

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 Environmental Preservation and Conservation Committee

BILL: SB 758

INTRODUCER: Senator Jones

SUBJECT: Beach Management

DATE: January 5, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Pre-meeting
2.			CA	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill:

- Streamlines the permitting processes for coastal construction permits and joint coastal permits, including beach restoration and nourishment projects;
- Clarifies what constitutes “reasonable assurance”;
- Requires the Department of Environmental Protection (DEP) to negotiate permit conditions in good faith prior to issuing the notice of intent and the permit;
- Allows the DEP to issue coastal construction permits or joint coastal permits before an incidental take authorization is issued under the federal Endangered Species Act;
- Directs the DEP to adopt rules related to turbidity mixing zones to alleviate the need for variances;
- Requires the DEP to justify Requests for Additional Information (RAIs) by statute or rule;
- Clarifies that the DEP may not enforce guidelines as rules;
- Alleviates the need for a detailed review of a new application for a previously constructed project that met design expectations;
- Requires the DEP to amend rules related to beach maintenance projects and inlet sand bypassing activities;
- Establishes new reporting requirements of active, state-funded beach erosion control projects to increase the transparency of the beach management funding program; and
- Exempts from permitting de minimis exploratory activities related to beach restoration and nourishment.

This bill substantially amends ss. 161.041, 161.101 and 373.406 and creates s. 161.0413 of the Florida Statutes.

II. Present Situation:

Importance of Florida Beaches

Florida beaches draw many tourists to the state each year. The Florida Shore & Beach Preservation Association (FSBPA) reports that 16.5 million out-of-state visitors visited Florida beaches in 2010. The top 5 visited state parks were all beach parks.¹ It is estimated that the adjusted economic impact to the state's economy from its beaches was \$22.7 billion in 2010. Direct spending and sales taxes amounted to \$11.7 billion and \$352.8 million, respectively, in 2010. The FSBPA reports that 399 miles, or nearly half, of Florida's sandy beaches are critically eroded.² The DEP estimates it manages erosion control projects for 221 miles of beaches. In addition to attracting tourists, healthy beaches also serve as a first defense against storm surge from hurricanes and tropical storms.

DEP Administration of Coastal Permitting

The DEP administers a permitting program under ch. 161, F.S., for beach restoration, beach nourishment, erosion control structures (groins and breakwaters), public fishing piers, maintenance of inlets, inlet related structures (jetties and sand traps), and navigation channel dredging, where material disposal occurs on the beach or nearshore. These activities may also require an environmental resource permit or wetland resource permit, or sovereign submerged lands authorization under chs. 373, 253, and 258, F.S. When multiple permits are required for these types of activities, the DEP issues a single permit, called a joint coastal permit, providing for a single permit covering the required statutory chapters.

The DEP must review permit applications within 30 days and issue an RAI if additional information is needed to satisfy the application requirements. The DEP also distributes the application to external reviewers (e.g., Florida Fish and Wildlife Conservation Commission (FWC), U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS)) for comment. Once the permit application is complete, the DEP must issue or deny it within 90 days.

Many coastal construction activities generate turbidity (solids suspended in the water column) in excess of Florida's water quality standards. If turbidity cannot be controlled using best management practices alone, the DEP's water quality regulations allow turbidity standards to be achieved at the edge of a temporary mixing zone adjacent to the point of discharge. Variances can be issued if significant turbidity results from the project. The DEP issues variances for the vast majority of beach erosion control projects. The DEP is authorized to exempt activities that will have only minimal or insignificant individual or cumulative adverse impacts on water resources.

Permits for first-time construction activities are issued for up to five years. Maintenance permits for inlet sand management or beach nourishment projects are issued for up to 10 years. When multiple nourishment or maintenance dredging events are collectively authorized, the permittee

¹ Florida Shore & Beach Preservation Association, *Healthy Beaches Are Vital to Florida's Economic Recovery* (2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

² *Id.*

must submit certain information before the DEP issues a Notice to Proceed (NTP) for the next nourishment. Before issuing the NTP, the DEP also reviews the results of post-construction project monitoring to determine if performance expectations have been achieved and whether any unanticipated impacts have occurred. The project design may be adjusted or mitigation may be required.

The DEP maintains a statewide beach management plan for the restoration and maintenance of critically eroded beaches. Approximately 221 miles of critically eroded beach have been restored and are currently maintained. Each improved, altered, or modified inlet is also evaluated and recommendations are made to mitigate erosive impacts.

The DEP also develops a long-range budget plan and a funding list of beach restoration, nourishment and inlet management projects. The DEP is directed to cost-share with local governments up to 50 percent of beach project costs and up to 75 percent for inlet management. The funding list is submitted to the Legislature annually, with appropriated funds being contracted with local sponsors in priority order until funds are exhausted. In the event a local government cannot timely use the money, the DEP may reallocate it to inlet management projects.

