

Bill No. CS for SB 1472

Amendment No.      Barcode 734126

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator Clary moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 1, line 22,

15

16 insert:

17 Section 1. Section 380.20, Florida Statutes, is

18 amended to read:

19 380.20 Short title.--Sections 380.205-380.27

20 ~~380.205-380.24~~ may be cited as the "Florida Coastal Management

21 Act."

22 Section 2. Section 380.205, Florida Statutes, is

23 amended to read:

24 380.205 Definitions.--As used in ss. 380.20-380.27 ~~ss.~~

25 ~~380.21-380.24~~:

26 (1) "Department" means the Department of Environmental

27 Protection ~~Community Affairs~~.

28 (2) "Coastal zone" means that area of land and water

29 from the territorial limits seaward to the most inland extent

30 of marine influences. However, for planning and developing

31 coordinated projects and initiatives for coastal resource

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1 protection and management, the department shall consider the  
2 coastal zone to be the geographical area encompassed by the 35  
3 Florida coastal counties listed in the Final Environmental  
4 Impact Statement for the Florida Coastal Management Program  
5 and the adjoining territorial sea. It is not the intent of  
6 this definition to limit the authority currently exercised  
7 under the federal law and the federally approved Florida  
8 Coastal Management Program by which projects landward and  
9 seaward of the 35 coastal counties are reviewed for  
10 consistency with the Florida Coastal Management Program.

11 (3) "Coastal Zone Management Act" means the Coastal  
12 Zone Management Act of 1972, as amended (16 U.S.C. ss.  
13 1451-1464).

14 Section 3. Subsection (1), (2), and (3) of section  
15 380.21, Florida Statutes, are amended to read:

16 380.21 Legislative intent.--

17 (1) The Legislature finds that:

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

25 (b) It is in the state and national interest to  
26 protect, maintain, and develop these resources through  
27 coordinated management.

28 (c) State land and water management policies should,  
29 to the maximum possible extent, be implemented by local  
30 governments through existing processes for the guidance of  
31 growth and development.

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

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

25           (b) The state coastal zone management program ~~plan~~  
26 ~~shall be a part of the state comprehensive plan.~~ It shall  
27 contain each of the program elements ~~a boundary, policies,~~  
28 ~~goals, and programs~~ necessary to comply with the requirements  
29 of the ~~federal~~ Coastal Zone Management Act ~~of 1972, as amended~~  
30 ~~(16 U.S.C. ss. 1451-1464)~~, specifically delineating the role  
31 of state, regional, and local agencies in implementing the

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1 ~~program plan~~; and it shall provide that the appeal of any  
2 regulatory decision, other than those appeals provided for by  
3 existing law, shall be to the Governor and Cabinet.

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

6 380.22 Lead agency authority and duties.--

7 (1) The department shall be the lead agency pursuant  
8 to the Coastal Zone Management Act 16 U.S.C. ss. 1451 et seq.,  
9 and shall compile and submit to the appropriate federal agency  
10 applications ~~an application~~ to receive funds pursuant to s.  
11 ~~306 of the federal Coastal Zone Management Act of 1972, as~~  
12 ~~amended (16 U.S.C. ss. 1451-1464)~~. The ~~application for federal~~  
13 ~~approval of the~~ state's program shall include program policies  
14 that only reference existing statutes and existing  
15 implementing administrative rules. ~~If in the event the~~  
16 ~~application or~~ the program submitted pursuant to this  
17 subsection is rejected by the appropriate federal agency  
18 because of failure of this act, the existing statutes, or the  
19 existing implementing administrative rules to comply with the  
20 requirements of the ~~federal~~ Coastal Zone Management Act of  
21 ~~1972, as amended~~, no state coastal management program shall  
22 become effective without prior legislative approval. The  
23 coastal ~~management application or~~ program may be amended from  
24 time to time to include changes in statutes and rules adopted  
25 pursuant to statutory authority other than this act.

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

27 (a) Establish advisory councils with sufficient  
28 geographic balance to ensure statewide representation.

29 (b) Coordinate central files and clearinghouse  
30 procedures for coastal resource data information and encourage  
31 the use of compatible information and standards.

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1 (c) Provide to the extent practicable financial,  
2 technical, research, and legal assistance to effectuate the  
3 purposes of this act.

