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CS/HB 691, Engrossed 1

2012 Legislature

1
2 An act relating to beach management; amending s.
3 161.011, F.S.; renaming Parts I and II as the Dennis
4 L. Jones Beach and Shore Preservation Act; amending s.
5 161.041, F.S.; specifying that demonstration to the
6 Department of Environmental Protection of the adequacy
7 of a project's design and construction is supported by
8 certain evidence; authorizing the department to issue
9 permits for an incidental take authorization under
10 certain circumstances; requiring the department to
11 adopt certain rules involving the excavation and
12 placement of sediment; requiring the department to
13 justify items listed in a request for additional
14 information; requiring the department to adopt
15 guidelines by rule; providing legislative intent with
16 regard to permitting for periodic maintenance of
17 certain beach nourishment and inlet management
18 projects; requiring the department to amend specified
19 rules to streamline such permitting; providing a
20 permit life for certain joint coastal permits;
21 amending s. 161.101, F.S.; requiring the department to
22 maintain certain beach management project information
23 on its website; requiring the department to notify the
24 Governor's Office and the Legislature concerning any
25 significant changes in project funding levels;
26 amending s. 403.813, F.S.; providing a permit
27 exemption for certain specified exploratory activities
28 relating to beach restoration and nourishment projects

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29 and inlet management activities; providing an
 30 effective date.

31

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

33

34 Section 1. Section 161.011, Florida Statutes, is amended
 35 to read:

36 161.011 Short title.—Parts I and II of this chapter may be
 37 known and cited as the "Dennis L. Jones Beach and Shore
 38 Preservation Act."

39 Section 2. Section 161.041, Florida Statutes, is amended
 40 to read:

41 161.041 Permits required.—

42 (1) If a ~~any~~ person, firm, corporation, county,
 43 municipality, township, special district, or ~~any~~ public agency
 44 desires to make any coastal construction or reconstruction or
 45 change of existing structures, or any construction or physical
 46 activity undertaken specifically for shore protection purposes,
 47 or other structures and physical activity including groins,
 48 jetties, moles, breakwaters, seawalls, revetments, artificial
 49 nourishment, inlet sediment bypassing, excavation or maintenance
 50 dredging of inlet channels, or other deposition or removal of
 51 beach material, or construction of other structures ~~if~~ of a
 52 solid or highly impermeable design, upon state sovereignty lands
 53 ~~of Florida,~~ below the mean high-water line of any tidal water of
 54 the state, a coastal construction permit must be obtained from
 55 the department before ~~prior to~~ the commencement of such work.
 56 The department may exempt interior tidal waters of the state

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57 | from the permit requirements of this section. ~~No such~~
 58 | ~~development shall interfere,~~
 59 | (a) Except during construction, such development may not
 60 | interfere with the public use ~~by the public~~ of any area of a
 61 | beach seaward of the mean high-water line unless the department
 62 | determines that the ~~such~~ interference is unavoidable for
 63 | purposes of protecting the beach or an ~~any~~ endangered upland
 64 | structure. ~~The department may require,~~ As a condition of ~~to~~
 65 | granting permits under this section, the department may require
 66 | the provision of alternative access if ~~when~~ interference with
 67 | public access along the beach is unavoidable. The width of such
 68 | alternate access may not be required to exceed the width of the
 69 | access that will be obstructed as a result of the permit being
 70 | granted. ~~Application for coastal construction permits as defined~~
 71 | ~~above shall be made to the department upon such terms and~~
 72 | ~~conditions as set forth by rule of the department.~~

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

83 | (2) The department may authorize an excavation or erection
 84 | of a structure at any coastal location upon receipt of an

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85 application from a property or riparian owner and upon
 86 consideration of facts and circumstances, including:

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

90 (b) Design features of the proposed structures or
 91 activities; and

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

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

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

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113 the contractual agreements entered into pursuant to ~~the~~
 114 ~~provisions of~~ this subsection to be filed in the public records
 115 of the county in which the permitted activity is located.

116 (5) Notwithstanding any other provision of law, the
 117 department may issue permits pursuant to this part in advance of
 118 the issuance of an incidental take authorization provided under
 119 the Endangered Species Act and its implementing regulations if
 120 the permits and authorizations include a condition that requires
 121 that such authorized activities not begin until the incidental
 122 take authorization is issued.

