

## CHAPTER 2012-65

### Committee Substitute for House Bill No. 691

An act relating to beach management; amending s. 161.011, F.S.; renaming Parts I and II as the Dennis L. Jones Beach and Shore Preservation Act; amending s. 161.041, F.S.; specifying that demonstration to the Department of Environmental Protection of the adequacy of a project's design and construction is supported by certain evidence; authorizing the department to issue permits for an incidental take authorization under certain circumstances; requiring the department to adopt certain rules involving the excavation and placement of sediment; requiring the department to justify items listed in a request for additional information; requiring the department to adopt guidelines by rule; providing legislative intent with regard to permitting for periodic maintenance of certain beach nourishment and inlet management projects; requiring the department to amend specified rules to streamline such permitting; providing a permit life for certain joint coastal permits; amending s. 161.101, F.S.; requiring the department to maintain certain beach management project information on its website; requiring the department to notify the Governor's Office and the Legislature concerning any significant changes in project funding levels; amending s. 403.813, F.S.; providing a permit exemption for certain specified exploratory activities relating to beach restoration and nourishment projects and inlet management activities; providing an effective date.

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

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

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

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

161.041 Permits required.—

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

interior tidal waters of the state from the permit requirements of this section. ~~No such development shall interfere,~~

(a) Except during construction, ~~such development may not interfere~~ with the ~~public use by the public~~ of any area of a beach seaward of the mean high-water line unless the department determines ~~that the such~~ interference is unavoidable for purposes of protecting the beach or ~~an any~~ endangered upland structure. ~~The department may require, As a condition of~~ granting permits under this section, ~~the department may require~~ the provision of alternative access ~~if when~~ interference with public access along the beach is unavoidable. The width of such alternate access may not be required to exceed the width of the access that will be obstructed as a result of the permit being granted. ~~Application for coastal construction permits as defined above shall be made to the department upon such terms and conditions as set forth by rule of the department.~~

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

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

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

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

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

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

(4) The department may, as a condition to ~~the~~ granting of a permit under this section, require mitigation, financial, or other assurances acceptable to the department as ~~may be~~ necessary to assure performance of the conditions

of a permit or enter into contractual agreements to best assure compliance with any permit conditions. Biological and environmental monitoring conditions included in the permit ~~must~~ shall be based upon clearly defined scientific principles. The department may also require notice of the required permit conditions ~~required~~ and the contractual agreements entered into pursuant to ~~the provisions of~~ this subsection to be filed in the public records of the county in which the permitted activity is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, nothing in this subsection relieves an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or any water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

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

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

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

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

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

Approved by the Governor April 6, 2012.

Filed in Office Secretary of State April 6, 2012.