4 (d) Review rules of other affected agencies to  
5 determine consistency with the program and to report any  
6 inconsistencies to the Legislature.

7 (3) The department shall adopt by rule procedures and  
8 criteria for the evaluation of subgrant applications that seek  
9 to receive a portion of those funds allotted to the state  
10 under the ~~federal~~ Coastal Zone Management Act.

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

23 (5) In addition to other criteria established by  
24 statute or rule, the following criteria shall be considered  
25 when establishing priorities for public acquisition of coastal  
26 property:

27 (a) The value of acquiring coastal high-hazard  
28 parcels, consistent with hazard mitigation and postdisaster  
29 redevelopment policies, in order to minimize the risk to life  
30 and property and to reduce the need for future disaster  
31 assistance.

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

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

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

10 Section 5. Section 380.23, Florida Statutes, is  
11 amended to read:

12 380.23 Federal consistency.--

13 (1) When a federally licensed or permitted ~~an~~ activity  
14 ~~requires a permit or license~~ subject to federal consistency  
15 review requires a state license, the issuance or renewal of a  
16 state license shall automatically constitute the state's  
17 concurrence that the licensed activity or use, as licensed, is  
18 consistent with the federally approved program. When a  
19 federally licensed or permitted ~~an~~ activity ~~requires a permit~~  
20 ~~or license~~ subject to federal consistency review requires a  
21 state license, the denial of a state license shall  
22 automatically constitute the state's finding that the proposed  
23 activity or use is not consistent with the state's federally  
24 approved program, unless the United States Secretary of  
25 Commerce determines that such activity or use is in the  
26 national interest as provided in the ~~federal~~ Coastal Zone  
27 Management Act ~~of 1972~~.

28 (2)(a) Where federal licenses, permits, activities,  
29 and projects listed in subsection (3) are subject to federal  
30 consistency review and are seaward of the jurisdiction of the  
31 state, or there is no state agency with sole jurisdiction, the

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1 department shall be responsible for the consistency review and  
2 determination; however, the department shall not make a  
3 determination that the license, permit, activity, or project  
4 is consistent if any other state agency with significant  
5 analogous responsibility makes a determination of  
6 inconsistency. All decisions and determinations under this  
7 subsection shall be appealable to the Governor and Cabinet.

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

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

29 (a) Federal development projects and activities of  
30 federal agencies which significantly affect coastal waters and  
31 the adjacent shorelands of the state.

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1 (b) Federal assistance projects which significantly  
2 affect coastal waters and the adjacent shorelands of the state  
3 and which are reviewed as part of the review process developed  
4 pursuant to Presidential Executive Order 12372 ~~OMB Circular~~  
5 ~~A-95~~.

6 (c) Federally licensed or permitted activities  
7 affecting land or water uses when such activities are in or  
8 seaward of the jurisdiction of local governments required to  
9 develop a coastal zone protection element as provided in s.  
10 380.24 and when such activities involve:

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

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

17 3. Permits and licenses required under ~~ss. 201, 402,~~  
18 ~~403, 404, and 405 of the Federal Water Pollution Control Act~~  
19 ~~of 1972, 33 U.S.C. ss. 1251 et seq., as amended, unless such~~  
20 ~~permitting activities pursuant to such sections have been~~  
21 ~~delegated to the state pursuant to said act.~~

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

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

28 ~~4.6.~~ Permits and licenses relating to the  
29 transportation of hazardous substance materials or  
30 transportation and dumping which are issued pursuant to the  
31 Hazardous Materials Transportation Act, 49 U.S.C. ss. 1501, et

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1 ~~seq. 1801-1812~~, as amended, or 33 U.S.C. s. 1321 ~~s. 419~~, as  
2 amended.

3 ~~5.7.~~ Permits and licenses required under 15 ~~43~~ U.S.C.  
4 ss. 717-717w, 3301-3432, 42 U.S.C. ss. 7101-7352, and 43  
5 U.S.C. ss. 1331-1356 ~~s. 717~~ for construction and operation of  
6 interstate gas pipelines and storage facilities.

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

10 ~~6.9.~~ Permits and licenses required for the siting and  
11 construction of any new electrical power plants as defined in  
12 s. 403.503(12), as amended.

