

By Senator Jones

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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 of Environmental Protection to justify
13 items listed in a request for additional information;
14 requiring the department to adopt guidelines by rule;
15 creating s. 161.0413, F.S.; providing for joint
16 coastal permits for certain beach-related projects;
17 providing that certain previously permitted projects
18 are presumed permissible; requiring the department to
19 amend certain rules to facilitate the joint permitting
20 process; providing for the permit life of joint
21 permits; amending s. 161.101, F.S.; requiring the
22 department to maintain certain beach management
23 project information on its website; requiring the
24 department to notify the Governor's Office and the
25 Legislature concerning any significant changes in
26 project funding levels; amending s. 373.406, F.S.;
27 providing a permit exemption for certain specified
28 exploratory activities relating to beach restoration
29 and nourishment; requiring a department determination

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30 of a de minimis permit exemption to be provided within
31 a certain time; providing an effective date.

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

34
35 Section 1. Section 161.041, Florida Statutes, is amended to
36 read:

37 161.041 Permits required.—

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

55 (a) Except during construction, such development may not
56 interfere with the public use ~~by the public~~ of any area of a
57 beach seaward of the mean high-water line unless the department
58 determines that the ~~such~~ interference is unavoidable for

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59 purposes of protecting the beach or an ~~any~~ endangered upland
60 structure. ~~The department may require,~~ As a condition of ~~to~~
61 granting permits under this section, the department may require
62 the provision of alternative access if ~~when~~ interference with
63 public access along the beach is unavoidable. The width of such
64 alternate access may not be required to exceed the width of the
65 access that will be obstructed as a result of the permit being
66 granted. ~~Application for coastal construction permits as defined~~
67 ~~above shall be made to the department upon such terms and~~
68 ~~conditions as set forth by rule of the department.~~

69 (b) Except for the deepwater ports identified in s.
70 403.021(9)(b), the department may ~~shall~~ not issue a ~~any~~ permit
71 for the construction of a coastal inlet jetty or the excavation
72 or maintenance of such an inlet if the activity authorized by
73 the permit will have a significant adverse impact on the sandy
74 beaches of this state without a mitigation program approved by
75 the department. In evaluating the mitigation program, the
76 department shall consider ~~take into consideration~~ the benefits
77 of the long-term sand management plan of the permittee and the
78 overall public benefits of the inlet activity.

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

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

86 (b) Design features of the proposed structures or
87 activities; and

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

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

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

112 (5) Department-proposed permit conditions as well as
113 specific provisions and requirements associated with requisite
114 monitoring and mitigation plans must be negotiated in good faith
115 by the agency and the applicant before the issuance of the
116 notice of intent and transmittal of the permit. The subsequent

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117 time period between the applicant receiving a notice of intent
118 and the final notice to proceed may not be used to circumvent
119 the time limits in chapter 120 or the Legislature's expressed
120 intent to simplify and expedite the regulatory process for beach
121 nourishment and inlet management projects pursuant to s.
122 161.0413 when they are declared to be in the public interest
123 pursuant to s. 161.088.

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

131 (7) The department shall adopt rules to address standard
132 mixing zone criteria and antidegradation requirements for
133 turbidity generation for permits that involve the excavation and
134 placement of sediment in order to eliminate the need for
135 variances, except within Outstanding Florida Waters and aquatic
136 preserves, and to reduce the need for other variances issued
137 pursuant to s. 373.414 or s. 403.201. In processing variance
138 requests, the department must consider the legislative
139 declaration that, pursuant to s. 161.088, beach nourishment
140 projects are in the public interest.

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

143 (a) If, as part of the permit process, the department
144 requests additional information, it must cite applicable
145 statutory and rule provisions that justify any item listed in a

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146 request for additional information.

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

151 Section 2. Section 161.0413, Florida Statutes, is created
152 to read:

153 161.0413 Joint coastal permits.—The department is
154 authorized to issue a joint coastal permit for activities
155 falling under both s. 161.041 and part IV of chapter 373.

156 (1) The Legislature intends to simplify the permitting
157 process for the periodic maintenance of previously permitted and
158 constructed beach nourishment and inlet management projects
159 under the joint coastal permit process. To achieve that goal:

160 (a) A detailed review of a previously permitted project is
161 not required if there have been no substantial changes in
162 project scope and past performance of the project indicates that
163 it has performed according to design expectations. Such projects
164 are hereby presumed permissible.

165 (b) The department shall amend chapters 62B-41 and 62B-49
166 of the Florida Administrative Code, relating to periodic beach
167 maintenance projects and inlet sand bypassing activities.

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

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

173 161.101 State and local participation in authorized
174 projects and studies relating to beach management and erosion

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175 control.-

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

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

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

202 (c) A local project sponsor may at any time release, in
203 whole or in part, appropriated project dollars by formal

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204 notification to the department, which shall notify the Executive
205 Office of the Governor and the Legislature. Notification must
206 indicate how the project dollars are intended to be used.

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

209 373.406 Exemptions.—The following exemptions shall apply:

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

214 (a) The collection of geotechnical and cultural resource
215 data, including mapping, seismic and acoustic soundings, and
216 benthic and other biologic sampling and coring.

217 (b) Oceanographic instrument deployment, including
218 temporary installation on the seabed of coastal and
219 oceanographic data collection equipment.

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

222
223 A determination of whether any other activity is de minimis and
224 therefore exempt from the permitting process must be made by the
225 department within 30 days after receipt of the request unless
226 the applicant requests additional time.

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