

**CHAPTER 161**

**BEACH AND SHORE PRESERVATION**

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**PART I**

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**161.011 Short title.**--Parts I and II of this chapter may be known and cited as the "Beach and Shore Preservation Act."

**History.**--s. 1, ch. 65-408.

**161.021 Definitions.**--In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

- (1) "Access" or "public access" as used in ss. 161.041, 161.052, and 161.053 means the public's right to laterally traverse the sandy beaches of this state where such access exists on or after July 1, 1987, or where the public has established an accessway through private lands to lands seaward of the mean high tide or water line by prescription, prescriptive easement, or any other legal means, development or construction shall not interfere with such right of public access unless a comparable alternative accessway is provided.
- (2) "Beach and shore preservation," "erosion control, beach preservation and hurricane protection," "beach erosion control" and "erosion control" includes, but is not limited to, erosion control, hurricane protection, coastal flood control, shoreline and offshore rehabilitation, and regulation of work and activities likely to affect the physical condition of the beach or shore.
- (3) "Beach nourishment" means the maintenance of a restored beach by the replacement of sand.
- (4) "Beach restoration" means the placement of sand on an eroded beach for the purposes of restoring it as a recreational beach and providing storm protection for upland properties.
- (5) "Board of trustees" means the Board of Trustees of the Internal Improvement Trust Fund.
- (6) "Coastal construction" includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes.
- (7) "Department" means the Department of Environmental Protection.
- (8) "Emergency" means any unusual incident resulting from natural or unnatural causes which endangers the health, safety, or resources of the residents of the state, including damages or erosion to any shoreline resulting from a hurricane, storm, or other such violent disturbance.
- (9) "Inlet sediment bypassing" includes any transfer of sediment from an inlet or beach to another stretch of beach for the purpose of nourishment and beach erosion control.
- (10) "Local government" means a county, municipality, community development district, or independent special taxing district.

**History.**--s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 43, ch. 71-377; s. 1, ch. 78-257; s. 1, ch. 86-138; s. 11, ch. 87-97; s. 17, ch. 94-356; s. 2, ch. 2000-346; s. 1, ch. 2007-99.

**161.031 Personnel and facilities.**--The Department of Environmental Protection may call to its assistance temporarily, any engineer or other employee in any state agency or department or in the University of Florida or other educational institution financed wholly or in part by the state, for the purpose of devising the most effective and economical method of averting and preventing erosion, hurricane, and storm damages. These employees shall not receive additional compensation, except for actual necessary expenses incurred while working under the direction of the department.

**History.**--s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 18, ch. 94-356; s. 4, ch. 2000-197.

**161.041 Permits required.**--

(1) If 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 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 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, except during construction, with the use by the public of any area of a beach seaward of the mean high-water line unless the department determines such interference is unavoidable for purposes of protecting the beach or any endangered upland structure. The department may require, as a condition to granting permits under this section, the provision of alternative access 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. Except for the deepwater ports identified in s. 403.021(9)(b), the department shall not issue 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 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 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.

(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 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 shall be based upon clearly defined scientific principles. The department may also require notice of the 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.

**History.**--s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 2, ch. 78-257; s. 1, ch. 83-247; s. 12, ch. 87-97; s. 19, ch. 94-356; s. 3, ch. 2000-346.

**161.0415 Citation of rule.**--In addition to any other provisions within this chapter or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this chapter or such rules promulgated hereunder, cite a specific rule or provision of the Florida Building Code. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

**History.**--s. 1, ch. 79-161; s. 4, ch. 2000-141; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

**161.042 Coastal construction and excavation in barrier beach inlets.**--The department is authorized to direct any person, or any public body or agency, responsible for the excavation of sandy sediment as a result of any activity conducted to maintain navigable depths within or immediately adjacent to any coastal barrier beach inlet within sovereignty lands, after the department considers any limitations under chapters 253 and 403 on the deposition of spoil material from the excavation, and upon issuance of water quality certification by the department, to use such sediment for beach nourishment as prescribed by the department. For any construction or excavation within or immediately contiguous to any coastal barrier beach inlet which has been permitted pursuant to s. 161.041, the department may require the permittee to supply beach profiles and conduct hydrographic monitoring of the impacted area.

**History.**--s. 3, ch. 78-257; s. 1, ch. 80-183; s. 20, ch. 94-356; s. 4, ch. 2000-346.

**161.051 Coastal construction by persons, firms, corporations, or local authorities.**--Where any person, firm, corporation, county, municipality, township, special district, or any public agency shall construct and install projects when permits have been properly issued, such works and improvements shall be the property of said person, firm, corporation, county, municipality, township, special district, or any public agency where located, and shall thereafter be maintained by and at the expense of said person, firm, corporation, county, municipality, township, special district, or other public agency. No grant under this section shall affect title of the state to any lands below the mean high-water mark, and any additions or accretions to the upland caused by erection of such works or improvement shall remain the property of the state if not previously conveyed. The state shall in no way be liable for any damages as a result of erections of such works and improvements, or for any damages arising out of construction, reconstruction, maintenance, or repair thereof, or otherwise arising on account of such works or improvements.

**History.**--s. 1, ch. 65-408.

**161.052 Coastal construction and excavation; regulation.**--

(1) No person, firm, corporation, municipality, county, or other public agency shall excavate or

construct any dwelling house, hotel, motel, apartment building, seawall, revetment, or other structure incidental to or related to such structure, including but not limited to such attendant structures or facilities as a patio, swimming pool, or garage, within 50 feet of the line of mean high water at any riparian coastal location fronting the Gulf of Mexico or Atlantic coast shoreline of the state, exclusive of bays, inlets, rivers, bayous, creeks, passes, and the like. In areas where an erosion control line has been established under the provisions of ss. 161.141-161.211, that line, or the presently existing mean high-water line, whichever is more landward, shall be considered to be the mean high-water line for the purposes of this section.

(2) A waiver or variance of the setback requirements may be authorized by the department in the following circumstances:

(a) The department may authorize an excavation or erection of a structure at any riparian coastal location as described in subsection (1) upon receipt of an application from a riparian owner and upon the consideration of facts and circumstances, including adequate engineering data concerning shoreline stability and storm tides related to shoreline topography, which, in the opinion of the department, clearly and unequivocally justify such a waiver or variance.

(b) If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the foregoing, and if said existing structures have not been unduly affected by erosion, a proposed structure may be permitted along such line on written authorization from the department if such proposed structure complies with the Florida Building Code and the rules of the department. However, the department shall not contravene setback requirements established by a county or municipality which are equal to, or more strict than, those setback requirements provided herein.

(c) The department may authorize the construction of pipelines or piers extending outward from the shoreline, unless it determines that the construction of such projects would cause erosion of the beach in the area of such structures.

(3) The provisions of this section shall not apply to structures intended for shore protection purposes which are regulated by s. 161.041 or to structures existing or under construction on June 27, 1970.

(4) The department may by regulation exempt specifically described portions of the coastline from the provisions of this section whenever in its judgment such portions of coastline, because of their nature, are not subject to erosion of a substantially damaging effect to the public.

(5) The setback requirements as defined herein shall not apply to any riparian coastal locations fronting the Atlantic Ocean or Gulf of Mexico which have vegetation-type nonsandy shores.

(6) The setback requirements defined in subsection (1) shall not apply to any modification, maintenance, or repair to any existing structure within limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure. Specifically excluded from this exemption are seawalls and any additions or enclosures added, constructed, or installed below the first dwelling floor or lowest deck of the existing structure.

(7) Any coastal structure erected, or excavation created, in violation of the provisions of this section is hereby declared to be a public nuisance, and such structure shall be forthwith removed or such excavation refilled after written notice by the department directing such removal or filling. In the event that the structure is not removed or the excavation refilled as directed within a

reasonable time, the department may remove such structure or fill such excavation at its own expense. The cost thereof shall become a lien upon the property of the upland owner upon which such unauthorized structure or excavation is located.

(8) Any person violating any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083. Such person shall be deemed guilty of a separate offense for each month during any portion of which any violation of this section is committed or continued.

(9) The secretary of the department may make recommendations to the Board of Trustees of the Internal Improvement Trust Fund concerning the purchase of the fee or any lesser interest in any lands seaward of the setback requirement as environmentally endangered lands or as outdoor recreation lands.

(10) A coastal county or municipality fronting on the Gulf of Mexico or the Atlantic Ocean shall advise the department within 5 days after receipt of any permit application for construction or other activities proposed to be located within 50 feet of the line of mean high water. Within 5 days after receipt of such application, the county or municipality shall notify the applicant of the requirements for state permits.

(11) The department is authorized to adopt rules for the implementation of the following provisions of this section: excavation and construction; setback requirements; waivers or variances; exemptions; the removal of unauthorized structures or refilling of unauthorized excavations; and violations and penalties.

(12) In accordance with ss. 553.73 and 553.79, and upon the effective date of the Florida Building Code, the provisions of this section which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities shall be incorporated into the Florida Building Code. The Florida Building Commission shall have the authority to adopt rules pursuant to ss. 120.536 and 120.54 in order to implement those provisions. This subsection does not limit or abrogate the right and authority of the department to require permits or to adopt and enforce environmental standards, including but not limited to, standards for ensuring the protection of the beach-dune system, proposed or existing structures, adjacent properties, marine turtles, native salt-resistant vegetation, endangered plant communities, and the preservation of public beach access.

**History.**--s. 1, ch. 70-231; s. 82, ch. 71-136; s. 1, ch. 75-87; s. 4, ch. 78-257; s. 2, ch. 80-183; s. 66, ch. 81-259; s. 21, ch. 94-356; s. 1, ch. 98-131; s. 5, ch. 2000-141; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

#### **161.053 Coastal construction and excavation; regulation on county basis.--**

(1)(a) The Legislature finds and declares that the beaches in this state and the coastal barrier dunes adjacent to such beaches, by their nature, are subject to frequent and severe fluctuations and represent one of the most valuable natural resources of Florida and that it is in the public interest to preserve and protect them from imprudent construction which can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access. In furtherance of these findings, it is the intent of the Legislature to provide that the department establish coastal construction control lines on a county basis along the sand beaches of the state fronting on the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida. Such lines shall be established so as to define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions. However, the department may establish a segment or segments of a coastal construction control line further landward than the impact zone of a 100-year storm surge, provided such segment or segments do

not extend beyond the landward toe of the coastal barrier dune structure that intercepts the 100-year storm surge. Such segment or segments shall not be established if adequate dune protection is provided by a state-approved dune management plan. Special siting and design considerations shall be necessary seaward of established coastal construction control lines to ensure the protection of the beach-dune system, proposed or existing structures, and adjacent properties and the preservation of public beach access.

(b) As used in this subsection:

1. When establishing coastal construction control lines as provided in this section, the definition of "sand beach" shall be expanded to include coastal barrier island ends contiguous to the sand beaches of the state fronting on the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida.
2. "Coastal barrier island ends" means those areas on the ends of barrier islands fronting the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida, which are subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.
3. "Coastal barrier islands" means geological features which are completely surrounded by marine waters that front upon the open waters of the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida and are composed of quartz sands, clays, limestone, oolites, rock, coral, coquina, sediment, or other material, including spoil disposal, which features lie above the line of mean high water. Mainland areas which were separated from the mainland by artificial channelization for the purpose of assisting marine commerce shall not be considered coastal barrier islands.

(c) Coastal construction control lines shall be set on coastal barrier island ends only in conjunction with the resetting of the coastal construction control line throughout the entire county within which the barrier island end is located, and shall not be established on reaches of coastal barrier island ends where the shore is vegetated with mangroves.

(2)(a) Coastal construction control lines shall be established by the department only after it has been determined from a comprehensive engineering study and topographic survey that the establishment of such control lines is necessary for the protection of upland properties and the control of beach erosion. No such line shall be set until a public hearing has been held in each affected county. After the department has given consideration to the results of such public hearing, it shall, after considering ground elevations in relation to historical storm and hurricane tides, predicted maximum wave uprush, beach and offshore ground contours, the vegetation line, erosion trends, the dune or bluff line, if any exist, and existing upland development, set and establish a coastal construction control line and cause such line to be duly filed in the public records of any county affected and shall furnish the clerk of the circuit court in each county affected a survey of such line with references made to permanently installed monuments at such intervals and locations as may be considered necessary. However, no coastal construction control line shall be set until a public hearing has been held by the department and the affected persons have an opportunity to appear. The hearing shall constitute a public hearing and shall satisfy all requirements for a public hearing pursuant to s. 120.54(3). The hearing shall be noticed in the Florida Administrative Weekly in the same manner as a rule. Any coastal construction control line adopted pursuant to this section shall not be subject to a s. 120.56(2) rule challenge or a s. 120.54(3)(c)2. drawout proceeding, but, once adopted, shall be subject to a s. 120.56(3) invalidity challenge. The rule shall be adopted by the department and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6. Upon such filing with the Department of State, no person, firm, corporation, or governmental agency shall construct any structure whatsoever seaward thereof; make any excavation, remove any beach material, or otherwise alter existing ground elevations; drive any vehicle on, over, or across any sand dune; or damage or cause to be damaged such sand dune or the vegetation growing thereon seaward



thereof, except as hereinafter provided. Control lines established under the provisions of this section shall be subject to review at the discretion of the department after consideration of hydrographic and topographic data that indicate shoreline changes that render established coastal construction control lines to be ineffective for the purposes of this act or at the written request of officials of affected counties or municipalities. Any riparian upland owner who feels that such line as established is unduly restrictive or prevents a legitimate use of the owner's property shall be granted a review of the line upon written request. After such review, the department shall decide if a change in the control line as established is justified and shall so notify the person or persons making the request. The decision of the department shall be subject to judicial review as provided in chapter 120.

(b)1. The department shall exempt construction proposed for a location seaward of a coastal construction control line and landward of existing armoring from certain siting and design criteria of this chapter, provided the armoring is capable of protecting the proposed construction from the effects of erosion from a 100-year storm surge. The exemption shall apply to proposed structures involving the foundation, siting, and excavation criteria of this section, except such structures shall be:

- a. Sited a sufficient distance landward of the armoring to allow for maintenance of the armoring.
  - b. Located up to or landward of the established line of construction.
  - c. Designed to comply with the windload requirements of this section.
  - d. Sited and designed to protect marine turtles.

2. The applicant shall provide scientific and engineering evidence that the armoring has been designed, constructed, and maintained to survive the effects of the design storm and provide protection to existing and proposed structures from the erosion associated with that event. Evidence shall include a report with data and supporting analysis, and shall be certified by a professional engineer registered in this state, that the armoring was designed and constructed and is in adequate condition to meet the following criteria:

- a. The top must be at or above the still water level, including setup, for the design storm plus the breaking wave calculated at its highest achievable level based on the maximum eroded beach profile and highest surge level combination, and must be high enough to preclude runoff overtopping.
- b. The armoring must be stable under the design storm including maximum localized scour, with adequate penetration and toe protection to avoid settlement, toe failure, or loss of material from beneath or behind the armoring.
- c. The armoring must have sufficient continuity or return walls to prevent flanking under the design storm from impacting the proposed construction.
- d. The armoring must withstand the static and hydrodynamic forces of the design storm.

