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1                   A bill to be entitled  
2           An act relating to sand source management; amending s.  
3           161.021, F.S.; revising the definition of "access" or  
4           "public access" to include certain lands; amending s.  
5           161.085, F.S.; revising provisions relating to rigid  
6           coastal armoring structures; prohibiting local governments  
7           from installing certain rigid coastal armoring structures;  
8           requiring adoption of rules implementing the section;  
9           authorizing permitting for projects incorporating  
10          geotextile containers and similar structures under certain  
11          conditions; providing project requirements; requiring  
12          applicants and property owners to bond certain activities;  
13          requiring permittees to file public notice for certain  
14          activities; requiring the department to remove certain  
15          containers and structures under certain conditions;  
16          authorizing the department to require certifications for  
17          project activities; requiring the department to review and  
18          evaluate certain dune restoration projects and make  
19          recommendations to the Governor and the Legislature;  
20          amending s. 161.141, F.S.; providing for an offset against  
21          damages in lawsuits resulting from activities relating to  
22          beach restoration projects; creating s. 161.144, F.S.;  
23          providing legislative findings; directing the Department  
24          of Environmental Protection to develop and maintain an  
25          inventory of identified offshore sand sources as part of  
26          its comprehensive long-term beach management plan;  
27          requiring the department to provide maps of offshore sand  
28          sources for public review; requiring the department to

29 provide written notice to the boards of county  
 30 commissioners of certain coastal counties; requiring the  
 31 department to provide such boards with the opportunity to  
 32 comment during the planning and permitting stages of  
 33 certain projects; requiring the department to note and  
 34 transmit certain information to the Legislature; providing  
 35 an effective date.  
 36

37 Be It Enacted by the Legislature of the State of Florida:  
 38

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

41 161.021 Definitions.--In construing these statutes, where  
 42 the context does not clearly indicate otherwise, the word,  
 43 phrase, or term:

44 (1) "Access" or "public access" as used in ss. 161.041,  
 45 161.052, and 161.053 means the public's right to laterally  
 46 traverse the sandy beaches of this state where such access  
 47 exists on or after July 1, 1987, or where the public has  
 48 established an accessway through private lands to lands seaward  
 49 of the mean high tide or water line by prescription,  
 50 prescriptive easement, or any other legal means.

51 Section 2. Subsections (3), (5), and (9) of section  
 52 161.085, Florida Statutes, are amended to read:

53 161.085 Rigid coastal armoring structures.--

54 (3) If erosion occurs as a result of a storm event which  
 55 threatens private structures or public infrastructure and a  
 56 permit has not been issued pursuant to subsection (2), unless

57 | the authority has been revoked by order of the department  
 58 | pursuant to subsection (8), an agency, political subdivision, or  
 59 | municipality having jurisdiction over the impacted area may  
 60 | install or authorize installation of rigid coastal armoring  
 61 | structures, exclusive of those authorized under subsection (9),  
 62 | for the protection of private structures or public  
 63 | infrastructure, or take other measures to relieve the threat to  
 64 | private structures or public infrastructure as long as the  
 65 | following items are considered and incorporated into such  
 66 | emergency measures:

- 67 |       (a) Protection of the beach-dune system.
- 68 |       (b) Siting and design criteria for the protective  
 69 | structure.
- 70 |       (c) Impacts on adjacent properties.
- 71 |       (d) Preservation of public beach access.
- 72 |       (e) Protection of native coastal vegetation and nesting  
 73 | marine turtles and their hatchlings.
- 74 |       (5) The department shall ~~may~~ adopt rules to implement the  
 75 | provisions of this section.

76 |       (9) The department, ~~or an agency, political subdivision,~~  
 77 | ~~or municipality described in subsection (3),~~ may authorize dune  
 78 | restoration incorporating sand-filled geotextile containers  
 79 | ~~tubes~~ or similar structures proposed as the core of a restored  
 80 | dune feature when the conditions of paragraphs (a)-(c) and the  
 81 | requirements of s. 161.053 are met. ~~if the applicant meets the~~  
 82 | ~~requirements of this section and:~~

- 83 |       (a) A permit may be granted by the department under this  
 84 | subsection for dune restoration incorporating sand-filled

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85 geotextile containers or similar structures, provided that such  
86 projects:

87 1. Provide for the protection of an existing major  
88 structure or public infrastructure, and notwithstanding any  
89 definition in department rule to the contrary, that major  
90 structure or public infrastructure is vulnerable to damage from  
91 frequent coastal storms or is upland of a beach-dune system that  
92 has experienced significant beach erosion from such storm  
93 events.

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

97 3. May include materials other than native or beach-  
98 quality sand, such as geotextile materials that are used to  
99 contain beach-quality sand for the purposes of maintaining the  
100 stability and longevity of the dune core.

101 4. Are continuously covered with at least 3 feet of native  
102 or beach-quality sand and stabilized with native salt-tolerant  
103 vegetation.

104 5. Are sited as far landward as practicable, balancing the  
105 need to minimize excavation of the beach-dune system, impacts to  
106 nesting marine turtles, and impacts to adjacent properties.

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

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

110 8. Are designed to minimize adverse effects to nesting  
111 marine turtles and turtle hatchlings, consistent with s. 370.12.

112 9. Are designed to facilitate easy removal of the

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113 geotextile containers if needed.

114 10. Include an incidental take permit for marine turtles  
115 pursuant to sections 7 and 10 of the Endangered Species Act  
116 administered by the United States Fish and Wildlife Service if  
117 an incidental take permit is required for the placement of the  
118 structures.

