Governor's budget
7 recommendation for fiscal year 2002-2003, all powers, duties,
8 functions, rules, records, personnel, property, and unexpended
9 balances of appropriations, allocations, or other funds of the
10 Florida Coastal Management Program as provided for in ss.
11 380.20-380.285, Florida Statutes, currently assigned to and
12 administered by the Department of Community Affairs are
13 transferred by a type two transfer, as defined in s. 20.06(2),
14 Florida Statutes, to the Department of Environmental
15 Protection.

16 Section 8. Subsection (40) is added to section
17 403.061, Florida Statutes, to read:

18 403.061 Department; powers and duties.--The department
19 shall have the power and the duty to control and prohibit
20 pollution of air and water in accordance with the law and
21 rules adopted and promulgated by it and, for this purpose, to:

22 (40) Serve as the state's single point of contact for
23 performing the responsibilities described in Presidential
24 Executive Order 12372, including administration and operation
25 of the Florida State Clearinghouse. The Florida State
26 Clearinghouse shall be responsible for coordinating
27 interagency reviews of the following: federal activities and
28 actions subject to the federal consistency requirements of s.
29 307 of the Coastal Zone Management Act; documents prepared
30 pursuant to the National Environmental Policy Act, 42 U.S.C.
31 ss. 4321, et seq., and the Outer Continental Shelf Lands Act,

1 43 U.S.C. ss. 1331 et seq.; applications for federal funding
2 pursuant to s. 216.212, Florida Statutes; and other notices
3 and information regarding federal activities in the state, as
4 appropriate. The Florida State Clearinghouse shall ensure that
5 state agency comments and recommendations on the
6 environmental, social, and economic impact of proposed federal
7 actions are communicated to federal agencies, applicants,
8 local governments, and interested parties.

9
10 The department shall implement such programs in conjunction
11 with its other powers and duties and shall place special
12 emphasis on reducing and eliminating contamination that
13 presents a threat to humans, animals or plants, or to the
14 environment.

15 Section 9. Section 380.276, Florida Statutes, is
16 created to read:

17 380.276 Beaches and coastal areas; display of uniform
18 warning and safety flags on public beaches; placement of
19 uniform notification signs.--

20 (1) It is the intent of the Legislature that a
21 cooperative effort among state agencies and local governments
22 be undertaken to plan for and assist in the display of uniform
23 warning and safety flags, and the placement of uniform
24 notification signs that provide the meaning of such warning
25 and safety flags, on the public beaches along the coast of the
26 state. Because the varying natural conditions of Florida's
27 public beaches and coastal areas pose significant risks to the
28 safety of tourists and the general public, it is important to
29 inform the public of the need to exercise caution.

30 (2) The Department of Environmental Protection,
31 through the Florida Coastal Management Program, shall direct

1 and coordinate the uniform warning and safety flag program.
2 The purpose of the program shall be to encourage the display
3 of uniform warning and safety flags at all public beaches
4 along the coast of the state at which warning and safety flags
5 are displayed and lifeguards are on duty, and to encourage the
6 placement of uniform notification signs that provide the
7 meaning of such flags.

8 (3) The Department of Environmental Protection shall
9 develop a program for the display of uniform warning and
10 safety flags at all public beaches along the coast of the
11 state at which warning and safety flags are displayed and
12 lifeguards are on duty, and for the placement of uniform
13 notification signs that provide the meaning of the flags
14 displayed. Such a program shall provide:

15 (a) For posted notification of the meaning of each of
16 the warning and safety flags at all designated public access
17 points.

18 (b) That uniform notification signs be posted in a
19 conspicuous location and be clearly legible.

20 (c) A standard size, shape, color, and definition for
21 each warning and safety flag.

22 (d) That flags incorporate a numerical designation to
23 accommodate persons who are colorblind.

24 (e) That flags not specifically defined by the
25 department must be identified by the entity displaying the
26 flags in the posted notification.

27 (f) Guidelines for the periodic replacement of flags.

28 (4) The Department of Environmental Protection is
29 authorized, within the limits of appropriations available to
30 it for such purposes, to establish and operate a program to
31 encourage the display of uniform warning and safety flags on

1 all public beaches along the coast of the state and to
2 encourage the placement of uniform notification signs that
3 provide the meaning of the flags displayed. The department
4 shall coordinate the implementation of the uniform warning and
5 safety flag program with local governing bodies and the
6 Florida Beach Patrol Chiefs Association.

7 (5) The Department of Environmental Protection may
8 adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to
9 administer this section.

10 (6) The state, state agencies, local governments, and
11 local government agencies may not be held liable for any
12 injury caused by the reasonable placement or location of
13 uniform warning and safety flags or reasonably posted uniform
14 notification signs or the failure to install uniform warning
15 and safety flags or posted uniform notification signs as
16 provided by this section.

17 Section 10. This act shall take effect July 1, 2002.
18
19
20
21
22
23
24
25
26
27
28
29
30
31