(3) It is the intent of the Legislature that any coastal construction control line that has not been updated since June 30, 1980, shall be considered a critical priority for reestablishment by the department. In keeping with this intent, the department shall notify the Legislature if all such lines cannot be reestablished by December 31, 1997, so that the Legislature may subsequently consider interim lines of jurisdiction for the remaining counties.

(4) Any coastal county or coastal municipality may establish coastal construction zoning and building codes in lieu of the provisions of this section, provided such zones and codes are approved by the department as being adequate to preserve and protect the beaches and coastal barrier dunes adjacent to such beaches which are under the jurisdiction of the department from imprudent construction that will jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access. Exceptions to locally established coastal construction zoning and building codes shall not be granted unless previously approved by the department. It is the intent of this subsection to provide for local administration of established coastal construction control lines through approved zoning and building codes where desired by local interests and where such local interests have, in the judgment of the department, sufficient funds and personnel to adequately administer the program. Should the department determine at any time that the program is inadequately administered, the department shall have authority to revoke the authority granted to the county or municipality.

(5) Except in those areas where local zoning and building codes have been established pursuant to subsection (4), a permit to alter, excavate, or construct on property seaward of established coastal construction control lines may be granted by the department as follows:

(a) The department may authorize an excavation or erection of a structure at any coastal location as described in subsection (1) upon receipt of an application from a property and/or riparian owner and upon the consideration of facts and circumstances, including:

1. Adequate engineering data concerning shoreline stability and storm tides related to shoreline topography;
2. Design features of the proposed structures or activities; and
3. Potential impacts of the location of such structures or activities, including potential cumulative effects of any proposed structures or activities upon such beach-dune system, which, in the opinion of the department, clearly justify such a permit.

(b) If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the foregoing, and if the existing structures have not been unduly affected by erosion, a proposed structure may, at the discretion of the department, be permitted along such line on written authorization from the department if such structure is also approved by the department. However, the department shall not contravene setback requirements or zoning or building codes established by a county or municipality which are equal to, or more strict than, those requirements provided herein. This paragraph does not prohibit the department from requiring structures to meet design and siting criteria established in paragraph (a) or in subsection (1) or subsection (2).

(c) The department may condition the nature, timing, and sequence of construction of permitted activities to provide protection to nesting sea turtles and hatchlings and their habitat, pursuant to s. 370.12, and to native salt-resistant vegetation and endangered plant communities.

(d) The department may require such engineer certifications as necessary to assure the adequacy of the design and construction of permitted projects.

(e) The department shall limit the construction of structures which interfere with public access along the beach. However, the department may require, as a condition to granting permits, the provision of alternative access 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.

(f) 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 conditions of a permit or enter into contractual agreements to best assure compliance with any permit conditions. The department may also require notice of the 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.

(6)(a) As used in this subsection:

1. "Frontal dune" means the first natural or manmade mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity, and configuration to offer protective value.
2. "Seasonal high-water line" means the line formed by the intersection of the rising shore and the elevation of 150 percent of the local mean tidal range above local mean high water.

(b) After October 1, 1985, and notwithstanding any other provision of this part, the department, or a local government to which the department has delegated permitting authority pursuant to subsections (4) and (16), shall not issue any permit for any structure, other than a coastal or shore protection structure, minor structure, or pier, meeting the requirements of this part, or other than intake and discharge structures for a facility sited pursuant to part II of chapter 403, which is proposed for a location which, based on the department's projections of erosion in the area, will be seaward of the seasonal high-water line within 30 years after the date of application for such permit. The procedures for determining such erosion shall be established by rule. In determining the area which will be seaward of the seasonal high-water line in 30 years, the department shall not include any areas landward of a coastal construction control line.

(c) Where the application of paragraph (b) would preclude the construction of a structure, the department may issue a permit for a single-family dwelling for the parcel so long as:

1. The parcel for which the single-family dwelling is proposed was platted or subdivided by metes and bounds before the effective date of this section;
2. The owner of the parcel for which the single-family dwelling is proposed does not own another parcel immediately adjacent to and landward of the parcel for which the dwelling is proposed;
3. The proposed single-family dwelling is located landward of the frontal dune structure; and
4. The proposed single-family dwelling will be as far landward on its parcel as is practicable without being located seaward of or on the frontal dune.

(d) In determining the land areas which will be below the seasonal high-water line within 30 years after the permit application date, the department shall consider the impact on the erosion rates of an existing beach nourishment or restoration project or of a beach nourishment or restoration project for which all funding arrangements have been made and all permits have been issued at the time the application is submitted. The department shall consider each year there is sand seaward of the erosion control line that no erosion took place that year. However, the seaward extent of the beach nourishment or restoration project beyond the erosion control line shall not be considered in determining the applicable erosion rates. Nothing in this subsection shall prohibit the department from requiring structures to meet criteria established in subsection (1), subsection (2), or subsection (5) or to be further landward than required by this subsection based on the criteria

established in subsection (1), subsection (2), or subsection (5).

(e) The department shall annually report to the Legislature the status of this program, including any changes to the previously adopted procedures for determining erosion projections.

(7) Any coastal structure erected, or excavation created, in violation of the provisions of this section is hereby declared to be a public nuisance; and such structure shall be forthwith removed or such excavation shall be forthwith refilled after written notice by the department directing such removal or filling. In the event the structure is not removed or the excavation refilled within a reasonable time as directed, the department may remove such structure or fill such excavation at its own expense; and the costs thereof shall become a lien upon the property of the upland owner upon which such unauthorized structure or excavation is located.

(8) Any person, firm, corporation, or agent thereof who violates this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; except that a person driving any vehicle on, over, or across any sand dune and damaging or causing to be damaged such sand dune or the vegetation growing thereon in violation of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person, firm, corporation, or agent thereof shall be deemed guilty of a separate offense for each day during any portion of which any violation of this section is committed or continued.

(9) The provisions of this section do not apply to structures intended for shore protection purposes which are regulated by s. 161.041 or to structures existing or under construction prior to the establishment of the coastal construction control line as provided herein, provided such structures may not be materially altered except as provided in subsection (5). Except for structures that have been materially altered, structures determined to be under construction at the time of the establishment or reestablishment of the coastal construction control line shall be exempt from the provisions of this section. However, unless such an exemption has been judicially confirmed to exist prior to April 10, 1992, the exemption shall last only for a period of 3 years from either the date of the determination of the exemption or April 10, 1992, whichever occurs later. The department may extend the exemption period for structures that require longer periods for completion of their construction, provided that construction during the initial exemption period has been continuous. For purposes of this subsection, "continuous" means following a reasonable sequence of construction without significant or unreasonable periods of work stoppage.

(10) The department may by regulation exempt specifically described portions of the coastline from the provisions of this section when in its judgment such portions of coastline because of their nature are not subject to erosion of a substantially damaging effect to the public.

(11) Pending the establishment of coastal construction control lines as provided herein, the provisions of s. 161.052 shall remain in force. However, upon the establishment of coastal construction control lines, or the establishment of coastal construction zoning and building codes as provided in subsection (4), the provisions of s. 161.052 shall be superseded by the provisions of this section.

(12)(a) The coastal construction control requirements defined in subsection (1) and the requirements of the erosion projections pursuant to subsection (6) do not apply to any modification, maintenance, or repair to any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure. Specifically excluded from this exemption are seawalls or other rigid coastal or shore protection structures and any additions or enclosures added, constructed, or installed below the first dwelling floor or lowest deck of the existing structure.

(b) Activities seaward of the coastal construction control line which are determined by the department not to cause a measurable interference with the natural functioning of the coastal system are exempt from the requirements in subsection (5).

(c) The department may establish exemptions from the requirements of this section for minor activities determined by the department not to have adverse impacts on the coastal system. Examples of such activities include, but are not limited to:

1. Boat moorings;
2. Maintenance of existing beach/dune vegetation;
3. The burial of seaweed, dead fish, whales, or other marine animals on the unvegetated beach;
4. The removal of piers or other derelict structures from the unvegetated beach or seaward of mean high water;
5. Temporary emergency vehicular access, provided any impacted area is immediately restored;
6. The removal of any existing structures or debris from the upland, provided there is no excavation or disturbance to the existing topography or beach/dune vegetation;
7. Construction of any new roof overhang extending no more than 4 feet beyond the confines of the existing foundation during modification, renovation, or reconstruction of a habitable structure within the confines of the existing foundation of that structure which does not include any additions to or modification of the existing foundation of that structure;
8. Minor and temporary excavation for the purpose of repairs to existing subgrade residential service utilities (e.g., water and sewer lines, septic tanks and drainfields, electrical and telephone cables, and gas lines), provided that there is minimal disturbance and that grade is restored with fill compatible in both coloration and grain size to the onsite material and any damaged or destroyed vegetation is restored using similar vegetation; and
9. Any other minor construction with impacts similar to the above activities.

(13)(a) Notwithstanding the coastal construction control requirements defined in subsection (1) or the erosion projection determined pursuant to subsection (6), the department may, at its discretion, issue a permit for the repair or rebuilding within the confines of the original foundation of a major structure pursuant to the provisions of subsection (5). Alternatively, the department may also, at its discretion, issue a permit for a more landward relocation or rebuilding of a damaged or existing structure if such relocation or rebuilding would not cause further harm to the beach-dune system, and if, in the case of rebuilding, such rebuilding complies with the provisions of subsection (5), and otherwise complies with the provisions of this subsection.

(b) Under no circumstances shall the department permit such repairs or rebuilding that expand the capacity of the original structure seaward of the 30-year erosion projection established pursuant to subsection (6).

(c) In reviewing applications for relocation or rebuilding, the department shall specifically consider changes in shoreline conditions, the availability of other relocation or rebuilding options, and the design adequacy of the project sought to be rebuilt.

(d) Permits issued under this subsection shall not be considered precedential as to the issuance of subsequent permits.

(14) Concurrent with the establishment of a coastal construction control line and the ongoing administration of this chapter, the secretary of the department shall make recommendations to the Board of Trustees of the Internal Improvement Trust Fund concerning the purchase of the fee or any lesser interest in any lands seaward of the control line pursuant to the state's Save Our Coast, Conservation and Recreation Lands, or Outdoor Recreation Land acquisition programs; and, with respect to those control lines established pursuant to this section prior to June 14, 1978, the secretary may make such recommendations.

(15) A coastal county or municipality fronting on the Gulf of Mexico, the Atlantic Ocean, or the Straits of Florida shall advise the department within 5 days after receipt of any permit application for construction or other activities proposed to be located seaward of the line established by the department pursuant to the provisions of this section. Within 5 days after receipt of such application, the county or municipality shall notify the applicant of the requirements for state permits.

(16) In keeping with the intent of subsection (4), and at the discretion of the department, authority for permitting certain types of activities which have been defined by the department may be delegated by the department to a coastal county or coastal municipality. Such partial delegation shall be narrowly construed to those particular activities specifically named in the delegation and agreed to by the affected county or municipality, and the delegation may be revoked by the department at any time if it is determined that the delegation is improperly or inadequately administered.

(17) The department may, at the request of a property owner, contract with such property owner for an agreement, or modify an existing contractual agreement regulating development activities landward of a coastal construction control line, provided that nothing within the contractual agreement shall be inconsistent with the design and siting provisions of this section. In no case shall the contractual agreement bind either party for a period longer than 5 years from its date of execution. Prior to beginning any construction activity covered by the agreement, the property owner shall obtain the necessary authorization required by the agreement. The agreement shall not authorize construction for:

(a) Major habitable structures which would require construction beyond the expiration of the agreement, unless such construction is above the completed foundation; or

(b) Nonhabitable major structures or minor structures, unless such construction was authorized at the same time as the habitable major structure.

(18) The department is authorized to grant areawide permits to local governments, other governmental agencies, and utility companies for special classes of activities in areas under their general jurisdiction or responsibility, so long as these activities, due to the type, size, or temporary nature of the activity, will not cause measurable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites. Such activities shall include, but not be limited to: road repairs, not including new construction; utility repairs and replacements, or other minor activities necessary to provide utility services; beach cleaning; and emergency response. The department may adopt rules to establish criteria and guidelines for use by permit applicants. The department shall require notice provisions appropriate to the type and nature of the activities for which areawide permits are sought.

(19) The department is authorized to grant general permits for projects, including dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other

nonhabitable structures, so long as these projects, due to the type, size, or temporary nature of the project, will not cause a measurable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites. In no event shall multifamily habitable structures qualify for general permits. However, single-family habitable structures which do not advance the line of existing construction and satisfy all siting and design requirements of this section may be eligible for a general permit pursuant to this subsection. The department may adopt rules to establish criteria and guidelines for use by permit applicants.

(a) Persons wishing to use the general permits set forth in this subsection shall, at least 30 days before beginning any work, notify the department in writing on forms adopted by the department. The notice shall include a description of the proposed project and supporting documents depicting the proposed project, its location, and other pertinent information as required by rule, to demonstrate that the proposed project qualifies for the requested general permit. Persons who undertake projects without proof of notice to the department, but whose projects would otherwise qualify for general permits, shall be considered as being undertaken without a permit and shall be subject to enforcement pursuant to s. 161.121.

(b) Persons wishing to use a general permit must provide notice as required by the applicable local building code where the project will be located. If a building code requires no notice, any person wishing to use a general permit must, at a minimum, post on the property at least 5 days prior to the commencement of construction a sign no smaller than 88 square inches, with letters no smaller than one-quarter inch, describing the project.

(20)(a) The department may suspend or revoke the use of a general or areawide permit for good cause, including: submission of false or inaccurate information in the notification for use of a general or areawide permit; violation of law, department orders, or rules relating to permit conditions; deviation from the specified activity or project indicated or the conditions for undertaking the activity or project; refusal of lawful inspection; or any other act on the permittee's part in using the general or areawide permit which results or may result in harm or injury to human health or welfare, or which causes harm or injury to animal, plant, or aquatic life or to property.

(b) The department shall have access to the permitted activity or project at reasonable times to inspect and determine compliance with the permit and department rules.

(21) The department is authorized to adopt rules related to the following provisions of this section: establishment of coastal construction control lines; activities seaward of the coastal construction control line; exemptions; property owner agreements; delegation of the program; permitting programs; and violations and penalties.

(22) In accordance with ss. 553.73 and 553.79, and upon the effective date of the Florida Building Code, the provisions of this section which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities shall be incorporated into the Florida Building Code. The Florida Building Commission shall have the authority to adopt rules pursuant to ss. 120.536 and 120.54 in order to implement those provisions. This subsection does not limit or abrogate the right and authority of the department to require permits or to adopt and enforce environmental standards, including but not limited to, standards for ensuring the protection of the beach-dune system, proposed or existing structures, adjacent properties, marine turtles, native salt-resistant vegetation, endangered plant communities, and the preservation of public beach access.

