

## Committee Substitute for House Bill No. 1591

An act relating to Florida's coasts and public beaches; amending s. 380.20, F.S.; revising those sections of Florida Statutes which comprise the Florida Coastal Management Act; amending s. 380.205, F.S.; providing definitions; transferring the state coastal management program functions from the Department of Community Affairs to the Department of Environmental Protection; amending s. 380.21, F.S.; clarifying legislative intent for the Coastal Zone Management Program; amending s. 380.22, F.S.; clarifying the duties and authority of the lead agency; amending s. 380.23, F.S.; clarifying procedures for the granting or denial of a state license for a federally licensed or permitted activity; amending s. 380.285, F.S.; authorizing the Department of Environmental Protection to assist in the study, preservation, and funding of lighthouses on the Florida coast; transferring the powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds of the Coastal Management Program from the Department of Community Affairs to the Department of Environmental Protection by type two transfer; amending s. 403.061, F.S.; allowing the Department of Environmental Protection to serve as the single point of contact for performing specified responsibilities, including administration and operation of the Florida State Clearinghouse; creating s. 380.276, F.S.; providing for a cooperative effort among state agencies and local governments to plan for and assist in the display of uniform warning and safety flags and the placement of specified uniform notification signs; providing that the Department of Environmental Protection shall direct and coordinate a program for the display and placement of such flags and signs; providing for the development of the program; providing program components and requirements; authorizing the department to coordinate the implementation of the program with specified entities; providing for rules; limiting the liability of participating governmental entities; providing an effective date.

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

Section 1. Section 380.20, Florida Statutes, is amended to read:

380.20 Short title.—Sections 380.205-380.27 ~~380.205-380.24~~ may be cited as the “Florida Coastal Management Act.”

Section 2. Section 380.205, Florida Statutes, is amended to read:

380.205 Definitions.—As used in ss. 380.205-380.27 ~~380.21-380.24~~:

(1) “Department” means the Department of Environmental Protection ~~Community Affairs~~.

(2) “Coastal zone” means that area of land and water from the territorial limits seaward to the most inland extent of marine influences. However, for

planning and developing coordinated projects and initiatives for coastal resource protection and management, the department shall consider the coastal zone to be the geographical area encompassed by the 35 Florida coastal counties listed in the Final Environmental Impact Statement for the Florida Coastal Management Program and the adjoining territorial sea. It is not the intent of this definition to limit the authority currently exercised under the federal law and the federally approved Florida Coastal Management Program by which projects landward and seaward of the 35 coastal counties are reviewed for consistency with the Florida Coastal Management Program.

(3) “Coastal Zone Management Act” means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464).

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

380.21 Legislative intent.—

(1) The Legislature finds that:

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

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

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

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

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

(b) The state coastal zone management program plan shall be a part of the state comprehensive plan. It shall contain each of the program elements a boundary, policies, goals, and programs necessary to comply with the requirements of the federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. ss. 1451-1464), specifically delineating the role of state, regional, and local agencies in implementing the program plan; and it shall provide that the appeal of any regulatory decision, other than those appeals provided for by existing law, shall be to the Governor and Cabinet.

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

380.22 Lead agency authority and duties.—

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

(2) The department shall also have authority to:

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

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

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

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

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

(4) The department shall establish a county-based process for identifying, and setting priorities for acquiring, coastal properties in coordination with the Land Acquisition and Restoration Management Advisory Council, or its successor, so these properties may be acquired as part of the state's

land acquisition programs. This process shall include the establishment of criteria for prioritizing coastal acquisitions which, in addition to recognizing pristine coastal properties and coastal properties of significant or important environmental sensitivity, recognize hazard mitigation, beach access, beach management, urban recreation, and other policies necessary for effective coastal management.

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

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

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

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

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

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

380.23 Federal consistency.—

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

(2)(a) Where federal licenses, permits, activities, and projects listed in subsection (3) are subject to federal consistency review and are seaward of the jurisdiction of the state, or there is no state agency with sole jurisdiction, the department shall be responsible for the consistency review and determination; however, the department shall not make a determination that the license, permit, activity, or project is consistent if any other state agency with significant analogous responsibility makes a determination of inconsistency. All decisions and determinations under this subsection shall be appealable to the Governor and Cabinet.

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

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

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

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

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

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

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

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

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

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

4.6. ~~Permits~~ and licenses relating to the transportation of hazardous substance materials or transportation and dumping which are issued pursu-

ant to the Hazardous Materials Transportation Act, 49 U.S.C. ss. 1501, et seq. ~~1801-1812~~, as amended, or 33 U.S.C. s. 1321 ~~419~~, as amended.

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

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

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

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

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

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

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

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

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

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

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

(6) Agencies authorized to review and comment on the consistency of federal activities subject to state review under the Florida Coastal Management Program are those agencies charged with the implementation of the statutes and rules included in the federally approved program. Each agency shall be afforded an opportunity to provide the department or the state

licensing agency with its comments and determination regarding the consistency of the federal activity with the statutes and rules included in the federally approved program implemented by the agency. An agency that submits a determination of inconsistency to the department or a state licensing agency shall be an indispensable party to any administrative or judicial proceeding in which such determination is an issue, shall be responsible for defending its determination in such proceedings, and shall be liable for any damages, costs, and attorney's fees awarded in the action as a consequence of such determination.

