

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

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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

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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

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).



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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.

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