**History.**--s. 1, ch. 71-280; s. 2, ch. 75-87; s. 1, ch. 77-12; s. 5, ch. 78-257; s. 29, ch. 79-164; s. 3, ch. 80-183; s. 67, ch. 81-259; s. 2, ch. 83-247; s. 33, ch. 85-55; s. 1, ch. 86-191; s. 13, ch. 87-97; s. 1, ch. 88-106; s. 1, ch. 88-349; s. 11, ch. 89-175; s. 9, ch. 91-224; s. 1, ch. 92-191; s. 22, ch. 94-356; s. 1437, ch. 95-147; s. 1, ch. 96-371; s. 21, ch. 96-410; s. 2, ch. 98-131; s. 6, ch. 2000-141; s.

5, ch. 2000-346; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

**161.05301 Beach erosion control project staffing.--**

(1) There are hereby appropriated to the Department of Environmental Protection six positions and \$449,918 for fiscal year 1998-1999 from the Ecosystem Management and Restoration Trust Fund from revenues provided by this act pursuant to s. 201.15(11). These positions and funding are provided to assist local project sponsors, and shall be used to facilitate and promote enhanced beach erosion control project administration. Such staffing resources shall be directed toward more efficient contract development and oversight, promoting cost-sharing strategies and regional coordination or projects among local governments, providing assistance to local governments to ensure timely permit review, and improving billing review and disbursement processes.

(2) Upon the effective date of the Florida Building Code, when the reviews authorized by s. 161.053 are conducted by local government, current department positions supporting the coastal construction building codes review shall be directed to support implementation of the subject beach management plan.

**History.--**s. 6, ch. 98-311; s. 3, ch. 99-247; s. 7, ch. 2000-141; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

**161.0531 Development agreements.--**

(1) At the request of the property owner, the department is authorized to enter into a development agreement with such property owner, or modify or extend an existing development agreement, for activities seaward of a coastal construction control line. All such agreements must further the conservation, preservation, and protection of the beach-dune system and cause no measurable interference with marine turtles or their nesting sites.

(2) For purposes of this section, "development agreement" means contractual agreements between property owners and the department concerning siting and design criteria and the permitting requirements and environmental enhancements required by this chapter for a proposed construction activity seaward of the coastal construction control line.

(3) A development agreement shall include the following:

- (a) A legal description of the land subject to the agreement, and the names of the legal and equitable owners of the land.
- (b) The duration of the agreement.
- (c) A description of the siting and design features of the proposed development or activity.
- (d) Adequate engineering data concerning inlet and shoreline stability and storm tides related to shoreline topography.
- (e) A description of the permitting requirements and environmental enhancements of the development.
- (f) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the department for the protection of the environment.



- (g) A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations.
- (h) A statement that all filing, processing, administration, and issuance fees have been paid.
- (4) A development agreement shall not authorize construction for a period longer than 5 years from the date of execution.
- (5) The department shall inspect land subject to a development agreement at least once every 12 months to determine that the project is in compliance with the terms of the development agreement, unless the department determines a lesser standard meets the intent of the terms of the development agreement.
- (6) Within 14 days after the date for a request for a chapter 120 hearing has passed, or after a hearing has been held and a decision has been rendered, the developer shall record the development agreement with the clerk of the circuit court in the county where the development is located. A development agreement shall not be effective until it is properly recorded in the public records of the county.
- (7) The department's approval of a development agreement, or modification or extension of an existing development agreement, pursuant to this section constitutes final agency action subject to the provisions of chapter 120. However, the property owner may not challenge the department's refusal to enter into a development agreement or modification or extension of an existing agreement.

**History.**--s. 2, ch. 96-371.

**161.0535 Permits; fees, costs.**--The department may establish by rule a fee schedule and may assess fees for the filing, processing, and issuance of permits issued under ss. 161.041 and 161.053. The fee schedule must contain categories of permits based on the varying costs of evaluating applications for different types of proposed construction. The fee schedule must be based on the actual costs of administering these permitting programs. Moneys from fees assessed under this section must be deposited into the Florida Permit Fee Trust Fund. The department may also assess the applicant for the costs of public notice by publication prior to the consideration of these permit applications; alternatively, the department may require an applicant to publish, at the applicant's expense, in a newspaper of general circulation within the affected area, a notice of receipt of the application and a notice of the intended agency action.

**History.**--s. 2, ch. 83-247; s. 34, ch. 85-55; s. 14, ch. 87-97; s. 486, ch. 94-356; s. 2, ch. 96-321.

**161.054 Administrative fines; liability for damage; liens.**--

- (1) In addition to the penalties provided for in ss. 161.052, 161.053, and 161.121, any person, firm, corporation, or governmental agency, or agent thereof, refusing to comply with or willfully violating any of the provisions of s. 161.041, s. 161.052, or s. 161.053, or any rule or order prescribed by the department thereunder, shall incur a fine for each offense in an amount up to \$10,000 to be fixed, imposed, and collected by the department. Each day during any portion of which such violation occurs constitutes a separate offense.
- (2) Whenever any person, firm, corporation, or governmental agency, or agent thereof, knowingly or by gross negligence violates any of the provisions of s. 161.041, s. 161.052, or s. 161.053 so that damage is caused to sovereignty lands seaward of mean high water or to beaches, shores, or beach-dune systems, including animal, plant, or aquatic life thereon, such violator shall be liable for such

damage. If two or more persons, firms, corporations, or governmental agencies, or their agents, cause damage, and if liability for such damage cannot be apportioned, each violator shall be jointly and severally liable for the damage. If, however, liability for such damage can be apportioned, each violator is liable only for that portion of the damage and subject to that portion of the fine attributable to his or her violation.

- (3) The imposition of a fine or an award of damages pursuant to this section shall create a lien upon the real and personal property of the violator, enforceable by the department as are statutory liens under chapter 85. The proceeds of such fines and awards of damages shall be deposited in the Ecosystem Management and Restoration Trust Fund.
- (4) Fines imposed by the department or damages awarded shall be of such amount so as to ensure immediate and continued compliance with the provisions of ss. 161.041, 161.052, and 161.053.
- (5) Any applicant for a permit pursuant to s. 161.041, s. 161.052, or s. 161.053 shall be denied a permit if a lien imposed upon the property pursuant to the provisions of this section is outstanding against the applicant; however, the department may authorize a permit after the fact in accordance with s. 161.041, s. 161.052, or s. 161.053, conditioned upon a resolution of the violation.

**History.**--s. 4, ch. 80-183; s. 3, ch. 83-247; s. 35, ch. 85-55; s. 2, ch. 86-138; s. 15, ch. 87-97; s. 30, ch. 91-45; s. 894, ch. 95-147; s. 3, ch. 96-321.

#### **161.055 Concurrent processing of permits.--**

- (1) When an activity for which a permit is required under this chapter also requires a permit, authorization, or approval described in paragraph (2)(b), the department may, by rule, provide that the activity may be undertaken only upon receipt of a single permit from the department called a "joint coastal permit," as provided in this section.
- (2) The department may adopt rules requiring concurrent application submittal and establishing a concurrent review and permitting procedure for any activity regulated under this chapter that also requires one or more of the permits, authorizations, or approvals described in paragraph (a) or paragraph (b). The rules must establish concurrent procedures for processing applications under this part with one or more of the permits, authorizations, or approvals described in paragraph (a) or paragraph (b). An applicant that proposes such an activity must submit, as part of the permit application under this chapter, all information necessary to satisfy the requirements for issuance of any required:
  - (a) Proprietary authorization under chapters 253 and 258 to use submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund; and
  - (b) Environmental resource permit or dredge and fill permit under part IV of chapter 373.

The timeframes for license approval or denial set forth in s. 120.60(1) do not commence until all required information is received. The rules authorized under this section may also require submittal of such information as is necessary to determine whether the proposed activity will occur on submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, and shall contain provisions for permit processing and issuance of orders which are consistent with s. 373.427 and provisions for providing notice of applications which are consistent with s. 373.413. Authorization under this subsection may not be issued unless the requirements for issuance of any additional required authorizations, permits, waivers, variances, and approvals described in

paragraph (a) or paragraph (b) are also satisfied.

- (3) The review of agency action on an application for issuance of a joint coastal permit must be as provided in s. 373.4275.

**History.**--s. 485, ch. 94-356; s. 22, ch. 96-410.

**161.061 Coastal construction serving no public purpose, endangering human life, health, or welfare, or becoming unnecessary or undesirable.--**

(1) Any coastal construction, or any structure including groins, jetties, moles, breakwaters, seawalls, revetments, or other structures if of a solid or highly impermeable design upon sovereignty lands of Florida, below the mean high-water line of any tidal water of the state, regardless of date of construction or whether a permit has been issued in accordance with this part, which serves no public purpose, which is dangerous to or in any way endangers human life, health, or welfare, or which proves to be undesirable or becomes unnecessary, as determined by the department, shall be adjusted, altered, or removed by the abutting upland property owner after written notice by the division. Request for hearing must be filed by the owner with the department within 15 days after such notice. Adjustments, alterations, or removals required by this section shall be accomplished at no cost to the state. The decision of the department as to whether to adjust, alter, or remove such coastal construction or structure shall be final, and the department shall set a reasonable time within which the adjustment, alteration, or removal shall be accomplished.

(2) In the event that the upland property owner does not adjust, alter, or remove any coastal construction, or other structure including groins, jetties, moles, breakwaters, seawalls, revetments, or other structures if of a solid or highly impermeable design upon sovereignty lands of Florida, below the mean high-water line, when requested or directed by the department in accordance with subsection (1) of this section, the department may alter, adjust, or remove such coastal construction or structures at its own expense, and the costs thereof shall become a lien upon the property of said abutting upland property owner.

**History.**--s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 23, ch. 78-95; s. 23, ch. 94-356.

**161.071 Prosecuting officers to assist enforcement of this part.--**State attorneys, or other prosecuting officers of the state or county, and sheriffs and their deputies of the several counties of this state, shall assist the department in enforcement of this part. The officers and their deputies shall, upon information that any persons, firms, or corporations are violating any of the provisions of this part, report the same, together with the information in their possession relating thereto, to the department and shall cooperate with the department in carrying out the provisions of this part. The state attorneys and other prosecuting officers of the state or any county, upon the request of the department, shall institute and maintain such legal proceedings as may be necessary to carry out the enforcement of the provisions of this part.

**History.**--s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 24, ch. 94-356.

**161.081 Powers of Department of Legal Affairs.--**When a permit is required under this part and has not been issued as provided herein, any such project or physical activity shall be considered a public nuisance and the Department of Legal Affairs may at the request of the Department of Environmental Protection institute proceedings to enjoin or abate such nuisance.

**History.**--s. 1, ch. 65-408; ss. 11, 25, 35, ch. 69-106; s. 1, ch. 95-150.

**161.082 Review of innovative technologies for beach nourishment.**--The department is directed to periodically review innovative technologies for beach nourishment and, on a limited basis, authorize, through the permitting process, experimental projects that are alternatives to traditional dredge and fill projects to determine the most effective and less costly techniques for beach nourishment.

**History.**--s. 2, ch. 93-8; s. 25, ch. 94-356; s. 6, ch. 2000-346.

**161.085 Rigid coastal armoring structures.**--

(1) The state recognizes the need to protect private structures and public infrastructure from damage or destruction caused by coastal erosion. Until such time as the state takes measures to reduce erosion on a regional basis, this section is the state's policy on rigid coastal armoring structures, pursuant to ss. 161.041 and 161.053, for protection of private property and public infrastructure.

(2) In order to allow state and federal agencies, political subdivisions of the state, and municipalities to preplan for emergency response for the protection of private structures and public infrastructure, the department, pursuant to s. 161.041 or s. 161.053, may issue permits for the present or future installation of rigid coastal armoring structures or other emergency response measures to protect private structures, public infrastructure, and private and public property.

(a) Permits for present installations may be issued if it is determined that private structures or public infrastructure is vulnerable to damage from frequent coastal storms.

(b) Permits for future installations of coastal armoring structures may be issued contingent upon the occurrence of specified changes to the coastal system which would leave upland structures vulnerable to damage from frequent coastal storms. The department may assist agencies, political subdivisions of the state, or municipalities, at their request, in identifying areas within their jurisdictions which may require permits for future installations of rigid coastal armoring structures.

(c) Permits for present installations of coastal armoring may be issued where such installation is between and adjoins at both ends rigid coastal armoring structures, follows a continuous and uniform armoring structure construction line with existing coastal armoring structures, and is no more than 250 feet in length.

Structures built pursuant to permits granted under this subsection may be ordered removed by the department only if such structures are determined to be unnecessary or to interfere with the installation of a beach restoration project.

(3) If erosion occurs as a result of a storm event which threatens private structures or public infrastructure and a permit has not been issued pursuant to subsection (2), unless the authority has been revoked by order of the department pursuant to subsection (8), an agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of rigid coastal armoring structures, exclusive of those authorized under subsection (9), for the protection of private structures or public infrastructure, or take other measures to relieve the threat to private structures or public infrastructure as long as the following items are considered and incorporated into such emergency measures:

(a) Protection of the beach-dune system.

(b) Siting and design criteria for the protective structure.

(c) Impacts on adjacent properties.

(d) Preservation of public beach access.

(e) Protection of native coastal vegetation, nesting state or federally threatened or endangered species, and nesting marine turtles and their hatchlings.

(4) The agency, political subdivision, or municipality shall notify the department if it installs or authorizes the installation of any rigid coastal armoring structures pursuant to its authority under subsection (3).

(5) The department shall adopt rules to implement the provisions of this section.

(6) A rigid coastal armoring structure or other structure constructed under the authority of subsection (3) shall be temporary, and the agency, political subdivision, municipality, or private property owner shall remove the structure or submit a permit application to the department for a permanent rigid coastal armoring structure, pursuant to s. 161.041 or s. 161.053, within 60 days after the emergency installation of the structure or other measure to relieve the threat to private structures or public infrastructure. Construction debris shall not be used in the construction of a rigid coastal armoring structure.

(7) The term "public infrastructure" means, for purposes of this section, public evacuation routes, public emergency facilities, bridges, power facilities, water or wastewater facilities, other utilities, or hospitals, or structures of local governmental, state, or national significance.

(8) If a political subdivision or municipality installs or authorizes installation of a rigid coastal armoring structure that does not comply with subsection (3), and if the department determines that the action harms or interferes with the protection of the beach dune system, adversely impacts adjacent properties, interferes with public beach access, or harms native coastal vegetation or nesting marine turtles or their hatchlings, the department may revoke by order the authority of the political subdivision or municipality under subsection (3) to install or authorize the installation of rigid coastal armoring structures.