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

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

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

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

380.285 Lighthouses; study; preservation; funding.—

(1) ~~The Coastal Management Program of the Department of Community Affairs and the Division of Historical Resources of the Department of State shall undertake a study of the lighthouses in the state. The study must determine the location, ownership, condition, and historical significance of all lighthouses in the state and ensure that all historically significant lighthouses are nominated for inclusion on the National Register of Historic Places. The study must assess the condition and restoration needs of historic lighthouses and develop plans for appropriate future public access and use. The Coastal Management Program and the Division of Historical Resources shall take a leadership role in implementing plans to stabilize lighthouses and associated structures and to preserve and protect them from future deterioration. When possible, the lighthouses and associated buildings should be made available to the public for educational and recreational purposes. The Department of Community Affairs should consider these responsibilities to be a priority of the Florida Coastal Management Program, and implementation of this act should be a priority in the use of coastal management funds.~~

(2) ~~The Department of Community Affairs and the Department of State shall request in its their annual legislative budget requests request funding necessary to carry out the duties and responsibilities specified in this act.~~

Funds for the rehabilitation of lighthouses should be allocated through matching grants-in-aid to state and local government agencies and to non-profit organizations. The Department of Environmental Protection Community Affairs may assist the Division of Historical Resources in projects to accomplish the goals and activities described in this section ~~lighthouse identification, assessment, restoration, and interpretation.~~

Section 7. As described in the Governor's budget recommendation for fiscal year 2002-2003, all powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Florida Coastal Management Program as provided for in ss. 380.20-380.285, Florida Statutes, currently assigned to and administered by the Department of Community Affairs are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Department of Environmental Protection.

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

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

(40) Serve as the state's single point of contact for performing the responsibilities described in Presidential Executive Order 12372, including administration and operation of the Florida State Clearinghouse. The Florida State Clearinghouse shall be responsible for coordinating interagency reviews of the following: federal activities and actions subject to the federal consistency requirements of s. 307 of the Coastal Zone Management Act; documents prepared pursuant to the National Environmental Policy Act, 42 U.S.C. ss. 4321, et seq., and the Outer Continental Shelf Lands Act, 43 U.S.C. ss. 1331 et seq.; applications for federal funding pursuant to s. 216.212, Florida Statutes; and other notices and information regarding federal activities in the state, as appropriate. The Florida State Clearinghouse shall ensure that state agency comments and recommendations on the environmental, social, and economic impact of proposed federal actions are communicated to federal agencies, applicants, local governments, and interested parties.

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

Section 9. Section 380.276, Florida Statutes, is created to read:

380.276 Beaches and coastal areas; display of uniform warning and safety flags on public beaches; placement of uniform notification signs.—

(1) It is the intent of the Legislature that a cooperative effort among state agencies and local governments be undertaken to plan for and assist in the



display of uniform warning and safety flags, and the placement of uniform notification signs that provide the meaning of such warning and safety flags, on the public beaches along the coast of the state. Because the varying natural conditions of Florida's public beaches and coastal areas pose significant risks to the safety of tourists and the general public, it is important to inform the public of the need to exercise caution.

(2) The Department of Environmental Protection, through the Florida Coastal Management Program, shall direct and coordinate the uniform warning and safety flag program. The purpose of the program shall be to encourage the display of uniform warning and safety flags at all public beaches along the coast of the state at which warning and safety flags are displayed and lifeguards are on duty, and to encourage the placement of uniform notification signs that provide the meaning of such flags.

(3) The Department of Environmental Protection shall develop a program for the display of uniform warning and safety flags at all public beaches along the coast of the state at which warning and safety flags are displayed and lifeguards are on duty, and for the placement of uniform notification signs that provide the meaning of the flags displayed. Such a program shall provide:

(a) For posted notification of the meaning of each of the warning and safety flags at all designated public access points.

(b) That uniform notification signs be posted in a conspicuous location and be clearly legible.

(c) A standard size, shape, color, and definition for each warning and safety flag.

(d) That flags incorporate a numerical designation to accommodate persons who are colorblind.

(e) That flags not specifically defined by the department must be identified by the entity displaying the flags in the posted notification.

(f) Guidelines for the periodic replacement of flags.

(4) The Department of Environmental Protection is authorized, within the limits of appropriations available to it for such purposes, to establish and operate a program to encourage the display of uniform warning and safety flags on all public beaches along the coast of the state and to encourage the placement of uniform notification signs that provide the meaning of the flags displayed. The department shall coordinate the implementation of the uniform warning and safety flag program with local governing bodies and the Florida Beach Patrol Chiefs Association.

(5) The Department of Environmental Protection may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to administer this section.

(6) The state, state agencies, local governments, and local government agencies may not be held liable for any injury caused by the reasonable

placement or location of uniform warning and safety flags or reasonably posted uniform notification signs or the failure to install uniform warning and safety flags or posted uniform notification signs as provided by this section.

Section 10. This act shall take effect July 1, 2002.

Approved by the Governor May 23, 2002.

Filed in Office Secretary of State May 23, 2002.