

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Environmental Preservation Committee

BILL: SB 2282

SPONSOR: Senator Baker

SUBJECT: Beach access and use

DATE: April 2, 2005

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|--------------------|
| 1. | <u>Kiger</u> | <u>Kiger</u> | <u>EP</u> | <u>Pre-meeting</u> |
| 2. | _____ | _____ | <u>CA</u> | _____ |
| 3. | _____ | _____ | <u>JU</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill affirms the public's right to access and customary uses of the state's beaches. Legislative findings and intent are provided that: find a right for the public to have and access and uses of beaches; to direct the government to protect this public right; and that the state does not intend to interfere with those property owners adjacent to beaches. The bill also prohibits the construction of barriers that would interfere or obstruct with the public's right of access and use. The bill directs the Attorney General to enforce its provisions.

This bill creates an unnumbered section of Florida Law.

II. Present Situation:

Beach access is presently addressed in ch. 161, Florida Statutes. Subsection 161.021(1), F.S., provides that "access" or "public access" means the public's right to laterally traverse the sandy beaches of this state where such access existed on or after July 1, 1987.

Pursuant to subsection 161.041(1), F.S., anyone desiring to obtain a permit for various types of coastal construction or reconstruction may not interfere with the public's use of any beach area seaward of the mean high-water line, unless such interference is unavoidable for purposes of protecting the beach or any endangered upland structure.

Subsection 161.55(5), F.S., addresses public access as it relates to coastal construction and excavation activities. This provision provides that 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.

III. Effect of Proposed Changes:

The bill creates a series of legislative findings and intent concerning the protection of the public's right to access and use of the state's beaches. The findings and intent provide that:

The public has enjoyed a right to access, recreational use of, and customary use of the beach, and that such use dates back many years and has been free from dispute.

It is the intent of the Legislature to mandate that government define, protect, and enforce that public's rights of beach access and use.

It is not the intent of the Legislature to affect the title of lands adjacent to the beaches, nor to impair the right of an owner to contest the existence of those rights to access and use.

It shall be the state's policy that the public shall the right to recreational and other customary uses of the beaches.

The Attorney General shall be authorized to protect and defend these public rights.

The bill also creates prohibitions concerning obstructions that may be implemented to interfere with the public rights. The bill would prohibit the creation, erection, or construction of any structure, barrier, or restraint that would interfere with the right of the public to approach or lawfully use the beach. It shall also be prohibited for anyone to erect any sign, barrier, or other structure with the intent to falsely notify the public that the public does not have the right to access or use.

The bill would take effect on July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of Attorney General would incur litigation costs in its role to protect and defend the public right of access and use.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Environmental Protection has expressed some concern that the bill could be interpreted to prohibit governmental entities from enforcing beach closure during storm events.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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