(9) The department may authorize dune restoration incorporating sand-filled geotextile containers or similar structures proposed as the core of a restored dune feature when the conditions of paragraphs (a)-(c) and the requirements of s. 161.053 are met.

(a) A permit may be granted by the department under this subsection for dune restoration incorporating geotextile containers or similar structures provided that such projects:

1. Provide for the protection of an existing major structure or public infrastructure, and, notwithstanding any definition in department rule to the contrary, that major structure or public infrastructure is vulnerable to damage from frequent coastal storms, or is upland of a beach-dune system which has experienced significant beach erosion from such storm events.
2. Are constructed using native or beach-quality sand and native salt-tolerant vegetation suitable for dune stabilization as approved by the department.
3. May include materials other than native or beach-quality sand such as geotextile materials that are used to contain beach-quality sand for the purposes of maintaining the stability and longevity of the dune core.
4. Are continuously covered with 3 feet of native or beach-quality sand and stabilized with native

salt-tolerant vegetation.

5. Are sited as far landward as practicable, balancing the need to minimize excavation of the beach-dune system, impacts to nesting marine turtles and other nesting state or federally threatened or endangered species, and impacts to adjacent properties.
6. Are designed and sited in a manner that will minimize the potential for erosion.
7. Do not materially impede access by the public.
8. Are designed to minimize adverse effects to nesting marine turtles and turtle hatchlings, consistent with s. 370.12.
9. Are designed to facilitate easy removal of the geotextile containers if needed.
10. The United States Fish and Wildlife Service has approved an Incidental Take Permit for marine turtles and other federally threatened or endangered species pursuant to s. 7 or s. 10 of the Endangered Species Act for the placement of the structure if an Incidental Take Permit is required.
  - (b) The applicant or successive property owners shall provide financial assurances in the form of surety or performance bonds or other financial responsibility mechanisms that the authorized geotextile containers will be removed if the requirements of this subsection and the permit conditions are not met. The permittee shall file a notice of formal permit conditions in the public records of the county where the permitted activity is located.
  - (c) The department shall order removal of the geotextile container if the conditions of subparagraph (a)4. are not met, if the project ceases to function due to irreparable damage, if the project is determined by the department to have caused a significant adverse impact to the beach-dune system, or if the United States Fish and Wildlife Service revokes the Incidental Take Permit required in subparagraph (a)10.
  - (d) The department may require any engineering certifications that are necessary to ensure the adequacy of the design and construction of the permitted project.
  - (e) Upon receipt of a permit application, the department must notify the applicant and agent of all the statutory provisions of this subsection.
  - (f) The department shall review, with third-party expert involvement, the performance of dune restoration incorporating geotextile sand-filled containers to determine whether such structures provide upland protection and to determine their impact on the beach-dune system and adjacent properties. Such structures shall continue to be evaluated to determine if they are a more effective form of dune restoration than beach-compatible sand and native vegetation. Based on such analysis and peer review, the department shall recommend to the Governor, the President of the Senate, and the Speaker of the House of Representatives if the provisions of this subsection should be modified. It is the intent of the Legislature that until such recommendations are transmitted and considered by the Legislature, there shall be no changes in the requirements or conditions contained in this subsection.
  - (g) The department shall not include structures authorized under this subsection in the statewide comprehensive beach management plan or the annual list of local government funding requests submitted to the Legislature pursuant to ss. 161.091 and 161.161.

**History.**--s. 1, ch. 95-288; s. 4, ch. 99-247; s. 1, ch. 2006-68; s. 2, ch. 2007-99.

**161.088 Declaration of public policy respecting beach erosion control and beach restoration and nourishment projects.**--Because beach erosion is a serious menace to the economy and general welfare of the people of this state and has advanced to emergency proportions, it is hereby declared to be a necessary governmental responsibility to properly manage and protect Florida beaches fronting on the Atlantic Ocean, Gulf of Mexico, and Straits of Florida from erosion and that the Legislature make provision for beach restoration and nourishment projects, including inlet management projects that cost-effectively provide beach-quality material for adjacent critically eroded beaches. The Legislature declares that such beach restoration and nourishment projects, as approved pursuant to s. 161.161, are in the public interest; must be in an area designated as critically eroded shoreline, or benefit an adjacent critically eroded shoreline; must have a clearly identifiable beach management benefit consistent with the state's beach management plan; and must be designed to reduce potential upland damage or mitigate adverse impacts caused by improved, modified, or altered inlets, coastal armoring, or existing upland development. Given the extent of the problem of critically eroded beaches, it is also declared that beach restoration and nourishment projects shall be funded in a manner that encourages all cost-saving strategies, fosters regional coordination of projects, improves the performance of projects, and provides long-term solutions. The Legislature further declares that nothing herein is intended to reduce or amend the beach protection programs otherwise established in this chapter or to result in local governments altering the coastal management elements of their local government comprehensive plans pursuant to chapter 163.

**History.**--s. 3, ch. 86-138; s. 1, ch. 98-311; s. 7, ch. 2000-346.

**161.091 Beach management; funding; repair and maintenance strategy.**--

(1) Subject to such appropriations as the Legislature may make therefor from time to time, disbursements from the Ecosystem Management and Restoration Trust Fund may be made by the department in order to carry out the proper state responsibilities in a comprehensive, long-range, statewide beach management plan for erosion control; beach preservation, restoration, and nourishment; and storm and hurricane protection. Legislative intent in appropriating such funds is for the implementation of those projects that contribute most significantly to addressing the state's beach erosion problems.

(2) The department shall develop a multiyear repair and maintenance strategy that:

(a) Encourages regional approaches to ensure the geographic coordination and sequencing of prioritized projects;

(b) Reduces equipment mobilization and demobilization costs;

(c) Maximizes the infusion of beach-quality sand into the system;

(d) Extends the life of beach nourishment projects and reduces the frequency of nourishment; and

(e) Promotes inlet sand bypassing to replicate the natural flow of sand interrupted by improved, modified, or altered inlets and ports.

(3) In accordance with the intent expressed in s. 161.088 and the legislative finding that erosion of the beaches of this state is detrimental to tourism, the state's major industry, further exposes the state's highly developed coastline to severe storm damage, and threatens beach-related jobs, which, if not stopped, could significantly reduce state sales tax revenues, funds deposited into the

State Treasury to the credit of the Ecosystem Management and Restoration Trust Fund, in the annual amounts provided in s. 201.15(11), shall be used, for a period of not less than 15 years, to fund the development, implementation, and administration of the state's beach management plan, as provided in ss. 161.091-161.212, prior to the use of such funds deposited pursuant to s. 201.15(11) in that trust fund for any other purpose.

**History.**--s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 1, ch. 71-182; s. 1, ch. 72-170; ss. 1-3, ch. 74-102; s. 1, ch. 75-288; s. 1, ch. 77-379; s. 6, ch. 78-257; s. 5, ch. 80-183; s. 4, ch. 86-138; ss. 16, 23, ch. 87-97; s. 1, ch. 91-79; s. 4, ch. 96-321; s. 1, ch. 97-187; s. 2, ch. 98-311; s. 5, ch. 99-247; s. 8, ch. 2000-346.

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

- (1) The Legislature recognizes that beach erosion is a statewide problem that does not confine its effects to local governmental jurisdictions and that beach erosion can be adequately addressed most efficiently by a state-initiated program of beach restoration and beach nourishment. However, since local beach communities derive the primary benefits from the presence of adequate beaches, a program of beach restoration and beach nourishment should not be accomplished without a commitment of local funds to combat the problem of beach erosion. Accordingly, the Legislature declares that the state, through the department, shall determine those beaches which are critically eroded and in need of restoration and nourishment and may authorize appropriations to pay up to 75 percent of the actual costs for restoring and nourishing a critically eroded beach. The local government in which the beach is located shall be responsible for the balance of such costs.
- (2) To carry out the beach and shore preservation programs, the department is hereby constituted as the beach and shore preservation authority for the state. In this capacity, the secretary of the department may at his or her own initiative take all necessary steps as soon as practicable and desirable to implement the provisions of this chapter.
- (3) Whenever a beach erosion control project has been authorized by Congress for federal financial participation in accordance with any Act of Congress relating to beach erosion control in which nonfederal participation is required, it shall be the policy of the state to assist with an equitable share of such funds to the extent that funds are available, as determined by the department.
- (4) The department, for itself or on behalf of any and all duly established beach and shore preservation districts and local governments within the state, may enter into cooperative agreements and otherwise cooperate with, and meet the requirements and conditions (including, but not limited to, execution of indemnification agreements) of, federal, state, and other local governments and political entities, or any agencies or representatives thereof, for the purpose of improving, furthering, and expediting the beach management program.
- (5) The department is authorized, for and on behalf of the state, to accept such federal moneys for beach erosion control as are available and to sign all necessary agreements therefor and to do and perform all necessary acts in connection therewith to effectuate the intent and purposes of this act.
- (6) The department is authorized to make application for federal participation in the cost of any beach and shore preservation project under any Acts of Congress and all amendments thereto.
- (7) The department is authorized to implement regional components of the beach management



plan pursuant to ss. 161.091 and 161.161 and, where appropriate, to enter into agreements with the Federal Government, inlet districts, port authorities, intercoastal waterway districts, and local governments to cost-share and coordinate such activity.

(8) The department is authorized to sponsor or cosponsor demonstration projects of new or innovative technologies which have the potential to reduce project costs, conserve beach quality sand, extend the life of beach nourishment projects, and improve inlet sand bypassing pursuant to s. 161.091.

(9)(a) Because improved, modified, or altered inlets are a significant cause of beach erosion, it is the Legislature's intent to manage the erosive impacts of inlets under the state's beach management program. Accordingly, it is the further intent of the Legislature for the state to cost-share those components of inlet projects that minimize the erosive effects of the inlet or cost-effectively provide for the placement of beach-quality material on adjacent eroded beaches.

(b) The department is authorized to enter into cooperative agreements with local governments, including cities, counties, and special districts, for inlet management activities and to cost-share those components of inlet projects that minimize the erosive effects of the inlet or cost-effectively provide for the placement of beach-quality material on adjacent eroded beaches.

(10) The department is authorized to pay up to 100 percent of the costs of approved beach erosion control projects when construction and maintenance are on lands of which the state is the upland riparian owner.

(11) With regard to a project approved in accordance with s. 161.161, the department is authorized to pay from legislative appropriations specifically provided for these purposes an amount up to 75 percent of the costs of contractual services, including, but not limited to, the costs for:

(a) Feasibility and related planning studies.

(b) Design.

(c) Construction.

(d) Monitoring. The state shall cost-share in all biological and physical monitoring requirements which are based upon scientifically based criteria.

(12) A project, in order to receive state funds, shall provide for adequate public access, protect natural resources, and provide protection for endangered and threatened species.

(13) The department shall not fund projects that provide only recreational benefits. All funded activities must have an identifiable beach erosion control or beach preservation benefit directed toward maintaining or enhancing sand in the system. Activities ineligible for cost-sharing include, but are not limited to:

(a) Recreational structures such as piers, decks, and boardwalks.

(b) Park activities and facilities except for erosion control.

(c) Aesthetic vegetation.

- (d) Water quality components of stormwater management systems.
  - (e) Experimental or demonstration projects unless favorably peer reviewed or scientifically documented.
  - (f) Hard structures unless designed for erosion control or to enhance beach nourishment project longevity or bypassing performance.
  - (g) Operations and maintenance, with the exception of nourishment.
  - (h) Maintenance and repair of over-walks.
  - (i) Navigation construction, operation, and maintenance activities, except those elements whose purpose is to place or keep sand on adjacent beaches.
- (14) The intent of the Legislature in preserving and protecting Florida's sandy beaches pursuant to this act is to direct beach erosion control appropriations to the state's most severely eroded beaches, and to prevent further adverse impact caused by improved, modified, or altered inlets, coastal armoring, or existing upland development. In establishing annual project funding priorities, the department shall seek formal input from local coastal governments, beach and general government interest groups, and university experts. Criteria to be considered by the department in determining annual funding priorities shall include:
- (a) The severity of erosion conditions, the threat to existing upland development, and recreational and/or economic benefits.
  - (b) The availability of federal matching dollars.
  - (c) The extent of local government sponsor financial and administrative commitment to the project, including a long-term financial plan with a designated funding source or sources for initial construction and periodic maintenance.
  - (d) Previous state commitment and involvement in the project.
  - (e) The anticipated physical performance of the proposed project, including the frequency of periodic planned nourishment.
  - (f) The extent to which the proposed project mitigates the adverse impact of improved, modified, or altered inlets on adjacent beaches.
  - (g) Innovative, cost-effective, and environmentally sensitive applications to reduce erosion.
  - (h) Projects that provide enhanced habitat within or adjacent to designated refuges of nesting sea turtles.
  - (i) The extent to which local or regional sponsors of beach erosion control projects agree to coordinate the planning, design, and construction of their projects to take advantage of identifiable cost savings.
  - (j) The degree to which the project addresses the state's most significant beach erosion problems.

In the event that more than one project qualifies equally under the provisions of this subsection,

the department shall assign funding priority to those projects that are ready to proceed.

(15) Until the unmet demand for repairing Florida's damaged beaches and dunes is satisfied, it is the further intent of the Legislature to cost-share such projects equally between the state and local sponsors.

(16) In order to encourage regional approaches that provide cost savings, and notwithstanding subsection (15), actual cost savings that can be documented as resulting from geographic coordination and sequencing of two or more discrete erosion control projects shall proportionally reduce each local sponsor's cost share as long as the state financial participation does not exceed 75 percent.

(17) The selection of a project engineer acceptable to the department by local government as project sponsor shall be on the basis of competitive negotiation as provided in chapter 287. The project sponsor shall assume full responsibility for all project costs in excess of the state cost limitation.

(18) A local government desiring to initiate and pay the entire cost of designing, constructing, and maintaining an erosion control project prior to the state's initiating such construction may be reimbursed from state funds on the basis of the procedures set forth in s. 161.161, provided the project is approved by the department before initiation of construction and based on legislative appropriations and whether it furthers the provisions of s. 161.161. Such local interests shall, as project sponsor, be responsible for obtaining federal reimbursement in the case of federal-aid projects.

(19) Twenty-five percent of any funds appropriated for implementation of this section shall be held by the department until the last quarter of the fiscal year for which the appropriation is made. This amount shall be used to meet emergencies prescribed in s. 161.111. If no such emergencies occur, then these funds may be released in the last quarter of the fiscal year in which the appropriation is made for projects.

(20) The department shall maintain a current project 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.

(21) The department may adopt rules to implement this section.

**History.**--s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 7, ch. 78-257; s. 5, ch. 86-138; s. 17, ch. 87-97; s. 26, ch. 94-356; s. 1438, ch. 95-147; s. 5, ch. 96-321; s. 3, ch. 98-311; s. 9, ch. 2000-346.

**161.111 Shore erosion emergency.**--If a shore erosion emergency is declared by the Governor, the state, acting through the department, may spend whatever state funds are available to alleviate shore erosion.

