

By the Committee on Environmental Preservation and Conservation; and Senator Saunders

592-2542-07

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A bill to be entitled  
An act relating to beaches and shores; amending  
s. 161.021, F.S.; amending a definition;  
amending s. 161.085, F.S.; restricting the use  
of geotextile containers for emergency rigid  
coastal armoring; providing permitting for  
geotextile containers; providing conditions;  
providing for evaluation by the Department of  
Environmental Protection; amending s. 161.141,  
F.S.; providing additional legislative intent;  
creating s. 161.144, F.S.; providing for the  
development and maintenance of an inventory of  
identified offshore sand sources by the  
department as part of its comprehensive  
long-term beach management plan; providing for  
public review of maps of offshore sand sources;  
providing for boards of county commissioners of  
coastal counties adjacent to sand sources  
proposed for use outside of the region or  
subregion to be notified and given adequate  
opportunity to comment during a project's  
planning and permitting stages; providing for  
the inclusion of certain information in the  
department's annual funding request; providing  
an effective date.

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

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

1           161.021 Definitions.--In construing these statutes,  
2 where the context does not clearly indicate otherwise, the  
3 word, phrase, or term:

4           (1) "Access" or "public access" as used in ss.  
5 161.041, 161.052, and 161.053 means the public's right to  
6 laterally traverse the sandy beaches of this state where such  
7 access exists on or after July 1, 1987, or where the public  
8 has established an accessway through private lands to lands  
9 seaward of the mean high tide or water line by prescription,  
10 prescriptive easement, or any other legal means, development  
11 or construction shall not interfere with such right of public  
12 access unless a comparable alternative accessway is provided.

13           Section 2. Subsections (3), (5), and (9) of section  
14 161.085, Florida Statutes, are amended to read:

15           161.085 Rigid coastal armoring structures.--

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

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

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

1 (c) Impacts on adjacent properties.

2 (d) Preservation of public beach access.

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

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

8 (9) The department, ~~or an agency, political~~  
9 ~~subdivision, or municipality described in subsection (3)~~, may  
10 authorize dune restoration incorporating sand-filled  
11 geotextile containers ~~tubes~~ or similar structures proposed as  
12 the core of a restored dune feature when the conditions of  
13 paragraphs (a) through (c) and the requirements of s. 161.053  
14 are met. ~~if the applicant meets the requirements of this~~  
15 ~~section and:~~

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

19 1. Provide for the protection of an existing major  
20 structure or public infrastructure, and, notwithstanding any  
21 definition in department rule to the contrary, that major  
22 structure or public infrastructure is vulnerable to damage  
23 from frequent coastal storms, or is upland of a beach-dune  
24 system which has experienced significant beach erosion from  
25 such storm events.

26 2. Are constructed using native or beach-quality sand  
27 and native salt-tolerant vegetation suitable for dune  
28 stabilization as approved by the department.

29 3. May include materials other than native or  
30 beach-quality sand such as geotextile materials that are used  
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1 to contain beach-quality sand for the purposes of maintaining  
2 the stability and longevity of the dune core.

3 4. Are continuously covered with 3 feet of native or  
4 beach-quality sand and stabilized with native salt-tolerant  
5 vegetation.

6 5. Are sited as far landward as practicable, balancing  
7 the need to minimize excavation of the beach-dune system,  
8 impacts to nesting marine turtles and other nesting state or  
9 federally threatened or endangered species, and impacts to  
10 adjacent properties.

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

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

14 8. Are designed to minimize adverse effects to nesting  
15 marine turtles and turtle hatchlings, consistent with s.  
16 370.12.

17 9. Are designed to facilitate easy removal of the  
18 geotextile containers if needed.

19 10. The United States Fish and Wildlife Service has  
20 approved an Incidental Take Permit for marine turtles and  
21 other federally threatened or endangered species pursuant to  
22 Section 7 or 10 of the Endangered Species Act for the  
23 placement of the structure if an Incidental Take Permit is  
24 required.

25 (b) The applicant or successive property owners shall  
26 provide financial assurances in the form of surety or  
27 performance bonds or other financial responsibility mechanisms  
28 that the authorized geotextile containers will be removed if  
29 the requirements of this subsection and the permit conditions  
30 are not met. The permittee shall file a notice of formal  
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1 permit conditions in the public records of the county where  
2 the permitted activity is located.

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

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

14 (e) Upon receipt of a permit application, the  
15 department must notify the applicant and agent of all the  
16 statutory provisions of this subsection.

17 (f) The department shall review, with third-party  
18 expert involvement, the performance of dune restoration  
19 incorporating geotextile sand-filled containers to determine  
20 whether such structures provide upland protection and to  
21 determine their impact on the beach-dune system and adjacent  
22 properties. Such structures shall continue to be evaluated to  
23 determine if they are a more effective form of dune  
24 restoration than beach-compatible sand and native vegetation.  
25 Based on such analysis and peer review, the department shall  
26 recommend to the Governor, the President of the Senate, and  
27 the Speaker of the House of Representatives if the provisions  
28 of this subsection should be modified. It is the intent of the  
29 Legislature that until such recommendations are transmitted  
30 and considered by the Legislature, there shall be no changes  
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1 in the requirements or conditions contained in this  
2 subsection.

3 (g) The department shall not include structures  
4 authorized under this subsection in the statewide  
5 comprehensive beach management plan or the annual list of  
6 local government funding requests submitted to the Legislature  
7 pursuant to ss. 161.091 and 161.161.

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

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

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

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

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

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

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

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

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



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

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

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10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
11 COMMITTEE SUBSTITUTE FOR  
12 Senate Bill 1472

13 This committee substitute makes a series of changes involving  
14 the state's beach renourishment program. Specific provisions  
would:

15 Expand the definition of "access" or "public access" to  
16 include established accessways as those that must be retained  
for public use.

17 Create provisions that would allow the Department of  
18 Environmental Protection to issue permits for dune restoration  
19 projects that incorporate geotextile containers or similar  
20 structures. The committee substitute also provides a series  
of specific requirements governing the installation of these  
types of structures.

21 Amend provisions related to beach restoration projects and  
22 property rights of upland owners to provide the method by  
which potential impacts to the upland owners would be valued  
in conjunction with the restoration project.

23 Create a new provision to direct that a sand source inventory  
24 be developed which identifies offshore sand sources.  
25 Additionally, this provision requires that county commissions  
of coastal counties be notified when there is a proposal to  
use adjacent sand sources outside of the region.