

Bill No. SB 1472

Barcode 711948

CHAMBER ACTION

Senate

House

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The Committee on Environmental Preservation and Conservation
(Saunders) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (1) of section 161.021, Florida
Statutes, is amended to read:

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.

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1 Section 2. Subsections (3), (5) and (9) of section
2 161.085, Florida Statutes, are amended to read:

3 161.085 Rigid coastal armoring structures.--

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7 unless the authority has been revoked by order of the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

17 (a) Protection of the beach-dune system.

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

20 (c) Impacts on adjacent properties.

21 (d) Preservation of public beach access.

22 (e) Protection of native coastal vegetation and
23 nesting marine turtles and their hatchlings.

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

26 (9) The department, ~~or an agency, political~~
27 ~~subdivision, or municipality described in subsection (3)~~, may
28 authorize dune restoration incorporating sand-filled
29 geotextile containers ~~tubes~~ or similar structures proposed as
30 the core of a restored dune feature when the conditions of (a)
31 through (c) and the requirements of s. 161.053 are met. ~~if the~~

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1 ~~applicant meets the requirements of this section and:~~

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

5 1. Provide for the protection of an existing major
6 structure or public infrastructure, and, notwithstanding any
7 provision of paragraph (2)(a) of this section or department
8 rule to the contrary, that major structure or public
9 infrastructure is vulnerable to damage from frequent coastal
10 storms, or is upland of a beach-dune system which has
11 experienced significant beach erosion from such storm events.

12 2. Are constructed using native or beach quality sand
13 and native salt tolerant vegetation suitable for dune
14 stabilization as approved by the department.

15 3. May include materials other than native or beach
16 quality sand such as geotextile materials that are used to
17 contain beach quality sand for the purposes of maintaining the
18 stability and longevity of the dune core.

19 4. Are continuously covered with 3 feet of native or
20 beach quality sand and stabilized with native salt tolerant
21 vegetation.

22 5. Are sited as far landward as practicable, balancing
23 the need to minimize excavation of the beach-dune system,
24 impacts to nesting marine turtles, and impacts to adjacent
25 properties.

26 6. Are designed and sited in a manner that will
27 minimize the potential for erosion.

28 7. Do not materially impede access by the public.

29 8. Are designed to minimize adverse effects to nesting
30 marine turtles and turtle hatchlings, consistent with
31 s.370.12.

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1 9. Are designed to facilitate easy removal of the
2 geotextile containers if needed.

3 10. The United States Fish and Wildlife Service has
4 approved an Incidental Take Permit for marine turtles pursuant
5 to Section 7 or 10 of the Endangered Species Act for the
6 placement of the structure if an Incidental Take Permit is
7 required.

8 (b) The applicant or successive property owners shall
9 provide financial assurances in the form of surety or
10 performance bonds or other financial responsibility mechanisms
11 that the authorized geotextile containers will be removed if
12 the requirements of this subsection and the permit conditions
13 are not met. The permittee shall file a notice of formal
14 permit conditions in the public records of the county where
15 the permitted activity is located.

16 (c) The department shall order removal of the
17 geotextile container if the conditions of (9)(a)4. are
18 not met, if the project ceases to function due to irreparable
19 damage, if the project is determined by the department to have
20 caused a significant adverse impact to the beach-dune system,
21 or if the United States Fish and Wildlife Service revokes the
22 Incidental Take Permit required in (9)(a)10.

23 (d) The department may require any engineering
24 certifications that are necessary to ensure the adequacy of
25 the design and construction of the permitted project.

26 (e) The department shall review, with third-party
27 expert involvement, the performance of dune restoration
28 incorporating geotextile sand-filled containers to determine
29 whether such structures provide upland protection and to
30 determine their impact on the beach-dune system and adjacent
31 properties. Such structures shall continue to be evaluated to

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1 determine if they are a more effective form of dune
 2 restoration than beach-compatible sand and native
 3 vegetation. Based on such analysis and peer review, the
 4 department shall recommend to the Governor, President of the
 5 Senate, and Speaker of the House of Representatives if the
 6 provisions of subsection (9) should be modified.

7 ~~(a) Demonstrates that the United States Fish and~~
 8 ~~Wildlife Service has approved a habitat conservation plan that~~
 9 ~~includes the shoreline where each structure will be placed;~~

10 ~~(b) Provides reasonable assurance that adequate sand~~
 11 ~~cover will be maintained over the structure such that the~~
 12 ~~structure will not interact with the beach dune system as~~
 13 ~~rigid coastal armoring or adversely affect marine turtle~~
 14 ~~nesting and provides for a responsible entity to conduct such~~
 15 ~~maintenance; and~~

16 ~~(c) Provides reasonable assurance that each structure~~
 17 ~~will be removed if the maintenance required by paragraph (b)~~
 18 ~~proves to be not feasible.~~