**History.**--s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 27, ch. 94-356; s. 10, ch. 2000-346.

**161.121 Penalty.**--Unless otherwise provided in this chapter, whoever shall fail to comply with the provisions of this part is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**--s. 1, ch. 65-408; s. 83, ch. 71-136; s. 2, ch. 77-12; s. 10, ch. 91-224.

**161.131 Construction of ss. 161.011-161.212.**--The provisions of ss. 161.011-161.212 shall be

liberally construed by all concerned in a manner to best accomplish the beach and shore preservation purposes and programs.

**History.**--s. 3, ch. 65-408; s. 6, ch. 86-138.

**161.141 Property rights of state and private upland owners in beach restoration project areas.**--The Legislature declares that it is the public policy of the state to cause to be fixed and determined, pursuant to beach restoration, beach nourishment, and erosion control projects, the boundary line between sovereignty lands of the state bordering on the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida, and the bays, lagoons, and other tidal reaches thereof, and the upland properties adjacent thereto; except that such boundary line shall not be fixed for beach restoration projects that result from inlet or navigation channel maintenance dredging projects unless such projects involve the construction of authorized beach restoration projects. However, prior to construction of such a beach restoration project, the board of trustees must establish the line of mean high water for the area to be restored; and any additions to the upland property landward of the established line of mean high water which result from the restoration project remain the property of the upland owner subject to all governmental regulations and are not to be used to justify increased density or the relocation of the coastal construction control line as may be in effect for such upland property. The resulting additions to upland property are also subject to a public easement for traditional uses of the sandy beach consistent with uses that would have been allowed prior to the need for the restoration project. It is further declared that there is no intention on the part of the state to extend its claims to lands not already held by it or to deprive any upland or submerged land owner of the legitimate and constitutional use and enjoyment of his or her property. If an authorized beach restoration, beach nourishment, and erosion control project cannot reasonably be accomplished without the taking of private property, the taking must be made by the requesting authority by eminent domain proceedings. In any action alleging a taking of all or part of a property or property right as a result of a beach restoration project, in determining whether such taking has occurred or the value of any damage alleged with respect to the owner's remaining upland property adjoining the beach restoration project, the enhancement, if any, in value of the owner's remaining adjoining property of the upland property owner by reason of the beach restoration project shall be considered. If a taking is judicially determined to have occurred as a result of a beach restoration project, the enhancement in value to the owner's remaining adjoining property by reason of the beach restoration project shall be offset against the value of the damage, if any, resulting to such remaining adjoining property of the upland property owner by reason of the beach restoration project, but such enhancement in the value shall not be offset against the value of the property or property right alleged to have been taken. If the enhancement in value shall exceed the value of the damage, if any, to the remaining adjoining property, there shall be no recovery over against the property owner for such excess.

**History.**--s. 1, ch. 70-276; s. 1, ch. 79-233; s. 1, ch. 82-144; s. 7, ch. 86-138; s. 18, ch. 87-97; ss. 28, 487, ch. 94-356; s. 1439, ch. 95-147; s. 11, ch. 2000-346; s. 3, ch. 2007-99.

**161.142 Declaration of public policy relating to improved navigation inlets.**--The Legislature hereby recognizes the need for maintaining navigation inlets to promote commercial and recreational uses of our coastal waters and their resources. The Legislature further recognizes that inlets alter the natural drift of beach-quality sand resources, which often results in these sand resources being deposited around shallow outer-bar areas instead of providing natural nourishment to the downdrift beaches. Therefore:

(1) All construction and maintenance dredgings of beach-quality sand should be placed on the downdrift beaches; or, if placed elsewhere, an equivalent quality and quantity of sand from an alternate location should be placed on the downdrift beaches.

(2) On an average annual basis, a quantity of sand should be placed on the downdrift beaches

equal to the natural net annual longshore sediment transport.

- (3) Construction waterward of the coastal construction control line on downdrift coastal areas, on islands substantially created by the deposit of spoil, located within 1 mile of the centerline of navigation channels or inlets, providing access to ports listed in s. 403.021(9)(b), which suffers or has suffered erosion caused by such navigation channel maintenance or construction shall be exempt from the permitting requirements and prohibitions of subsections (2), (5), and (6) of s. 161.053. The timing and sequence of any construction in such coastal areas shall comply with 44 C.F.R. part 60 and shall provide protection to nesting sea turtles and hatchlings and their habitats and to native salt-resistant vegetation and endangered plant communities.
- (4) The provisions of subsections (1) and (2) shall not be a requirement imposed upon ports listed in s. 403.021(9)(b).

**History.**--s. 8, ch. 86-138; s. 19, ch. 87-97.

**161.144 Policy guidance related to sand source management.**--The Legislature recognizes that beach-quality sand for the nourishment of the state's critically eroded beaches is an exhaustible resource, in ever-decreasing supply, and must be carefully managed for the systemwide benefit of the state's beaches. Therefore, the Department of Environmental Protection, pursuant to s. 161.161 and in cooperation with federal and local government agencies, shall develop and maintain an inventory of identified offshore sand sources as part of the regional elements of its comprehensive long-term beach management plan. Offshore sand sources in state or federal waters which are identified for potential, proposed, or permitted use shall be clearly mapped or otherwise noted and readily available for public review. In addition, boards of county commissioners of coastal counties adjacent to sand sources proposed for use outside of the region or subregion shall be provided written notice by the department and an opportunity to comment during a specific project's planning and permitting stages. The department shall identify in its annual list of local government funding requests submitted to the Legislature, pursuant to s. 161.091, those projects that propose to use sand sources from another region or subregion at the time the list is submitted.

**History.**--s. 4, ch. 2007-99.

**161.151 Definitions; ss. 161.141-161.211.**--As used in ss. 161.141-161.211:

- (1) "Board of trustees" means the Board of Trustees of the Internal Improvement Trust Fund.
- (2) "Requesting authority" means any coastal county, municipality, or beach erosion control district which requests a survey by the board of trustees under the provisions of ss. 161.141-161.211.
- (3) "Erosion control line" means the line determined in accordance with the provisions of ss. 161.141-161.211 which represents the landward extent of the claims of the state in its capacity as sovereign titleholder of the submerged bottoms and shores of the Atlantic Ocean, the Gulf of Mexico, and the bays, lagoons and other tidal reaches thereof on the date of the recording of the survey as authorized in s. 161.181.
- (4) "Authorized beach restoration project" means a beach project authorized by the United States Congress or the department which involves a specific project engineering design and a project maintenance program for a period of not less than 10 years.

**History.**--s. 2, ch. 70-276; s. 1, ch. 70-439; s. 2, ch. 82-144.

### 161.161 Procedure for approval of projects.--

- (1) The department shall develop and maintain a comprehensive long-term management plan for the restoration and maintenance of the state's critically eroded beaches fronting the Atlantic Ocean, Gulf of Mexico, and Straits of Florida. The beach management plan shall:
  - (a) Address long-term solutions to the problem of critically eroded beaches in this state.
  - (b) Evaluate each improved, modified, or altered inlet and determine whether the inlet is a significant cause of beach erosion. With respect to each inlet determined to be a significant cause of beach erosion, the plan shall include:
    1. The extent to which such inlet causes beach erosion and recommendations to mitigate the erosive impact of the inlet, including, but not limited to, recommendations regarding inlet sediment bypassing; modifications to channel dredging, jetty design, and disposal of spoil material; establishment of feeder beaches; and beach restoration and beach nourishment; and
    2. Cost estimates necessary to take inlet corrective measures and recommendations regarding cost sharing among the beneficiaries of such inlet.
  - (c) Design criteria for beach restoration and beach nourishment projects, including, but not limited to:
    1. Dune elevation and width and revegetation and stabilization requirements; and
    2. Beach profile.
  - (d) Evaluate the establishment of feeder beaches as an alternative to direct beach restoration and recommend the location of such feeder beaches and the source of beach-compatible sand.
  - (e) Identify causes of shoreline erosion and change, calculate erosion rates, and project long-term erosion for all major beach and dune systems by surveys and profiles.
  - (f) Identify shoreline development and degree of density and assess impacts of development and shoreline protective structures on shoreline change and erosion.
    - (g) Identify short-term and long-term economic costs and benefits of beaches, including recreational value to user groups, tax base, revenues generated, and beach acquisition and maintenance costs.
  - (h) Study dune and vegetation conditions.
  - (i) Identify beach areas used by marine turtles and develop strategies for protection of the turtles and their nests and nesting locations.
  - (j) Identify alternative management responses to preserve undeveloped beach and dune systems, to restore damaged beach and dune systems, and to prevent inappropriate development and redevelopment on migrating beaches, and consider beach restoration and nourishment, armoring, relocation and abandonment, dune and vegetation restoration, and acquisition.
  - (k) Establish criteria, including costs and specific implementation actions, for alternative

management techniques.

(l) Select and recommend appropriate management measures for all of the state's sandy beaches in a beach management program.

(m) Establish a list of beach restoration and beach nourishment projects, arranged in order of priority, and the funding levels needed for such projects.

The beach management plan may be prepared at the regional level based upon areas of greatest need and probable federal funding. Such regional plans shall be components of the statewide beach management plan and shall serve as the basis for state funding decisions upon approval in accordance with chapter 86-138, Laws of Florida. In accordance with a schedule established for the submission of regional plans by the department, any completed plan must be submitted to the secretary of the department for approval no later than March 1 of each year. These regional plans shall include, but shall not be limited to, recommendations of appropriate funding mechanisms for implementing projects in the beach management plan, giving consideration to the use of single-county and multicounty taxing districts or other revenue generation measures by state and local governments and the private sector. Prior to presenting the plan to the secretary of the department, the department shall hold a public meeting in the areas for which the plan is prepared. The plan submission schedule shall be submitted to the secretary for approval. Any revisions to such schedule must be approved in like manner.

(2) Upon approval of the beach management plan, the secretary shall present to the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees recommendations for funding of beach erosion control projects. Such recommendations shall be presented to such members of the Legislature in the priority order specified in the plan and established pursuant to criteria contained in s. 161.101(14).

(3) Once a project is determined to be undertaken, a survey of all or part of the shoreline within the jurisdiction of the local government in which the beach is located shall be conducted in order to establish the area of beach to be protected by the project and locate an erosion control line. No provision of ss. 161.141-161.211 shall be construed as preventing a local government from participating in the funding of erosion control projects or surveys undertaken in accordance with the provisions of ss. 161.141-161.211. In lieu of conducting a survey, the board of trustees may accept and approve a survey as initiated, conducted, and submitted by the appropriate local government if said survey is made in conformity with the appropriate principles set forth in ss. 161.141-161.211.

(4) Upon completion of the survey depicting the area of the beach erosion control project and the proposed location of the erosion control line, the board of trustees shall give notice of the survey and the date on which the board of trustees will hold a public hearing for the purpose of receiving evidence on the merits of the proposed erosion control line and, if approval is granted, of locating and establishing such requested erosion control line. Such notice shall be by publication in a newspaper of general circulation published in the county or counties in which the proposed beach erosion control project shall be located not less than once a week for 3 consecutive weeks and by mailing copies of such notice by certified or registered mail to each riparian owner of record of upland property lying within 1,000 feet (radial distance) of the shoreline to be extended through construction of the proposed beach erosion control project, as his or her name and address appear upon the latest tax assessment roll, in order that any persons who have an interest in the location of such requested erosion control line can be present at such hearing to submit their views concerning the precise location of the proposed erosion control line. Such notice shall be in addition to any notice requirement in chapter 120.

(5) The board of trustees shall approve or disapprove the erosion control line for a beach

restoration project. In locating said line, the board of trustees shall be guided by the existing line of mean high water, bearing in mind the requirements of proper engineering in the beach restoration project, the extent to which erosion or avulsion has occurred, and the need to protect existing ownership of as much upland as is reasonably possible.

(6) In no event shall the department undertake a beach restoration or beach nourishment project where a local share is required without the approval of the local government or governments responsible for that local share.

(7) The department may adopt rules to administer this section.

**History.**--s. 3, ch. 70-276; s. 1, ch. 70-439; s. 23, ch. 78-95; s. 2, ch. 79-233; s. 9, ch. 86-138; s. 20, ch. 87-97; s. 29, ch. 94-356; s. 1440, ch. 95-147; s. 6, ch. 96-321; s. 3, ch. 96-371; s. 4, ch. 98-311; s. 12, ch. 2000-346.

**161.163 Coastal areas used by sea turtles; rules.**--The department shall adopt by rule a designation of coastal areas which are utilized, or are likely to be utilized, by sea turtles for nesting. The department shall also adopt by rule guidelines for local government regulations that control beachfront lighting to protect hatching sea turtles.

**History.**--s. 15, ch. 86-138; s. 1, ch. 2000-211.

**161.181 Recording of resolution and survey of board of trustees.**--If no review is taken within the time prescribed from the decision of the board of trustees or, if review be timely taken, in the absence of a final decision of a court of competent jurisdiction preventing the implementation of a beach erosion control project or invalidating, abolishing, or otherwise preventing the establishment and recordation of the erosion control line as provided herein, the board of trustees shall file in the public records of the county or counties in which the erosion control line lies, a copy of its resolution approving the beach erosion control project and locating the erosion control line and shall also file and cause to be recorded in the book of plats of said county or counties a survey showing the area of beach to be protected and the location of the erosion control line.

**History.**--s. 5, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

**161.191 Vesting of title to lands.**--

(1) Upon the filing of a copy of the board of trustees' resolution and the recording of the survey showing the location of the erosion control line and the area of beach to be protected as provided in s. 161.181, title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of such line shall be vested in the riparian upland owners whose lands either abut the erosion control line or would have abutted the line if it had been located directly on the line of mean high water on the date the board of trustees' survey was recorded.

(2) Once the erosion control line along any segment of the shoreline has been established in accordance with the provisions of ss. 161.141-161.211, the common law shall no longer operate to increase or decrease the proportions of any upland property lying landward of such line, either by accretion or erosion or by any other natural or artificial process, except as provided in s. 161.211(2) and (3). However, the state shall not extend, or permit to be extended through artificial means, that portion of the protected beach lying seaward of the erosion control line beyond the limits set forth in the survey recorded by the board of trustees unless the state first obtains the written consent of all riparian upland owners whose view or access to the water's edge



would be altered or impaired.

**History.**--s. 6, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

**161.201 Preservation of common-law rights.**--Any upland owner or lessee who by operation of ss. 161.141-161.211 ceases to be a holder of title to the mean high-water line shall, nonetheless, continue to be entitled to all common-law riparian rights except as otherwise provided in s.

161.191(2), including but not limited to rights of ingress, egress, view, boating, bathing, and fishing. In addition the state shall not allow any structure to be erected upon lands created, either naturally or artificially, seaward of any erosion control line fixed in accordance with the provisions of ss. 161.141-161.211, except such structures required for the prevention of erosion. Neither shall such use be permitted by the state as may be injurious to the person, business, or property of the upland owner or lessee; and the several municipalities, counties and special districts are authorized and directed to enforce this provision through the exercise of their respective police powers.