119 (b) The applicant or successive property owners shall  
120 provide financial assurances in the form of surety bonds,  
121 performance bonds, or other financial responsibility mechanisms  
122 that the authorized geotextile containers or similar structures  
123 will be removed if the requirements of this subsection and the  
124 permit conditions are not met. The permittee shall file a notice  
125 of formal permit conditions in the public records of the county  
126 where the permitted activity is located.

127 (c) The department shall order removal of the geotextile  
128 containers or similar structures if the conditions of  
129 subparagraph (a)3. are not met, if the project ceases to  
130 function due to irreparable damage, if the project is determined  
131 by the department to have caused a significant adverse impact to  
132 the beach-dune system, or if the United States Fish and Wildlife  
133 Service revokes the incidental take permit required in  
134 subparagraph (a)10.

135 (d) The department may require any engineering  
136 certifications necessary to ensure the adequacy of the design  
137 and construction of the permitted project.

138 (e) The department shall review, with third-party expert  
139 involvement, the performance of dune restoration incorporating  
140 sand-filled geotextile containers or similar structures to

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141 determine whether such structures provide upland protection and  
142 to determine the impact on the beach-dune system and adjacent  
143 properties. Such structures shall continue to be evaluated to  
144 determine if they are a more effective form of dune restoration  
145 than beach-compatible sand and native vegetation. Based on such  
146 analysis and peer review, the department shall recommend to the  
147 Governor, the President of the Senate, and the Speaker of the  
148 House of Representatives whether the provisions of this  
149 subsection should be modified.

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

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

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

161 Section 3. Section 161.141, Florida Statutes, is amended  
162 to read:

163 161.141 Property rights of state and private upland owners  
164 in beach restoration project areas.--The Legislature declares  
165 that it is the public policy of the state to cause to be fixed  
166 and determined, pursuant to beach restoration, beach  
167 nourishment, and erosion control projects, the boundary line  
168 between sovereignty lands of the state bordering on the Atlantic

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169 Ocean, the Gulf of Mexico, or the Straits of Florida, and the  
170 bays, lagoons, and other tidal reaches thereof, and the upland  
171 properties adjacent thereto; except that such boundary line  
172 shall not be fixed for beach restoration projects that result  
173 from inlet or navigation channel maintenance dredging projects  
174 unless such projects involve the construction of authorized  
175 beach restoration projects. However, prior to construction of  
176 such a beach restoration project, the board of trustees must  
177 establish the line of mean high water for the area to be  
178 restored; and any additions to the upland property landward of  
179 the established line of mean high water which result from the  
180 restoration project remain the property of the upland owner  
181 subject to all governmental regulations and are not to be used  
182 to justify increased density or the relocation of the coastal  
183 construction control line as may be in effect for such upland  
184 property. The resulting additions to upland property are also  
185 subject to a public easement for traditional uses of the sandy  
186 beach consistent with uses that would have been allowed prior to  
187 the need for the restoration project. It is further declared  
188 that there is no intention on the part of the state to extend  
189 its claims to lands not already held by it or to deprive any  
190 upland or submerged land owner of the legitimate and  
191 constitutional use and enjoyment of his or her property. If an  
192 authorized beach restoration, beach nourishment, and erosion  
193 control project cannot reasonably be accomplished without the  
194 taking of private property, the taking must be made by the  
195 requesting authority by eminent domain proceedings. In any  
196 action alleging a taking of all or part of a littoral right or

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197 riparian right as a result of a beach restoration project, any  
198 enhancement in value of the remaining adjoining property of the  
199 upland property owner by reason of the beach restoration project  
200 shall be offset against the damage, if any, resulting to such  
201 remaining adjoining property of the upland property owner by  
202 reason of the beach restoration project. However, such  
203 enhancement in the value shall not be offset against the value  
204 of the property right alleged to have been taken, and if such  
205 enhancement in value shall exceed the damage, if any, to the  
206 upland property, there shall be no recovery over against such  
207 property owner for such excess.

208 Section 4. Section 161.144, Florida Statutes, is created  
209 to read:

210 161.144 Offshore sand sources.--

211 (1) The Legislature recognizes that beach-quality sand for  
212 the nourishment of the state's critically eroded beaches is an  
213 exhaustible resource in ever-decreasing supply and must be  
214 carefully managed for the systemwide benefit of the state's  
215 beaches. Therefore, the Department of Environmental Protection,  
216 pursuant to s. 161.161 and in cooperation with federal and local  
217 governmental agencies, is directed to develop and maintain an  
218 inventory of identified offshore sand sources as part of the  
219 regional elements of its comprehensive long-term beach  
220 management plan.

221 (2) The department shall clearly map or otherwise note and  
222 make readily available for public review any offshore sand  
223 sources in state or federal waters which are identified for  
224 potential, proposed, or permitted use. In addition, the



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225 department shall provide the boards of county commissioners of  
226 coastal counties adjacent to offshore sand sources proposed for  
227 use outside of the region or subregion with written notice of  
228 such activities and an opportunity to comment during a specific  
229 project's planning and permitting stages.

230 (3) Any unresolved objections or concerns of the boards of  
231 county commissioners shall be duly noted by the department and  
232 transmitted to the President of the Senate and the Speaker of  
233 the House of Representatives before the Legislature considers  
234 state funding for a project or before regulatory action is taken  
235 if legislative funding precedes approval of the use of specific  
236 sand sources.

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