13 ~~7.10.~~ Permits and licenses required for drilling and  
14 mining on public lands.

15 ~~8.11.~~ Permits and licenses for areas leased under the  
16 OCS Lands Act, 43 U.S.C. ss. 1331 et seq., as amended,  
17 including leases and approvals ~~under 43 U.S.C. s. 1331, as~~  
18 ~~amended~~, of exploration, development, and production plans.

19 ~~9.12.~~ Permits for pipeline rights-of-way for oil and  
20 gas transmissions.

21 ~~10.13.~~ Permits and licenses required for deepwater  
22 ports under 33 U.S.C. s. 1503, as amended.

23 ~~11.14.~~ Permits required for the taking of marine  
24 mammals under the Marine Mammal Protection Act of 1972, as  
25 amended, 16 U.S.C. s.1374 ~~s. 104~~.

26 (d) Federal activities within the territorial limits  
27 of neighboring states when the Governor and the department  
28 determine that significant individual or cumulative impact to  
29 the land or water resources of the state would result from the  
30 activities.

31 (4) The department may adopt rules establishing

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1 procedures for conducting consistency reviews of activities,  
2 uses, and projects for which consistency review is required  
3 pursuant to subsections (1), (2), and (3). Such rules shall  
4 include ~~shall by rule adopt~~ procedures for the expeditious  
5 handling of emergency repairs to existing facilities for which  
6 consistency review is required ~~pursuant to subsections (1),~~  
7 ~~(2), and (3).~~ The department may also adopt rules prescribing  
8 the data and information needed for the review of consistency  
9 certifications and determinations.

10 (5) In any coastal management program submitted to the  
11 appropriate federal agency for its approval pursuant to this  
12 act, the department shall specifically waive its right to  
13 determine the consistency with the coastal management program  
14 of all federally licensed or permitted activities not  
15 specifically listed in subsection (3).

16 (6) Agencies authorized to review and comment on the  
17 consistency of federal activities subject to state review  
18 under the Florida Coastal Management Program are those  
19 agencies charged with implementing the statutes and rules  
20 included in the federally approved program. Each agency shall  
21 be afforded an opportunity to provide the department or the  
22 state licensing agency with its comments and determinations  
23 regarding the consistency of the federal activity with the  
24 statutes and rules included in the federally approved program  
25 implemented by the agency. An agency that submits a  
26 determination of inconsistency to the department or a state  
27 licensing agency shall be an indispensable party to any  
28 administrative or judicial proceeding in which such  
29 determination is an issue; shall be responsible for defending  
30 its determination in such proceedings; and shall be liable for  
31 any damages, costs, and attorney's fees awarded in the action

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1 as a consequence of such determination.

2 ~~(7)(6)~~ Agencies shall not review for federal  
3 consistency purposes an application for a federally licensed  
4 or permitted activity if the activity is vested, exempted, or  
5 excepted under its own regulatory authority.

6 ~~(8)(7)~~ The department shall review the items listed in  
7 subsection (3) to determine if in certain circumstances such  
8 items would constitute minor permit activities. If the  
9 department determines that the list contains minor permit  
10 activities, it may by rule establish a program of general  
11 concurrence pursuant to federal regulation which shall allow  
12 similar minor activities, in the same geographic area, to  
13 proceed without prior department review for federal  
14 consistency.

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

21 Section 6. Section 380.285, Florida Statutes, is  
22 amended to read:

23 380.285 Lighthouses; study; preservation; funding.--

24 (1) ~~The Coastal Management Program of the~~ Department  
25 of Community Affairs and the Division of Historical Resources  
26 of the Department of State shall undertake a study of the  
27 lighthouses in the state. The study must determine the  
28 location, ownership, condition, and historical significance of  
29 all lighthouses in the state and ensure that all historically  
30 significant lighthouses are nominated for inclusion on the  
31 National Register of Historic Places. The study must assess

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1 the condition and restoration needs of historic lighthouses  
2 and develop plans for appropriate future public access and  
3 use. ~~The Coastal Management Program and the Division of~~  
4 ~~Historical Resources shall take a leadership role in~~  
5 ~~implementing plans to stabilize lighthouses and associated~~  
6 ~~structures and to preserve and protect them from future~~  
7 ~~deterioration. When possible, the lighthouses and associated~~  
8 ~~buildings should be made available to the public for~~  
9 ~~educational and recreational purposes. The Department of~~  
10 ~~Community Affairs should consider these responsibilities to be~~  
11 ~~a priority of the Florida Coastal Management Program, and~~  
12 ~~implementation of this act should be a priority in the use of~~  
13 ~~coastal management funds.~~