19 Section 3. Section 161.141, Florida Statutes, is
 20 amended to read:

21 161.141 Property rights of state and private upland
 22 owners in beach restoration project areas.--The Legislature
 23 declares that it is the public policy of the state to cause to
 24 be fixed and determined, pursuant to beach restoration, beach
 25 nourishment, and erosion control projects, the boundary line
 26 between sovereignty lands of the state bordering on the
 27 Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida,
 28 and the bays, lagoons, and other tidal reaches thereof, and
 29 the upland properties adjacent thereto; except that such
 30 boundary line shall not be fixed for beach restoration
 31 projects that result from inlet or navigation channel

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1 maintenance dredging projects unless such projects involve the
2 construction of authorized beach restoration projects.
3 However, prior to construction of such a beach restoration
4 project, the board of trustees must establish the line of mean
5 high water for the area to be restored; and any additions to
6 the upland property landward of the established line of mean
7 high water which result from the restoration project remain
8 the property of the upland owner subject to all governmental
9 regulations and are not to be used to justify increased
10 density or the relocation of the coastal construction control
11 line as may be in effect for such upland property. The
12 resulting additions to upland property are also subject to a
13 public easement for traditional uses of the sandy beach
14 consistent with uses that would have been allowed prior to the
15 need for the restoration project. It is further declared that
16 there is no intention on the part of the state to extend its
17 claims to lands not already held by it or to deprive any
18 upland or submerged land owner of the legitimate and
19 constitutional use and enjoyment of his or her property. If an
20 authorized beach restoration, beach nourishment, and erosion
21 control project cannot reasonably be accomplished without the
22 taking of private property, the taking must be made by the
23 requesting authority by eminent domain proceedings. In any
24 action alleging a taking of all or part of a property or
25 property right as a result of a beach restoration project, in
26 determining whether such taking has occurred or the value of
27 any damage alleged with respect to the owner's remaining
28 upland property adjoining the beach restoration project, the
29 enhancement, if any, in value of the owner's remaining
30 adjoining property of the upland property owner by reason of
31 the beach restoration project shall be considered. If a

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1 taking is judicially determined to have occurred as a result
2 of a beach restoration project, the enhancement in value to
3 the owner's remaining adjoining property by reason of the
4 beach restoration project shall be offset against the value of
5 the damage, if any, resulting to such remaining adjoining
6 property of the upland property owner by reason of the beach
7 restoration project, but such enhancement in the value shall
8 not be offset against the value of the property or property
9 right alleged to have been taken. If the enhancement in value
10 shall exceed the value of the damage, if any, to the remaining
11 adjoining property, there shall be no recovery over against
12 the property owner for such excess.

13 Section 4. Section 161.144, Florida Statutes, is
14 created to read:

15 161.144 Policy guidance related to sand source
16 management.--The Legislature recognizes that beach-quality
17 sand for the nourishment of the state's critically eroded
18 beaches is an exhaustible resource, in ever-decreasing supply,
19 and must be carefully managed for the systemwide benefit of
20 the state's beaches. Therefore, the Department of
21 Environmental Protection, pursuant to s. 161.161 and in
22 cooperation with federal and local government agencies, shall
23 develop and maintain an inventory of identified offshore sand
24 sources as part of the regional elements of its comprehensive
25 long-term beach management plan. Offshore sand sources in
26 state or federal waters which are identified for potential,
27 proposed, or permitted use shall be clearly mapped or
28 otherwise noted and readily available for public review. In
29 addition, boards of county commissioners of coastal counties
30 adjacent to sand sources proposed for use outside of the
31 region or subregion shall be provided written notice by the

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1 department and an opportunity to comment during a specific
 2 project's planning and permitting stages. The department shall
 3 identify in its annual list of local government funding
 4 requests submitted to the Legislature, pursuant to s. 161.091,
 5 those projects that propose to use sand sources from another
 6 region or subregion at the time the list is submitted.

7 Section 5. This act shall take effect July 1, 2007.

10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 Delete everything before the enacting clause

14 and insert:

15 A bill to be entitled

16 An act relating to beaches and shores; amending
 17 s. 161.021, F.S.; amending a definition;
 18 amending s. 161.085, F.S.; restricting use of
 19 geotextile containers for emergency rigid
 20 coastal armoring; providing permitting for
 21 geotextile containers; providing conditions;
 22 providing for department evaluation; amending
 23 s. 161.141, F.S.; providing for additional
 24 legislative intent; creating s. 161.144, F.S.;
 25 providing for the development and maintenance
 26 of an inventory of identified offshore sand
 27 sources by the Department of Environmental
 28 Protection as part of its comprehensive
 29 long-term beach management plan; providing for
 30 public review of maps of offshore sand sources;
 31 providing for boards of county commissioners of

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1 coastal counties adjacent to sand sources
2 proposed for use outside of the region or
3 subregion to be notified and given adequate
4 opportunity to comment during a project's
5 planning and permitting stages; providing for
6 the inclusion of certain information in the
7 departments annual funding request; providing
8 an effective date.

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