**History.**--s. 7, ch. 70-276.

**161.211 Cancellation of resolution for nonperformance by board of trustees.--**

(1) If for any reason construction of the beach erosion control project authorized by the board of trustees is not commenced within 2 years from the date of the recording of the board of trustees' survey, as provided in s. 161.181, or in the event construction is commenced but halted for a period exceeding 6 months from commencement, then, upon receipt of a written petition signed by those owners or lessees of a majority of the lineal feet of riparian property which either abuts or would have abutted the erosion control line if the same had been located at the line of mean high water on the date the board of trustees' survey was recorded, the board of trustees shall forthwith cause to be canceled and vacated of record the resolution authorizing the beach erosion control project and the survey locating the erosion control line, and the erosion control line shall be null and void and of no further force or effect.

(2) If the state, county, municipality, erosion control district, or other governmental agency charged with the responsibility of maintaining the protected beach fails to maintain the same and as a result thereof the shoreline gradually recedes to a point or points landward of the erosion control line as established herein, the provisions of s. 161.191(2) shall cease to be operative as to the affected upland.

(3) In the event a substantial portion of the shoreline encompassed within the erosion control project recedes landward of the erosion control line, the board of trustees, on its own initiative, may direct or request, or, upon receipt of a written petition signed by the owners or lessees of a majority of the lineal feet of riparian property lying within the erosion control project, shall direct or request, the agency charged with the responsibility of maintaining the beach to restore the same to the extent provided for in the board of trustees' recorded survey. If the beach is not restored as directed or requested by the board of trustees within a period of 1 year from the date of the directive or request, the board of trustees shall forthwith cause to be canceled and vacated of record the resolution authorizing the beach erosion control project and the survey locating the erosion control line, and the erosion control line shall be null and void and of no further force or effect.

**History.**--s. 8, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

**161.212 Judicial review relating to permits and licenses.--**

(1) As used in this section, unless the context otherwise requires:

(a) "Agency" means any official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of state government.

(b) "Permit" means any permit or license required by this chapter.

(2) Any person substantially affected by a final action of any agency with respect to a permit may seek review within 90 days of the rendering of such decision and request monetary damages and other relief in the circuit court in the judicial circuit in which the affected property is located; however, circuit court review shall be confined solely to determining whether final agency action is an unreasonable exercise of the state's police power constituting a taking without just compensation. Review of final agency action for the purpose of determining whether the action is in accordance with existing statutes or rules and based on competent substantial evidence shall proceed in accordance with chapter 120.

(3) If the court determines the decision reviewed is an unreasonable exercise of the state's police power constituting a taking without just compensation, the court shall remand the matter to the agency which shall, within a reasonable time:

(a) Agree to issue the permit;

(b) Agree to pay appropriate monetary damages; however, in determining the amount of compensation to be paid, consideration shall be given by the court to any enhancement to the value of the land attributable to governmental action; or

(c) Agree to modify its decision to avoid an unreasonable exercise of police power.

(4) The agency shall submit a statement of its agreed-upon action to the court in the form of a proposed order. If the action is a reasonable exercise of police power, the court shall enter its final order approving the proposed order. If the agency fails to submit a proposed order within a reasonable time not to exceed 90 days which specifies an action that is a reasonable exercise of police power, the court may order the agency to perform any of the alternatives specified in subsection (3).

(5) The court shall award reasonable attorney's fees and court costs to the agency or substantially affected person, whichever prevails.

(6) The provisions of this section are cumulative and shall not be deemed to abrogate any other remedies provided by law.

**History.**--ss. 1, 2, 3, 4, 5, 6, ch. 78-85.

**161.242 Harvesting of sea oats and sea grapes prohibited; possession prima facie evidence of violation.--**

(1) The purpose of this section is to protect the beaches and shores of the state from erosion by preserving natural vegetative cover to bind the sand.

(2) It is unlawful for any purpose to cut, harvest, remove, or eradicate any of the grass commonly known as sea oats or *Uniola paniculata* and *Coccolobis uvifera* commonly known as sea grapes from any public land or from any private land without consent of the owner of such land or person

having lawful possession thereof. Possession of either *Uniola paniculata* or *Coccolobis uvifera* by other than the owner of such land shall constitute prima facie evidence of violation of this section. However, licensed, certified nurserymen who grow any of the native plants listed in this section from seeds or by vegetative propagation are specifically permitted to sell these commercially grown plants and shall not be in violation of this section of the law if they do so, as it is the intent of the law to preserve and encourage the growth of these native plants which are rapidly disappearing from the state.

**History.**--s. 1, ch. 65-458; s. 1, ch. 67-150; s. 280, ch. 71-136; s. 1, ch. 71-153; s. 1, ch. 73-258; s. 16, ch. 85-234; s. 11, ch. 2000-197.

**Note.**--Former s. 370.041.

## PART II

### BEACH AND SHORE PRESERVATION DISTRICTS

161.25 County beach and shore preservation authority; board of county commissioners.

161.26 Expenses; use of county funds.

161.27 Personnel and facilities.

161.28 Comprehensive county beach and shore preservation program.

161.29 Benefit categories or zones.

161.31 Establishment of districts.

161.32 Existing erosion prevention district.

161.33 Cooperation with federal, state, and other governmental entities.

161.34 Coordination of county preservation activities.

161.35 County shoreline; supervisory and regulatory powers of board of county commissioners.

161.36 General powers of authority.

161.37 Capital, operation and maintenance costs; district benefits tax levy.

161.38 Issuance of bonds.

161.39 Cooperation between two or more counties.

161.40 Tax exemptions.

161.41 Construction of ss. 161.25-161.40.

161.45 Effect of repeal of chapter 158 on districts created prior to repeal.

**161.25 County beach and shore preservation authority; board of county commissioners.**--To carry out the beach and shore preservation program, the board of county commissioners of any county and its successors in office, as an ex officio duty, are hereby severally constituted as the beach and shore preservation authority for their county. In this capacity, any such board of county commissioners may at its own initiative take all necessary steps as soon as practicable and desirable to implement the provisions of this chapter.

**History.**--s. 1, ch. 65-408.

**161.26 Expenses; use of county funds.**--The board of county commissioners of any of the counties is authorized to use any available county funds to meet necessary expenses of its beach and shore preservation program. This may include, among other things, costs of studies, surveys, planning, engineering, coordination, negotiation, acquisition of lands, construction of works and facilities, operation and maintenance, and other activities incidental to acquisition and construction to the extent considered proper and desirable by the board of county commissioners.

**History.**--s. 1, ch. 65-408.

**161.27 Personnel and facilities.**--In carrying out the purposes of this part, the board of county commissioners may use to the extent feasible any personnel or facilities employed by or available to the county. In addition, the board of county commissioners may hire such personnel and contract for such services as may prove necessary or desirable.

**History.**--s. 1, ch. 65-408.

**161.28 Comprehensive county beach and shore preservation program.**--The board of county commissioners of any of the counties may, by assignments to legally qualified personnel, whose services are made available as provided in s. 161.27, initiate and carry on such studies and investigations as may be necessary to plan a logical and suitable program for comprehensive beach and shore preservation within its county. This program may incorporate all or part of the recommendations of the United States Army Corps of Engineers concerning beach and shore restoration and erosion control, if there be any, and may additionally provide to an appropriate extent for the other aspects of beach and shore preservation. In conducting its studies and making its plans for a beach and shore preservation program, the board of county commissioners shall hold sufficient public hearings to ascertain the views and feelings of affected property owners in the various localities of the county regarding the needs to be served and manner in which they should best be served. The board of county commissioners shall give proper and reasonable consideration to all evidence received in planning the beach and shore preservation program.

**History.**--s. 1, ch. 65-408.

**161.29 Benefit categories or zones.**--Upon adoption of a reasonably final plan of improvement for the beach and shore preservation program for the entire county, the board of county commissioners shall conduct, through the use of personnel competent and qualified in this field, an economic analysis of the proposed program, determining the nature and extent of benefits expected to accrue from the program and allocating these benefits to their proper recipients by categories or zones of comparable benefits, and place in the same zone areas of equal benefit, or follow such other method as may be deemed suitable for the purposes of this section. From time to time, the board of county commissioners shall conduct in the same or similar manner a new analysis to better determine and allocate actual or expected benefits.

**History.--s. 1, ch. 65-408.**

**161.31 Establishment of districts.--**

- (1) Districts established under the provisions of this part shall constitute public bodies corporate and politic, exercising public powers and all other powers and duties incident to such bodies.
- (2) The board of county commissioners shall serve as the governing body for all districts created under this authority and shall proceed as expeditiously as possible to determine and implement policy and program for each such district in accordance with the overall county program, except that the board of county commissioners may receive guidance in these matters for each district from an advisory group, consisting of not less than three nor more than five persons, which the board of county commissioners may appoint from any or each such district. Members of such advisory group shall have no definite term of office but shall serve at the pleasure of the board of county commissioners.
- (3) To further provide for efficient administration of the district program, the board of county commissioners may hire such additional personnel or contract for such additional services as it considers necessary or desirable in each case.
- (4) A uniform ad valorem tax not to exceed 1 mill per year on all nonexempt taxable property within the district may be levied for a period of not more than 2 years to defray organizational and administrative costs of said district.

**History.--s. 1, ch. 65-408; s. 3, ch. 71-14.**

**161.32 Existing erosion prevention district.--**This part shall not be construed to impair the existence, powers or functions of any existing erosion prevention, beach or shore preservation districts created by special or local act; provided, however, that any such existing district may re-create and reestablish itself under the provisions of this act as if originally created and established hereunder in all respects, by resolution of its governing body adopting the provisions of chapter 161, in their entirety and thereafter shall function as a beach and shore preservation district created and established under the provisions of this part.

**History.--s. 1, ch. 65-408.**

**161.33 Cooperation with federal, state, and other governmental entities.--**

- (1) The board of county commissioners, for itself or on behalf of any and all duly established beach and shore preservation districts within the county, may enter into cooperative agreements and otherwise cooperate with, and meet the requirements and conditions of, federal, state and other local governments and political entities, or any agencies or representative thereof, for the purpose of improving, furthering and expediting the beach and shore preservation program.
- (2) The board of county commissioners and the department, for and on behalf of each or any district created in accordance with parts I and II of this chapter, are authorized to receive and accept from any federal agency, grants for or in aid of any beach and shore preservation program contemplated by this part, and to receive and accept aid or contributions from any source, of money, property and other things of value. The board of county commissioners is authorized to make application for federal participation in the cost of any beach and shore preservation program under any Acts of Congress and all amendments thereto.

**History.**--s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 30, ch. 94-356.

**161.34 Coordination of county preservation activities.**--The board of county commissioners shall coordinate the work and activity of all districts established hereunder within the county and, to further ensure harmony and consistency with the overall county beach and shore preservation plan, shall establish working liaison with each municipality and other agencies and groups involved in beach and shore preservation activity within the county.

**History.**--s. 1, ch. 65-408.

**161.35 County shoreline; supervisory and regulatory powers of board of county commissioners.**--

- (1) With the consent of the department and of any municipality or other political authority involved, the board of county commissioners may regulate and supervise all physical work or activity along the county shoreline which is likely to have a material physical effect on existing coastal conditions or natural shore processes. This regulatory and supervisory authority shall specifically include, but not be limited to, installation of groins, jetties, moles, breakwaters, seawalls, revetments, and other coastal construction as defined herein. For this purpose, the board of county commissioners, with assistance as required from its professional personnel, may develop standards and criteria, issue permits and conduct inspections.
- (2) All regulations and requirements prescribed by the board of county commissioners pursuant to this part may be enforced by mandatory injunction or other appropriate action in any court of competent jurisdiction. Such regulations and requirements shall in no way affect the regulatory authority of the department.

**History.**--s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 31, ch. 94-356.

**161.36 General powers of authority.**--In order to most effectively carry out the purposes of this part, the board of county commissioners, as the county beach and shore preservation authority and as the governing body of each beach and shore preservation district established thereby, shall be possessed of broad powers to do all manner of things necessary or desirable in pursuance of this end; provided, however, nothing herein shall diminish or impair the regulatory authority of the Department of Environmental Protection under part I of this chapter or the Board of Trustees of the Internal Improvement Trust Fund under chapter 253. Such powers shall specifically include, but not be limited to, the following:

- (1) To make contracts and enter into agreements;
- (2) To sue and be sued;
- (3) To acquire and hold lands and property by any lawful means;
- (4) To exercise the power of eminent domain;
- (5) To enter upon private property for purposes of making surveys, soundings, drillings and examinations, and such entry shall not be deemed a trespass;
- (6) To construct, acquire, operate and maintain works and facilities;

(7) To make rules and regulations; and

(8) To do any and all other things specified or implied in this part.

**History.**--s. 1, ch. 65-408; ss. 25, 27, 35, ch. 69-106; s. 32, ch. 94-356; s. 60, ch. 99-2; s. 5, ch. 2000-197.

**161.37 Capital, operation and maintenance costs; district benefits tax levy.--**

(1) To provide for the capital, operation and maintenance cost of the beach and shore preservation program, either by debt service or direct expenditure, the board of county commissioners as the governing body of each district created in accordance with this part may levy upon all taxable property within each district an ad valorem benefits tax in any amount necessary to meet the requirements of the program but not exceeding the reasonable ability of the district to pay.

(2) The tax shall be levied upon each taxable property in proportion to benefits said property will receive as determined by the most recent economic analysis of the program as provided for under s. 161.29. General benefits shall be uniformly applied on an ad valorem basis to the entire assessed valuation of each district, while special benefits shall be assigned to groups of specific properties which shall constitute zones because of the equal or comparable benefits each included property will receive.

(3) Where the board of county commissioners levies any special benefits taxes, it shall consider the value of the property, its kind, susceptibility to improvement and the maximum annual benefits to be conferred thereon by the works or improvements in the district.

(4) The owner of lands where a special benefits tax is proposed to be levied shall be given written notice and an opportunity to be heard upon the amount of special benefits tax to be levied upon his or her lands. If the special benefits to all properties within any district are found to be equal or comparable, then the said district shall comprise only one tax zone. The proportional tax rate which each property within a district shall pay shall be determined by adding the general and special benefits assigned to its zone. The actual tax levy for any particular year shall depend on the revenue needs for that year.

(5) The board of county commissioners shall levy sufficient ad valorem and special benefits taxes to pay off debt service on any bonds issued. It shall be the duty of the board each year, sufficiently in advance of the preparation of the county tax roll, to establish the revenue requirements for each individual district for the fiscal year in question and certify this figure to the county property appraiser who shall then assign shares of this total to each zone within the respective district according to the proportion of total benefits previously assigned. The share of total required revenue assigned each zone shall then be collected by an ad valorem levy on each taxable property within the zone.