14 (2) ~~The Department of Community Affairs and the~~  
15 ~~Department of State shall request in its ~~their~~ annual~~  
16 ~~legislative budget requests funding necessary to carry out the~~  
17 ~~duties and responsibilities specified in this act. Funds for~~  
18 ~~the rehabilitation of lighthouses should be allocated through~~  
19 ~~matching grants-in-aid to state and local government agencies~~  
20 ~~and to nonprofit organizations. The Department of~~  
21 ~~Environmental Protection ~~Community Affairs~~ may assist the~~  
22 ~~Division of Historical Resources in projects to accomplish the~~  
23 ~~goals and activities described in this section ~~lighthouse~~~~  
24 ~~identification, assessment, restoration, and interpretation.~~

25 Section 7. As described in the Governor's budget  
26 recommendation for the 2002-2003 fiscal year, all powers,  
27 duties, functions, rules, records, personnel, property, and  
28 unexpended balances of appropriations, allocations, or other  
29 funds of the Florida Coastal Management Program as provided  
30 for in sections 380.20-380.285, Florida Statutes, currently  
31 assigned to and administered by the Department of Community

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1 Affairs are transferred by a type two transfer, as defined in  
2 section 20.06, Florida Statutes, to the Department of  
3 Environmental Protection.

4 Section 8. Subsection (40) is added to section  
5 403.061, Florida Statutes, to read:

6 403.061 Department; powers and duties.--The department  
7 shall have the power and the duty to control and prohibit  
8 pollution of air and water in accordance with the law and  
9 rules adopted and promulgated by it and, for this purpose, to:

10 (40) Serve as the state's single point of contact for  
11 performing the responsibilities described in Presidential  
12 Executive Order 12372, including administering and operating  
13 the Florida State Clearinghouse. The Florida State  
14 Clearinghouse shall coordinate interagency reviews of federal  
15 activities and actions subject to the federal consistency  
16 requirements of section 307 of the Coastal Zone Management  
17 Act; documents prepared pursuant to the National Environmental  
18 Policy Act, 42 U.S.C. ss. 4321 et seq., and the Outer  
19 Continental Shelf Lands Act, 43 U.S.C. ss. 1331 et seq.;  
20 applications for federal funding pursuant to s. 216.212; and  
21 other notices and information regarding federal activities in  
22 the state, as appropriate. The Florida State Clearinghouse  
23 shall ensure that state agency comments and recommendations on  
24 the environmental, social, and economic impact of proposed  
25 federal actions are communicated to federal agencies,  
26 applicants, local governments, and interested parties.

27  
28 The department shall implement such programs in conjunction  
29 with its other powers and duties and shall place special  
30 emphasis on reducing and eliminating contamination that  
31 presents a threat to humans, animals or plants, or to the

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1 environment.

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3 (Redesignate subsequent sections.)

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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8

On page 1, lines 2-3, delete those lines

9

10 and insert:

11

An act relating to the state's coasts and

12

public beaches; amending s. 380.20, F.S.;

13

revising the Florida Coastal Management Act;

14

amending s. 380.205, F.S.; providing

15

definitions; amending s. 380.21, F.S.;

16

providing legislative intent with respect to

17

coastal management; amending s. 380.22, F.S.;

18

clarifying duties and authority of the lead

19

agency that administers the Coastal Zone

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Management Act; amending s. 380.23, F.S.;

21

revising procedures for the state licensing or

22

denial of a federally licensed or permitted

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activity; providing requirements for agency

24

review; amending s. 380.285, F.S.; requiring

25

that the Department of Environmental Protection

26

assist in the preservation of lighthouses;

27

transferring the Florida Coastal Management

28

Program from the Department of Community

29

Affairs to the Department of Environmental

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Protection; amending s. 403.061, F.S.;

31

authorizing the Department of Environmental

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1           Protection to serve as the single point of  
2           contact for administering and operating the  
3           Florida State Clearinghouse; creating s.  
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