The Beach Management Working Group

The Legislature created the Beach Management Working Group (working group) in 2008. The working group was tasked with reviewing the current effectiveness of the Florida's beach management regulatory program and providing recommendations to improve the program.³ The working group was composed of stakeholders from both the private and public sectors. It focused on the process associated with Florida's beach management program, especially effectiveness and responsiveness, and how to improve both. The working group held eight meetings and submitted its final report to the Legislature in 2009 containing recommendations for legislative consideration, agency rule making consideration and agency consideration.

III. Effect of Proposed Changes:

Section 1 amends s. 161.041, F.S., specifying that reasonable assurance is demonstrated if the applicant provides competent substantial evidence based on plans, studies and credible expertise that accounts for naturally occurring variables that might reasonably be expected. This clarifies that remote possibilities do not have to be included in the permit application if they are not reasonably expected to occur.

The bill requires the DEP and the applicant to negotiate DEP-imposed permit conditions and requirements associated with monitoring and mitigation in good faith before the notice of intent and transmittal of the permit. The bill also directs that the time between the applicant receiving a notice of intent and the final notice to proceed cannot be used to circumvent time limits expressed in ch. 120, F.S., or the Legislature's express intent to streamline the regulatory process.

³ Beach Management Working Group, *Recommendations of the Beach Management Working Group* (2009) (on file with the Senate Committee on Environmental Preservation and Conservation).

The bill authorizes the DEP to issue permits before the federal government issues an incidental take authorization under the Endangered Species Act provided the permit contains conditions that authorized activities not begin until the incidental take authorization is issued.

The bill directs the DEP to adopt rules addressing antidegradation and mixing zone criteria for turbidity for permits involving excavation and placement of sediment. This will eliminate the need to grant variances for projects that violate water quality standards for turbidity. This exemption does not apply for Outstanding Florida Waters or in aquatic preserves. When processing variances, the DEP is directed to take into consideration the Legislature's declaration in s. 1612.088, F.S., that beach nourishment projects are in the public interest.

The bill specifies applications for permits shall be made to the DEP pursuant to the terms and conditions set forth in rule. If the DEP makes a RAI, it must include the statutory or rule provision that justifies any item listed in the RAI. The bill also clarifies that the DEP cannot enforce guidelines as standards unless it adopts the guidelines by rule.

Section 2 creates s. 161.0413, F.S., authorizing the DEP to issue a joint coastal permit for activities regulated under s. 161.041, F.S., and part IV of ch. 373, F.S. The bill contains legislative intent directing the DEP to simplify the joint coastal permitting process for periodic maintenance of previously permitted and constructed beach nourishment and inlet management projects. To accomplish this, the bill prohibits a detailed review of a previously permitted project if there are no substantial changes in project scope and if past performance indicates it has performed according to design expectations. The bill requires the DEP to amend chs. 62B-41 and 62B-49 of the Florida Administrative Code to comply with legislative intent. In addition the bill directs the DEP to allow for the greater of two maintenance or dredging events or a 15-year permit duration.

Section 3 amends s. 161.101, F.S., requiring the DEP to maintain an active project list sorted by project year to increase transparency. The listing must include those projects receiving funding and the amounts. The DEP is directed to notify the Executive Office of the Governor and the Legislature of any project that exceeds 25 percent of its initially requested budget submission. If there is surplus funding, the DEP must notify the Executive Office of the Governor and the Legislature where the funds will be used or if the funds will revert to the next appropriations process. The bill also directs the DEP to notify the Executive Office of the Governor and the Legislature when a local project sponsor releases funding. The notification must indicate how the project dollars will be used.

Section 4 amends s. 373.406, F.S., exempting certain de minimis activities related to beach restoration and nourishment from permitting requirements. Exempt exploratory activities include:

- the collection of geotechnical and cultural resource data, including mapping, seismic and acoustic soundings, and benthic and other biological sampling and coring;
- deploying and temporarily attaching instruments on the seabed, and
- incidental excavation that occurs associated with any of the activities listed above.

Lastly, the bill requires the DEP to make a de minimis determination within 30 days of receiving a request, unless the applicant requests a longer time period.

Section 5 provides an effective date of July 1, 2012.

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:

None.

C. Government Sector Impact:

The DEP will incur costs associated with rulemaking. Staff has indicated those costs can be absorbed within existing resources. In addition, the DEP may realize some cost savings with issuing longer permits, not having to do as many detailed reviews and other streamlining provisions in this bill. The savings cannot be determined at this time.

Local governments may also see cost savings due to the streamlining provisions in this bill. However, those savings cannot be determined at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires DEP to adopt a rule for antidegradation requirements. The DEP has indicated this rule must comply with federal requirements.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial 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.
