

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; requiring the permit applicant and
7 the department to negotiate in good faith; authorizing
8 the department to issue permits for an incidental take
9 authorization under certain circumstances; requiring
10 the department to adopt certain rules involving the
11 excavation and placement of sediment; requiring the
12 department to justify items listed in a request for
13 additional information; requiring the department to
14 adopt guidelines by rule; providing legislative intent
15 with regard to permitting for periodic maintenance of
16 certain beach nourishment and inlet management
17 projects; requiring the department to amend specified
18 rules to streamline such permitting; creating s.
19 161.0413, F.S.; providing for joint coastal permits
20 for certain beach-related projects; providing for the
21 permit life of joint permits; amending s. 161.101,
22 F.S.; requiring the department to maintain certain
23 beach management project information on its website;
24 requiring the department to notify the Governor's
25 Office and the Legislature concerning any significant
26 changes in project funding levels; amending s.
27 373.406, F.S.; providing a permit exemption for
28 certain specified exploratory activities relating to

HB 691

2012

29 | beach restoration and nourishment projects and inlet
 30 | management activities; requiring a department
 31 | determination of a de minimis permit exemption to be
 32 | provided within a certain time; providing an effective
 33 | date.

34 |

35 | Be It Enacted by the Legislature of the State of Florida:

36 |

37 | Section 1. Section 161.041, Florida Statutes, is amended
 38 | to read:

39 | 161.041 Permits required.—

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

57 (a) Except during construction, such development may not
 58 interfere with the public use ~~by the public~~ of any area of a
 59 beach seaward of the mean high-water line unless the department
 60 determines that the ~~such~~ interference is unavoidable for
 61 purposes of protecting the beach or an ~~any~~ endangered upland
 62 structure. ~~The department may require,~~ As a condition of ~~to~~
 63 granting permits under this section, the department may require
 64 the provision of alternative access if ~~when~~ interference with
 65 public access along the beach is unavoidable. The width of such
 66 alternate access may not be required to exceed the width of the
 67 access that will be obstructed as a result of the permit being
 68 granted. ~~Application for coastal construction permits as defined~~
 69 ~~above shall be made to the department upon such terms and~~
 70 ~~conditions as set forth by rule of the department.~~

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

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

85 (a) Adequate engineering data concerning inlet and
 86 shoreline stability and storm tides related to shoreline
 87 topography;

88 (b) Design features of the proposed structures or
 89 activities; and

90 (c) Potential effects ~~impacts~~ of the location of such
 91 structures or activities, including potential cumulative effects
 92 of any proposed structures or activities upon such beach-dune
 93 system or coastal inlet, which, in the opinion of the
 94 department, clearly justify such a permit.

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

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

HB 691

2012

113 of the county in which the permitted activity is located.

114 (5) Department-proposed permit conditions as well as
115 specific provisions and requirements associated with requisite
116 monitoring and mitigation plans must be negotiated in good faith
117 by the agency and the applicant before the issuance of the
118 notice of intent and transmittal of the permit. The subsequent
119 time period between the applicant receiving a notice of intent
120 and the final notice to proceed may not be used to circumvent
121 the time limits in chapter 120 or the Legislature's expressed
122 intent to simplify and expedite the regulatory process for beach
123 nourishment and inlet management projects pursuant to s.
124 161.0413 when they are declared to be in the public interest
125 pursuant to s. 161.088.

126 (6) Notwithstanding any other provision of law, the
127 department may issue permits pursuant to this part in advance of
128 the issuance of an incidental take authorization provided under
129 the Endangered Species Act and its implementing regulations if
130 the permits and authorizations include a condition that requires
131 that such authorized activities not begin until the incidental
132 take authorization is issued.

133 (7) The department shall adopt rules to address standard
134 mixing zone criteria and antidegradation requirements for
135 turbidity generation for permits that involve the excavation and
136 placement of sediment in order to eliminate the need for
137 variances, except within Outstanding Florida Waters and aquatic
138 preserves, and to reduce the need for other variances issued
139 pursuant to s. 373.414 or s. 403.201. In processing variance
140 requests, the department must consider the legislative

HB 691

2012

141 declaration that, pursuant to s. 161.088, beach nourishment
142 projects are in the public interest.