(6) All taxes provided for in this part shall be levied and collected by the county in the same manner as other county taxes, and while unpaid shall constitute a lien of equal stature and dignity with other county taxes.

**History.**--s. 1, ch. 65-408; s. 1, ch. 77-102; s. 895, ch. 95-147.

**161.38 Issuance of bonds.--**

(1) The board of county commissioners, for and on behalf of each or any district created in

accordance with this part, is authorized to provide from time to time for the issuance of bonds to obtain funds to meet the costs of the beach and shore preservation program; provided, however, that such issuance shall have first been approved at a duly conducted referendum election by freeholders within the subject district as provided for by law. The bonds of each issue shall be dated, shall bear interest at rates not to exceed 7.5 percent which mature at such time not to exceed 40 years from the date of issuance as determined by the board of county commissioners, and at the option of the board of county commissioners may be made redeemable before maturity under such terms and conditions and at such prices as fixed by the board of county commissioners prior to issuance.

(2) The board of county commissioners shall determine the form of such bonds, including any interest coupons to be attached thereto, the denomination of the bonds, and the place of payment of principal and interest which may be at any bank or trust company within or without the state.

(a) The resolution authorizing the issue may further provide that such bonds may be executed manually or by engraved, lithographed or facsimile signature.

(b) The appropriate seal may be affixed or lithographed, engraved or otherwise reproduced in facsimile on such bonds and shall be attested by the manual or facsimile signature of the county clerk; provided, however, that at least one of the signatures of executing officials on the bonds shall be manual. Signatures, manual or facsimile, of executing officials shall continue to be valid for all purposes whatsoever regardless of whether or not signing officials are still in office at the time bonds are actually delivered.

(c) Bonds may be issued in coupon or registered form as the board of county commissioners may decide and provision may be made for the registration of any coupon bonds as to principal alone or as to principal and interest, and for the reconversion of coupon bonds or any bond registered as to principal and interest.

(d) No sale of bonds shall be made at a price so low as to require the payment of interest on money received therefor at a rate in excess of 6 percent per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding from such computation, however, the amount of any premium to be paid for the redemption of any bonds prior to maturity.

(e) Prior to the preparation or issuance of definitive bonds, the board of county commissioners may under like restrictions issue interim receipts or temporary notes or other forms of such temporary obligations with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Such bonds may be issued under the provisions of this part without obtaining the consent of any commission, board, bureau or agency of this state, and without any other proceeding or happening than specifically required by this chapter.

(3) All bonds issued under this part shall constitute, and have all the qualities and incidents of, negotiable instruments under the law merchant and the negotiable instruments law of Florida, and shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and shall be incontestable in the hands of bona fide purchasers for value.

(4) The provisions of this part shall constitute an irrevocable contract between the board of county commissioners and the holders of such bonds or coupons thereof issued pursuant to the provisions hereof.

(5) Any holder of such bonds issued under the provisions of this part, and the trustee under any trustee agreement, except to the extent the rights herein given may be restricted by such trust



agreement, may either at law or in equity, by suit, action, or mandamus, force and compel the performance of the duties required by this part or of any of the officers or persons herein mentioned in relation to said bonds, or the levy, assessment, collection and enforcement and application of the taxes pledged for the principal and interest thereof as provided for in s. 161.37.

- (6) Bonds issued under the provisions of this part shall not be subject to the consent or approval of any state board, commission, or agency, but such bonds shall be validated in accordance with the provisions of chapter 75.

**History.**--s. 1, ch. 65-408; s. 11, ch. 73-302; s. 5, ch. 80-98.

**161.39 Cooperation between two or more counties.--**

- (1) When two or more counties have created one or more beach preservation districts as provided for under this part or any other law with same or like intent, or desire to carry out programs of beach and shore preservation, and find it to be mutually beneficial, the boards of county commissioners of such counties may cooperate to any extent necessary or desirable to carry out the intent of this part or any other law with same or like intent, in the implementation of any beach or shore preservation plan or project as defined herein. This cooperation may include but shall not be limited to cooperative participation in the nonfederal costs of federally authorized projects affecting one or more of the cooperating counties, plans or projects resulting from investigation, or studies made by any or all such counties, or other such plans or projects, which by their nature would prove to be beneficial to each such cooperating county as determined by the boards of county commissioners of each such county.

- (2) The costs of any such plan or project shall be borne by each of the cooperating counties in accordance with the benefits expected to accrue to each county as determined in accordance with s. 161.29, or as determined and agreed upon by the boards of county commissioners of each such cooperating county.

- (3) Any county may expend funds in any other county for the purposes provided herein if in the opinion of the board of county commissioners of one county such expenditure of its funds in other counties would be beneficial to the beaches and shores of that county.

**History.**--s. 1, ch. 65-408.

**161.40 Tax exemptions.**--All properties, revenues and other assets of the board of county commissioners acting as the beach and shore preservation authority, or of any of the districts created thereby, shall, by recognition of its essential public function, be exempt from all taxation by the state or any political subdivision, agency or instrumentality thereof. The exemption granted by this section shall not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

**History.**--s. 1, ch. 65-408; s. 51, ch. 89-356.

**161.41 Construction of ss. 161.25-161.40.**--The provisions of ss. 161.25-161.40 shall be liberally construed by all concerned in a manner to best accomplish the beach and shore preservation purposes and programs.

**History.**--s. 3, ch. 65-408.

**161.45 Effect of repeal of chapter 158 on districts created prior to repeal.**--The county erosion districts created under the provisions of chapter 158, and presently in existence shall not be

affected by the repeal of chapter 158.

**History.**--s. 2, ch. 65-126.

### **PART III**

#### **COASTAL ZONE PROTECTION**

161.52 Short title.

161.53 Legislative intent.

161.54 Definitions.

161.55 Requirements for activities or construction within the coastal building zone.

161.56 Establishment of local enforcement.

161.57 Coastal properties disclosure statement.

161.58 Vehicular traffic on coastal beaches.

**161.52 Short title.**--Sections 161.52-161.58 may be cited as the "Coastal Zone Protection Act of 1985."

**History.**--s. 36, ch. 85-55.

#### **161.53 Legislative intent.**--

(1) The Legislature recognizes that coastal areas play an important role in protecting the ecology and the public health, safety, and welfare of the citizens of the state; that in recent years the coastal areas have been subjected to increasing growth pressures; and that unless these pressures are controlled, the very features which make coastal areas economically, aesthetically, and ecologically rich will be destroyed.

(2) The Legislature further recognizes that coastal areas form the first line of defense for the mainland against both winter storms and hurricanes, that the dunes of coastal areas perform valuable protective functions for public and private property, and that placement of permanent structures in these protective areas may lead to increased risks to life and property and increased costs to the public. Coastal areas often protect lagoons, salt marshes, estuaries, bays, marine habitats, and the mainland from the direct action of ocean waves or storm surges; absorb the forces of oceanic activity on their seaward sides and protect calmer waters and stable shores to their landward sides; and are dynamic geologic systems with topography that is subject to alteration by waves, storm surges, flooding, or littoral currents.

(3) The Legislature further recognizes that these coastal areas are among Florida's most valuable resources and have extremely high recreational and aesthetic value which should be preserved and enhanced. Coastal areas provide a unique habitat for birds, wildlife, marine life, and plant life and protect waters that are vital to the food chain.

(4) The Legislature further recognizes that there is a tremendous cost to the state for postdisaster redevelopment in the coastal areas and that preventive measures should be taken on a continuing

basis in order to reduce the harmful consequences of natural and manmade disasters or emergencies.

- (5) It is, therefore, the intent of the Legislature that the most sensitive portion of the coastal area shall be managed through the imposition of strict construction standards in order to minimize damage to the natural environment, private property, and life.

**History.**--s. 36, ch. 85-55.

**161.54 Definitions.**--In construing ss. 161.52-161.58:

(1) "Coastal building zone" means the land area from the seasonal high-water line landward to a line 1,500 feet landward from the coastal construction control line as established pursuant to s. 161.053, and, for those coastal areas fronting on the Gulf of Mexico, Atlantic Ocean, Florida Bay, or Straits of Florida and not included under s. 161.053, the land area seaward of the most landward velocity zone (V-zone) line as established by the Federal Emergency Management Agency and shown on flood insurance rate maps.

(2) "Coastal barrier islands" means geological features which are completely surrounded by marine waters that front upon the open waters of the Gulf of Mexico, Atlantic Ocean, Florida Bay, or Straits of Florida and are composed of quartz sands, clays, limestone, oolites, rock, coral, coquina, sediment, or other material, including spoil disposal, which features lie above the line of mean high water. Mainland areas which were separated from the mainland by artificial channelization for the purpose of assisting marine commerce shall not be considered coastal barrier islands.

(3) "Beach" means the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves. "Beach" is alternatively termed "shore."

(4) "Dune" means a mound or ridge of loose sediments, usually sand-sized sediments, lying landward of the beach and deposited by any natural or artificial mechanism.

(5) "Construction" means the carrying out of any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land. When appropriate to the context, "construction" refers to the act of construction or the result of construction.

(6)(a) "Major structure" means houses, mobile homes, apartment buildings, condominiums, motels, hotels, restaurants, towers, other types of residential, commercial, or public buildings, and other construction having the potential for substantial impact on coastal zones.

(b) "Minor structure" means pile-supported, elevated dune and beach walkover structures; beach access ramps and walkways; stairways; pile-supported, elevated viewing platforms, gazebos, and boardwalks; lifeguard support stands; public and private bathhouses; sidewalks, driveways, parking areas, shuffleboard courts, tennis courts, handball courts, racquetball courts, and other uncovered paved areas; earth retaining walls; and sand fences, privacy fences, ornamental walls, ornamental garden structures, aviaries, and other ornamental construction. It shall be a characteristic of minor structures that they are considered to be expendable under design wind, wave, and storm forces.

(c) "Nonhabitable major structure" means swimming pools; parking garages; pipelines; piers; canals, lakes, ditches, drainage structures, and other water retention structures; water and sewage treatment plants; electrical power plants, and all related structures or facilities, transmission

lines, distribution lines, transformer pads, vaults, and substations; roads, bridges, streets, and highways; and underground storage tanks.

(d) "Coastal or shore protection structure" means shore-hardening structures, such as seawalls, bulkheads, revetments, rubble mound structures, groins, breakwaters, and aggregates of materials other than beach sand used for shoreline protection; beach and dune restoration; and other structures which are intended to prevent erosion or protect other structures from wave and hydrodynamic forces.

The enumeration of types of structures in this subsection shall not be construed as excluding from the operation of ss. 161.52-161.58 any other structure which by its usage, design, dimensions, or structural configuration would require engineering consideration similar to the listed structures.

(7) "Building support structure" means any structure which supports floor, wall, or column loads and transmits such loads to the foundation, and includes beams, grade beams, or joists and the lowest horizontal structural member exclusive of piles, columns, or footings.

(8) "Breakaway wall" or "frangible wall" means a partition independent of supporting structural members that will withstand design wind forces, but will fail under hydrostatic, wave, and runup forces associated with the design storm surge. Under such conditions, the wall will fail in a manner such that it dissolves or breaks up into components that will not act as potentially damaging missiles.

(9) "Department" means the Department of Environmental Protection.

(10) "State land planning agency" means the Department of Community Affairs.

(11) "State minimum building codes" means the Florida Building Code as identified in s. 553.73.

(12) "Substantial improvement" means any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the improvement or repair of the structure to its pre-damage condition equals or exceeds 50 percent of the market value of the structure either:

(a) Before the improvement or repair is started; or

(b) If the structure has been damaged and is being restored, before the damage occurred.

The total cost does not include nonstructural interior finishings, including, but not limited to, finish flooring and floor coverings, base molding, nonstructural substrates, drywall, plaster, paneling, wall covering, tapestries, window treatments, decorative masonry, paint, interior doors, tile, cabinets, moldings and millwork, decorative metal work, vanities, electrical receptacles, electrical switches, electrical fixtures, intercoms, communications and sound systems, security systems, HVAC grills and decorative trim, freestanding metal fireplaces, appliances, water closets, tubs and shower enclosures, lavatories, and water heaters, or roof coverings, except when determining whether the structure has been substantially improved as a result of a single improvement or repair.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state

or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

(13) When used in ss. 161.52-161.58, the terms defined in s. 177.27 have the same meanings as provided in that section.

**History.**--s. 36, ch. 85-55; s. 2, ch. 86-191; s. 1, ch. 91-56; s. 1, ch. 92-7; s. 33, ch. 94-356; s. 1, ch. 97-32; s. 1, ch. 98-269; s. 2, ch. 98-287; s. 1, ch. 99-211; s. 114, ch. 2000-141; s. 35, ch. 2001-186; s. 4, ch. 2001-372.

**161.55 Requirements for activities or construction within the coastal building zone.**--The following requirements shall apply beginning March 1, 1986, to construction within the coastal building zone and shall be minimum standards for construction in this area:

- (1) **REGULATION OF COASTAL MINOR STRUCTURES.**--Minor structures shall be designed to produce the minimum adverse impact on the beach and the dune system and adjacent properties and to reduce the potential for water or wind blown material. Construction of a rigid coastal or shore protection structure designed primarily to protect a minor structure shall not be permitted.
- (2) **REGULATION OF COASTAL NONHABITABLE MAJOR STRUCTURES.**--Nonhabitable major structures shall be designed to produce the minimum adverse impact on the beach and dune system. All sewage treatment plants and public water supply systems shall be flood proofed to prevent infiltration of surface water from a 100-year storm event. Underground utilities, excluding pad transformers and vaults, shall be flood proofed to prevent infiltration of surface water from a 100-year storm event or shall otherwise be designed so as to function when submerged by such storm event.
- (3) **LOCATION OF CONSTRUCTION.**--Construction, except for elevated walkways, lifeguard support stands, piers, beach access ramps, gazebos, and coastal or shore protection structures, shall be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability.
- (4) **APPLICATION TO COASTAL BARRIER ISLANDS.**--All requirements of this part which are applicable to the coastal building zone shall also apply to coastal barrier islands. The coastal building zone on coastal barrier islands shall be the land area from the seasonal high-water line to a line 5,000 feet landward from the coastal construction control line established pursuant to s. 161.053, or the entire island, whichever is less. For coastal barrier islands on which a coastal construction control line has not been established pursuant to s. 161.053, the coastal building zone shall be the land area seaward of the most landward velocity zone (V-zone) boundary line fronting upon the Gulf of Mexico, Atlantic Ocean, Florida Bay, or Straits of Florida. All land area in the Florida Keys located within Monroe County shall be included in the coastal building zone. The coastal building zone on any coastal barrier island between Sebastian Inlet and Fort Pierce Inlet may be reduced in size upon approval of the Land and Water Adjudicatory Commission, if it determines that the local government with jurisdiction has provided adequate protection for the barrier island. In no case, however, shall the coastal building zone be reduced to an area less than a line 2,500 feet landward of the coastal construction control line. The Land and Water Adjudicatory Commission shall withdraw its approval for a reduced coastal building zone if it determines that 6 months after a local government comprehensive plan is due for submission to the state land planning agency pursuant to s. 163.3167 the local government with jurisdiction has not adopted a coastal management element which is in compliance with s. 163.3178.
- (5) **PUBLIC ACCESS.**--Where the public has established an accessway through private lands to lands seaward of the mean high tide or water line by prescription, prescriptive easement, or any other

legal means, development or construction shall not interfere with such right of public access unless a comparable alternative accessway is provided. The developer shall have the right to improve, consolidate, or relocate such public accessways so long as the accessways provided by the developer are:

- (a) Of substantially similar quality and convenience to the public;
- (b) Approved by the local government;
- (c) Approved by the department whenever improvements are involved seaward of the coastal construction control line; and
- (d) Consistent with the coastal management element of the local comprehensive plan adopted pursuant to s. 163.3178.