123 (6) The department shall adopt rules to address standard
 124 mixing zone criteria and antidegradation requirements for
 125 turbidity generation for beach management and inlet bypassing
 126 permits that involve the excavation and placement of sediment in
 127 order to reduce or eliminate the need for variances. In
 128 processing variance requests, the department must consider the
 129 legislative declaration that, pursuant to s. 161.088, beach
 130 nourishment projects are in the public interest.

131 (7) Application for permits shall be made to the
 132 department upon such terms and conditions as set forth by rule.

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

137 (b) The department may not issue guidelines that are
 138 enforceable as standards for beach management, inlet management,
 139 and other erosion control projects without adopting such
 140 guidelines by rule.

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141 (8) The Legislature intends to simplify and expedite the
 142 permitting process for the periodic maintenance of previously
 143 permitted and constructed beach nourishment and inlet management
 144 projects under the joint coastal permit process. A detailed
 145 review of a previously permitted project is not required if
 146 there have been no substantial changes in project scope and past
 147 performance of the project indicates that the project has
 148 performed according to design expectations. The department shall
 149 amend chapters 62B-41 and 62B-49, Florida Administrative Code,
 150 to streamline the permitting process for periodic beach
 151 maintenance projects and inlet sand bypassing activities.

152 (9) Joint coastal permits issued for activities falling
 153 under this section and part IV of chapter 373 must allow for two
 154 maintenance or dredging disposal events or a permit life of 15
 155 years, whichever is greater.

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

158 161.101 State and local participation in authorized
 159 projects and studies relating to beach management and erosion
 160 control.—

161 (20) The department shall maintain active ~~a current~~
 162 project listings on its website by fiscal year in order to
 163 provide transparency regarding those projects receiving funding
 164 and the funding amounts, and to facilitate legislative reporting
 165 and oversight. In consideration of this intent: ~~listing and may,~~
 166 ~~in its discretion and dependent upon the availability of local~~
 167 ~~resources and changes in the criteria listed in subsection (14),~~
 168 ~~revise the project listing.~~

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169 (a) The department shall notify the Executive Office of
170 the Governor and the Legislature regarding any significant
171 changes in the funding levels of a given project as initially
172 requested in the department's budget submission and subsequently
173 included in approved annual funding allocations. The term
174 "significant change" means those changes exceeding 25 percent of
175 a project's original allocation. If there is surplus funding,
176 notification shall be provided to the Executive Office of the
177 Governor and the Legislature to indicate whether additional
178 dollars are intended to be used for inlet management pursuant to
179 s. 161.143, offered for reversion as part of the next
180 appropriations process, or used for other specified priority
181 projects on active project lists.

182 (b) A summary of specific project activities for the
183 current fiscal year, funding status, and changes to annual
184 project lists shall be prepared by the department and included
185 with the department's submission of its annual legislative
186 budget request.

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

192 Section 4. Paragraph (v) is added to subsection (1) of
193 section 403.813, Florida Statutes, to read:

194 403.813 Permits issued at district centers; exceptions.—

195 (1) A permit is not required under this chapter, chapter
196 373, chapter 61-691, Laws of Florida, or chapter 25214 or

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197 chapter 25270, 1949, Laws of Florida, for activities associated
198 with the following types of projects; however, except as
199 otherwise provided in this subsection, nothing in this
200 subsection relieves an applicant from any requirement to obtain
201 permission to use or occupy lands owned by the Board of Trustees
202 of the Internal Improvement Trust Fund or any water management
203 district in its governmental or proprietary capacity or from
204 complying with applicable local pollution control programs
205 authorized under this chapter or other requirements of county
206 and municipal governments:

207 (v) Notwithstanding any other provision in this chapter,
208 chapter 373, or chapter 161, a permit or other authorization is
209 not required for the following exploratory activities associated
210 with beach restoration and nourishment projects and inlet
211 management activities:

212 1. The collection of geotechnical, geophysical, and
213 cultural resource data, including surveys, mapping, acoustic
214 soundings, benthic and other biologic sampling, and coring.

215 2. Oceanographic instrument deployment, including
216 temporary installation on the seabed of coastal and
217 oceanographic data collection equipment.

218 3. Incidental excavation associated with any of the
219 activities listed under subparagraph 1. or subparagraph 2.

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