143 (8) Application for permits shall be made to the
144 department upon such terms and conditions as set forth by rule.

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

149 (b) The department may not issue guidelines that are
150 enforceable as standards for beach management, inlet management,
151 and other erosion control projects without adopting such
152 guidelines by rule.

153 (9) The Legislature intends to simplify the permitting
154 process for the periodic maintenance of previously permitted and
155 constructed beach nourishment and inlet management projects
156 under the joint coastal permit process. A detailed review of a
157 previously permitted project is not required if there have been
158 no substantial changes in project scope and past performance of
159 the project indicates that it has performed according to design
160 expectations. The department shall amend chapters 62B-41 and
161 62B-49 of the Florida Administrative Code to streamline the
162 permitting process for periodic beach maintenance projects and
163 inlet sand bypassing activities.

164 Section 2. Section 161.0413, Florida Statutes, is created
165 to read:

166 161.0413 Joint coastal permits.-

167 (1) The department is authorized to issue a joint coastal
168 permit for activities falling under both s. 161.041 and part IV

169 of chapter 373.

170 (2) Joint coastal permits must allow for two maintenance
 171 or dredging disposal events or a permit life of 15 years,
 172 whichever is greater.

173 Section 3. Subsection (20) of section 161.101, Florida
 174 Statutes, is amended to read:

175 161.101 State and local participation in authorized
 176 projects and studies relating to beach management and erosion
 177 control.—

178 (20) The department shall maintain active ~~a current~~
 179 project listings on its website by fiscal year in order to
 180 provide transparency regarding those projects receiving funding
 181 and the funding amounts, and to facilitate legislative reporting
 182 and oversight. In consideration of this intent: ~~listing and may,~~
 183 ~~in its discretion and dependent upon the availability of local~~
 184 ~~resources and changes in the criteria listed in subsection (14),~~
 185 ~~revise the project listing.~~

186 (a) The department shall notify the Executive Office of
 187 the Governor and the Legislature regarding any significant
 188 changes in the funding levels of a given project as initially
 189 requested in the department's budget submission and subsequently
 190 included in approved annual funding allocations. The term
 191 "significant" means those changes exceeding 25 percent of a
 192 project's original allocation. If there is surplus funding,
 193 notification shall be provided to the Executive Office of the
 194 Governor and the Legislature to indicate whether additional
 195 dollars are intended to be used for inlet management pursuant to
 196 s. 161.143, offered for reversion as part of the next

197 appropriations process, or used for other specified priority
 198 projects on active project lists.

199 (b) A summary of specific project activities for the
 200 current fiscal year, funding status, and changes to annual
 201 project lists shall be prepared by the department and included
 202 with the department's submission of its annual legislative
 203 budget request.

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

209 Section 4. Subsection (13) is added to section 373.406,
 210 Florida Statutes, to read:

211 373.406 Exemptions.—The following exemptions shall apply:

212 (13) Notwithstanding subsection (6) and s. 403.813, this
 213 section, and any rule or order adopted pursuant thereto, may not
 214 require a permit for the following de minimis exploratory
 215 activities associated with beach restoration and nourishment
 216 projects and inlet management activities:

217 (a) The collection of geotechnical, geophysical, and
 218 cultural resource data, including surveys, mapping, acoustic
 219 soundings, benthic and other biologic sampling, and coring.

220 (b) Oceanographic instrument deployment, including
 221 temporary installation on the seabed of coastal and
 222 oceanographic data collection equipment.

223 (c) Incidental excavation associated with any of the
 224 activities listed under paragraph (a) or paragraph (b).

HB 691

2012

225
226 A determination of whether any other activity is de minimis and
227 therefore exempt from the permitting process must be made by the
228 department within 30 days after receipt of the request unless
229 the applicant requests additional time.

230 Section 5. This act shall take effect July 1, 2012.