**History.**--s. 36, ch. 85-55; s. 3, ch. 86-191; s. 8, ch. 2000-141; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

#### **161.56 Establishment of local enforcement.--**

- (1) Nothing in ss. 161.52-161.58 shall be construed to limit or abrogate the right and power of the department to require permits or to adopt and enforce standards pursuant to s. 161.041 or s. 161.053 for construction seaward of the coastal construction control line that are as restrictive as, or more restrictive than, the requirements provided in s. 161.55 or the rights or powers of local governments to enact and enforce setback requirements or zoning or building codes that are as restrictive as, or more restrictive than, the requirements provided in s. 161.55.
- (2) To assist local governments in the implementation and enforcement of s. 161.55, the state land planning agency shall develop and maintain a biennial coastal building zone construction training program for the local enforcement agencies specified in subsection (1). The state land planning agency shall provide an initial training program not later than April 1, 1987, and on a recurring biennial basis shall provide a continuing education program beginning July 1, 1989. Registration fees, as determined appropriate by the state land planning agency, may be charged to defray the cost of the program if general revenue funds are not provided for this purpose.

**History.**--s. 36, ch. 85-55; s. 4, ch. 86-191; s. 1, ch. 89-249; s. 3, ch. 98-287; ss. 9, 10, ch. 2000-141; s. 14, ch. 2000-158; s. 2, ch. 2000-211; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

#### **161.57 Coastal properties disclosure statement.--**

- (1) The Legislature finds that it is necessary to ensure that the purchasers of interests in real property located in coastal areas partially or totally seaward of the coastal construction control line as defined in s. 161.053 are fully apprised of the character of the regulation of the real property in such coastal areas and, in particular, that such lands are subject to frequent and severe fluctuations.
- (2) At or prior to the time a seller and a purchaser both execute a contract for sale and purchase of any interest in real property located partially or totally seaward of the coastal construction control line as defined in s. 161.053, the seller must give a written disclosure statement in the following form to the prospective purchaser which may be set forth in the contract or in a separate writing:

The property being purchased may be subject to coastal erosion and to federal, state, or local

regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shoreline of the property being purchased.

(3) Unless otherwise waived in writing by the purchaser, at or prior to the closing of any transaction where an interest in real property located either partially or totally seaward of the coastal construction control line as defined in s. 161.053 is being transferred, the seller shall provide to the purchaser an affidavit, or a survey meeting the requirements of chapter 472, delineating the location of the coastal construction control line on the property being transferred.

(4) A seller's failure to deliver the disclosure, affidavit, or survey required by this section does not impair the enforceability of the sale and purchase contract by either party, create any right of rescission by the purchaser, or impair the title to any such real property conveyed by the seller to the purchaser.

**History.**--s. 36, ch. 85-55; s. 22, ch. 87-224; s. 1, ch. 2006-273.

#### **161.58 Vehicular traffic on coastal beaches.--**

(1) Vehicular traffic, except that which is necessary for cleanup, repair, or public safety, and except for traffic upon authorized local or state dune crossovers, is prohibited on the dunes or native stabilizing vegetation of the dune system of coastal beaches. Except as otherwise provided in this section, any person driving any vehicle on, over, or across any dune or native stabilizing vegetation of the dune system shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Vehicular traffic, except that which is necessary for cleanup, repair, or public safety, or for the purpose of maintaining existing licensed and permitted traditional commercial fishing activities or existing authorized public accessways, is prohibited on coastal beaches except where a local government with jurisdiction over a coastal beach or portions of a coastal beach has:

(a) Authorized such traffic, by at least a three-fifths vote of its governing body, on all or portions of the beaches under its jurisdiction prior to the effective date of this act; and

(b) Determined, by October 1, 1989, in accordance with the rules of the department, that less than 50 percent of the peak user demand for off-beach parking is available. However, the requirements and department rulemaking authority provided in this paragraph shall not apply to counties that have adopted, prior to January 1, 1988, unified countywide beach regulations pursuant to a county home rule charter.

(3) A local government authorizing such vehicular traffic on all or portions of its beaches pursuant to subsection (2) may later prohibit, by a vote of at least three-fifths of its governing body, such vehicular traffic on all or portions of the beaches under its jurisdiction. Any such local government shall be authorized by a three-fifths vote of its governing body to charge a reasonable fee for vehicular traffic access. The revenues from any such fees shall be used only for beach maintenance; beach-related traffic management and parking; beach-related law enforcement and liability insurance; or beach-related sanitation, lifeguard, or other staff purposes. Except where authorized by the local government, any person driving any vehicle on, over, or across the beach shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**--s. 36, ch. 85-55; s. 5, ch. 86-191; s. 23, ch. 87-224; s. 2, ch. 88-106; s. 2, ch. 89-249.

#### **PART IV**

#### **OCEANS AND COASTAL RESOURCES ACT**

161.70 Short title.

161.71 Definitions.

161.72 Findings and intent.

161.73 Composition.

161.74 Responsibilities.

161.75 Rulemaking authority.

161.76 Preservation of authority.

**161.70 Short title.**--This part may be cited as the "Oceans and Coastal Resources Act."

**History.**--s. 1, ch. 2005-166.

**161.71 Definitions.**--As used in this part, the term:

- (1) "Commission" means the Fish and Wildlife Conservation Commission created in s. 9, Art. IV of the State Constitution.
- (2) "Council" means the Florida Oceans and Coastal Council created by this act.
- (3) "Department" means the Department of Environmental Protection.
- (4) "Executive director" means the executive director of the Fish and Wildlife Conservation Commission.
- (5) "Oceans" means those waters from the mean high-water line outward to the state's jurisdictional boundary and those United States waters in which this state has an interest.
- (6) "Secretary" means the secretary of the Department of Environmental Protection.

**History.**--s. 1, ch. 2005-166.

**161.72 Findings and intent.**--

- (1) The Legislature finds that:
  - (a) The oceans and coastal resources of the United States are of national importance;
  - (b) The United States Commission on Ocean Policy has made 212 recommendations, and the



President has responded with an Ocean Action Plan to better protect and preserve our oceans;

(c) Florida's ocean and coastal resources contribute significantly to the state economy by supporting multiple beneficial uses and a wide range of economic value that requires balancing of competing considerations;

(d) Florida's oceans and coastal resources comprise habitats that support endangered and threatened species and extraordinary marine biodiversity;

(e) The coral reefs of southeast Florida and the barrier reef of the Florida Keys, the only barrier reef in the United States, are a national treasure and must continue to be protected;

(f) It is Florida's responsibility to be a national leader on oceans and coastal protection;

(g) It is in the state's best interest to ensure the productivity and health of our oceans and coastal resources;

(h) Florida's marine biodiversity at the species, natural community, seascape, and regional levels must be protected by restoring, rehabilitating, and maintaining the quality and natural function of oceans and coastal resources through an ecosystem-based management approach, as recommended by the United States Commission on Ocean Policy;

(i) The quality of our beaches and fisheries resources must be protected to ensure the public health;

(j) Protection must be provided to highly migratory marine species, such as sea turtles and sea birds;

(k) Opportunities must be increased to provide natural resource-based recreation and encourage responsibility and stewardship through educational opportunities;

(l) Oceans and coastal research must be prioritized to ensure coordination among researchers and managers and long-term programs to observe, monitor, and assess oceans, and coastal resources must be developed and implemented;

(m) Development of coastal areas should be both economically and environmentally sustainable, and inappropriate growth in ecologically fragile or hazard-prone areas should be discouraged; and

(n) Conservation and restoration of coastal habitat could be enhanced through the development of regional and local goals, the institution of a program dedicated to coastal and estuarine conservation, better coordination of the state's activities relating to habitat, and improved research, monitoring, and assessment.

(2) It is the intent of the Legislature to create the Oceans and Coastal Council to assist the state in identifying new management strategies to achieve the goal of maximizing the protection and conservation of ocean and coastal resources while recognizing their economic benefits.

(3) It is further the intent of the Legislature that the council shall encourage and support the development of creative public-private partnerships, pursue opportunities to leverage funds, and work in coordination with federal agencies and programs to maximize opportunities for the state's receipt of federal funds.

**History.**--s. 1, ch. 2005-166; s. 16, ch. 2006-1.

**161.73 Composition.**--The Florida Oceans and Coastal Council is created within the Department of Environmental Protection and shall consist of 18 members. The secretary, the executive director, and the commissioner of the Department of Agriculture and Consumer Services, or their designees, shall serve as ex officio members of the council. The council shall be jointly chaired by the secretary and the executive director. The 15 voting members of the council shall be appointed, within 60 days after this act becomes law, in the following manner:

(1) Five members shall be appointed by the secretary of the Department of Environmental Protection which will be comprised of one scientist specializing in each of the following fields: wetlands and watersheds; nearshore waters or estuaries; offshore waters or open oceans; hydrology and aquatic systems; and coastal geology or coastal erosion and shorelines.

(2) Five members shall be appointed by the executive director of the Fish and Wildlife Conservation Commission which will be comprised of one scientist specializing in each of the following fields: resource management; wildlife habitat management; fishery habitat management; coastal and pelagic birdlife; and marine biotechnology.

(3) Five members shall be appointed by the commissioner of the Department of Agriculture and Consumer Services. These appointments shall be selected from a list of at least eight individuals submitted to the commissioner by the Florida Ocean Alliance. The individuals selected by the Florida Ocean Alliance shall be chosen from the following disciplines or groups: sportfishing; ports; cruise industry; energy industry; ecotourism; private marine research institutes; universities; aquaculture; maritime law; commercial fisheries; socioeconomics; marine science education; and environmental groups.

(4) Appointments made by the secretary and executive director shall be to terms of 4 years each. Appointments made by the commissioner of the Department of Agriculture and Consumer Services shall be to terms of 2 years. Members shall serve until their successors are appointed. Vacancies shall be filled in the manner of the original appointment for the remainder of the term that is vacated.

(5) Members shall serve without compensation, but are entitled to reimbursement of travel and per diem expenses pursuant to s. 112.061, relating to completing their duties and responsibilities.

**History.**--s. 1, ch. 2005-166.

**161.74 Responsibilities.**--

(1) **RESEARCH REVIEW.**--Prior to the development of the research plan, the council shall review and compile the existing, ongoing, and planned ocean and coastal research and monitoring activities relevant to this state. Included in this review shall be the "Florida's Ocean Strategies Final Report to the Governor" by the Florida Governor's Oceans Committee dated June 1999. To aid the council in fulfilling this requirement, all public agencies must submit the information requested by the council, and private research institutes are encouraged to submit relevant information to the maximum extent practicable. Upon receiving the information required by this subsection, the council shall develop a library to serve as a repository of information for use by those involved in ocean and coastal research. The council shall develop an index of this information to assist researchers in accessing the information.

(2) **RESEARCH PLAN.**--The council must complete a Florida Oceans and Coastal Scientific Research Plan which shall be used by the Legislature in making funding decisions. The plan must recommend

priorities for scientific research projects. The plan must be submitted to the President of the Senate and the Speaker of the House of Representatives by January 15, 2006. Thereafter, annual updates to the plan must be submitted to the President of the Senate and the Speaker of the House of Representatives by February 1 of each year. The research projects contained in the plan must meet at least one of the following objectives:

- (a) Exploring opportunities to improve coastal ecosystem functioning and health through watershed approaches to managing freshwater and improving water quality.
  - (b) Evaluating current habitat conservation, restoring and maintaining programs, and recommending improvements in the areas of research, monitoring, and assessment.
  - (c) Promoting marine biomedical or biotechnology research and product discovery and development to enhance Florida's opportunity to maximize the beneficial uses of marine-derived bioproducts and reduce negative health impacts of marine organisms.
  - (d) Creating consensus and strategies on how Florida can contribute to sustainable management of ocean wildlife and habitat.
  - (e) Documenting through examination of existing and new research the impact of marine and coastal debris and current best practices to reduce debris.
  - (f) Providing methods to achieve sustainable fisheries through better science, governance, stock enhancements and consideration of habitat and secondary impacts such as bycatch.
  - (g) Documenting gaps in current protection strategies for marine mammals.
  - (h) Promoting research and new methods to preserve and restore coral reefs and other coral communities.
  - (i) Achieving sustainable marine aquaculture.
  - (j) Reviewing existing and ongoing studies on preventing and responding to the spread of invasive and nonnative marine and estuarine species.
  - (k) Exploring ocean-based renewable energy technologies and climate change-related impacts to Florida's coastal area.
  - (l) Enhancing science education opportunities such as virtual marine technology centers.
  - (m) Sustaining abundant birdlife and encouraging the recreational and economic benefits associated with ocean and coastal wildlife observation and photography.
  - (n) Developing a statewide analysis of the economic value associated with ocean and coastal resources, developing economic baseline data, methodologies, and consistent measures of oceans and coastal resource economic activity and value, and developing reports that educate Floridians, the United States Commission on Ocean Policy, local, state, and federal agencies and others on the importance of ocean and coastal resources.
- (3) RESOURCE ASSESSMENT.--By December 1, 2006, the council shall prepare a comprehensive oceans and coastal resource assessment that shall serve as a baseline of information to be used in

assisting in its research plan. The resource assessment must include:

- (a) Patterns of use of oceans and coastal resources;
- (b) Natural resource features, including, but not limited to, habitat, bathymetry, surficial geology, circulation, and tidal currents;
- (c) The location of current and proposed oceans and coastal research and monitoring infrastructure;
- (d) Industrial, commercial, coastal observing system, ships, subs, and recreational transit patterns; and
- (e) Socioeconomic trends of the state's oceans and coastal resources and oceans and coastal economy.

**History.**--s. 1, ch. 2005-166; s. 17, ch. 2006-1.

**161.75 Rulemaking authority.**--The department and the commission may adopt rules, pursuant to ss. 120.536(1) and 120.54, to administer this part.

**History.**--s. 1, ch. 2005-166.

**161.76 Preservation of authority.**--This part does not restrict or limit the authority otherwise granted to the commission, or other state agencies by law.

**History.**--s. 1, ch. 2005-166.