

# 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.)

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Prepared By: Regulated Industries Committee

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BILL: CS/SB 2216

SPONSOR: Environmental Protection Committee and Senator Clary

SUBJECT: Hurricane Damage Mitigation

DATE: March 29, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pardue</u>	<u>Skelton</u>	<u>DS</u>	<b>Favorable</b>
2.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	<b>Fav/CS</b>
3.	<u>Tomkiewicz</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute provides for the revocation of an agency, political subdivision, or municipality's authority to install or permit installation of rigid coastal armoring structures. Such structures are normally installed to protect private and public property from erosion. The committee substitute authorizes the Department of Environmental Protection to revoke such authority if installation would conflict with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The committee substitute also:

- Provides for the Division of Emergency Management to manage the update of regional hurricane evacuation studies;
- Prohibits the Department of Health from issuing a construction or repair permit for onsite sewage treatment and disposal systems located seaward of the coastal construction control line without receipt of a permit from the Department of Environmental Protection; and
- Provides for the disclosure of a property's location in a hurricane evacuation zone prior to completion of a real property sale;

This committee substitute substantially amends the following sections of the Florida Statutes: 161.085, 163.3178 (2) (h), and 381.0065 (4).

This committee substitute creates section 689.262 of the Florida Statutes.

## II. Present Situation:

### Rigid Coastal Armoring Structures

Coastal armoring is a manmade structure designed to either prevent erosion of the upland property or protect eligible structures from the effects of coastal wave and current action. Examples include seawalls, revetments, bulkheads, retaining walls, sloped boulder revetments, sloped geotextile revetments, geotextile dune scour protection, or other similar structures.<sup>1</sup>

Section 161.085, F.S., recognizes the need to protect private structures and public infrastructure from damage and destruction caused by coastal erosion. The section allows 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. Pursuant to chapter 161, F.S., the Department of Environmental Protection is authorized to 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.

If erosion occurs as a result of a storm event and a permit has not been issued pursuant to s. 161.085 (2), F.S., a state or federal agency, political subdivision, or municipality may install or authorize installation of rigid coastal armoring structures for the protection of private structures or public infrastructure. The following items must be considered and incorporated into such emergency measures:<sup>2</sup>

- Protection of the beach-dune system;
- Siting and design criteria for the protective structure;
- Impacts on adjacent properties;
- Preservation of public beach access; and
- Protection of native coastal vegetation and nesting marine turtles and their hatchlings.

### Regional Hurricane Evacuation Studies

Section 252.35, F.S., assigns responsibility to the Division of Emergency Management (DEM) for maintaining a comprehensive statewide program of emergency management. The division is required to prepare a comprehensive emergency management plan that is operations oriented. The plan shall include specific regional and interregional planning provisions and promote intergovernmental coordination of evacuation activities.

The division has the capability to conduct regional hurricane evacuation studies. Such studies include a computerized model run by the National Hurricane Center to estimate storm surge depths and winds resulting from historical, hypothetical, or predicted hurricanes taking into account:

- Pressure;
- Size;

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<sup>1</sup> Florida Department of Environmental Protection, "Coastal Armoring Policy and Guidelines," Nov. 22, 2005.

<sup>2</sup> Section 161.085 (3), F.S.

- Forward speed;
- Track; and
- Winds.

This model is known as SLOSH (Sea, Lake, and Overland Surges from Hurricanes). Calculations are applied to a specific locale's shoreline, incorporating the unique bay and river configurations, water depths, bridges, roads, and other physical features to estimate storm surge.<sup>3</sup> According to division personnel, the National Hurricane Center is continuing to improve its technology in order to provide greater specificity in defining high-hazard coastal area evacuation zones.

Periodic hurricane evacuation studies are required because of changing population dynamics. Populations and the existing transportation network define the speed with which an evacuation may be conducted. Regional hurricane evacuation studies are able to determine recommended timing intervals used to control a sequenced evacuation by locality. They guide decision makers in ordering an evacuation.

### **Onsite Sewage Treatment and Disposal Systems**

Onsite sewage treatment and disposal systems are facilities constructed on individual sites used to provide wastewater disposal where municipal sewerage is not available. Such systems usually consist of a septic tank and a subsurface infiltration system. Within the septic tank, sedimentation and some anaerobic digestion of solids occur. The remaining partially treated wastewater, referred to as septic tank effluent, is then discharged to the subsurface infiltration system and percolates through the surrounding soil. As the effluent moves through the soil, it is further treated by naturally occurring chemical, biological, and physical processes.<sup>4</sup>

Section 381.0065, F.S., states the intent of the Legislature that where a publicly owned or investor-owned sewerage system is not available, the Department of Health shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems. The section requires that a person may not perform any of these actions without first obtaining a permit from the department. The department shall not make issuance of such a permit contingent upon prior approval by the Department of Environmental Protection.

### **Real Property Sales Disclosures**

Many conditions are subject to disclosure to a buyer of real property during a sale. Florida Statutes require such items as association membership requirements;<sup>5</sup> homicide, suicide deaths or the diagnosis of HIV or AIDS infection in an occupant of real property;<sup>6</sup> and ad valorem taxes.<sup>7</sup>

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<sup>3</sup> [http://www.nhc.noaa.gov/HAW2/english/surge/slosh\\_printer.shtml](http://www.nhc.noaa.gov/HAW2/english/surge/slosh_printer.shtml)

<sup>4</sup> Ayres Associates. *Onsite Sewage Disposal System Research in Florida: An Evaluation of Current OSDS Practices in Florida*. Tampa: Florida Department of Health and Rehabilitative Services, Environmental Health Program: 1993.

<sup>5</sup> S. 720.401, F.S.

<sup>6</sup> S. 689.25, F.S.

<sup>7</sup> S. 689.21, F.S.

Disclosure of other items such as mold conditions, local land use limitations, and participation in flood insurance programs may also be required during a real property sale.

Florida, however, does not currently require disclosure of a property's location within a hurricane evacuation zone prior to a sales transaction.

### III. Effect of Proposed Changes:

**Section 1.** This committee substitute specifies that unless authority has been revoked by the Department of Environmental Protection, an agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of rigid coastal armoring structures.

The committee substitute includes a provision for the Department Environmental Protection to revoke the authority of an agency, political subdivision, or municipality to erect rigid coastal armoring structures. To revoke such authority, the department must find that the structures harm or interfere with the protection of the beach-dune system, adversely impacts adjacent properties, interfere with public beach access, or harm native coastal vegetation or nesting marine turtles or their hatchlings.

**Section 2.** This committee substitute requires the Division of Emergency Management to manage the update of regional hurricane evacuation studies. Such studies shall be done in a consistent manner and using the methodology for modeling storm surge that is used by the National Hurricane Center.

**Section 3.** The committee substitute provides that the Department of Health shall not issue a permit for work on onsite sewage treatment and disposal systems seaward of the coastal construction control line without receipt of a coastal construction control line permit issued by the Department of Environmental Protection.

**Section 4.** The committee substitute requires that the prospective purchaser of real property located in a hurricane evacuation zone be presented a disclosure summary at or before execution of a sale contract. Unless a substantially similar disclosure summary is included in the contract, a separate summary must be attached to the contract for sale. The committee substitute provides a sample format for the disclosure summary.

The sample format discloses that all or a portion of the property lies within a specifically identified hurricane evacuation zone. It further discloses that the designation may require occupants to evacuate the property during an impending tropical storm or hurricane event. It advises the purchaser to verify the hurricane zone evacuation designation at the start of every hurricane season through the county emergency management agency.

The committee substitute requires that the seller must provide the disclosure summary. The sale contract must refer to and incorporate by reference the disclosure summary and include, by prominent wording, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary.

**Section 5.** The committee substitute provides for an effective date of July 1, 2006.

**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:

The private sector will incur an administrative cost on each affected real property sales transaction related to hurricane evacuation zone disclosure. The amount of this cost is unknown but is expected to be relatively small.

C. Government Sector Impact:

The Division of Emergency Management currently conducts the type of studies required by this committee substitute. Such studies are usually funded through federal sources and recurring state funding is not usually provided. A recurring source of funding would be useful in implementing the requirements of this committee substitute.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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

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