

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/SB 2622

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Justice

SUBJECT: Public access to beaches

DATE: April 2, 2008

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Feffer  | Kiger          | EP        | Fav/CS |
| 2. |         |                | CA        |        |
| 3. |         |                | JU        |        |
| 4. |         |                | GA        |        |
| 5. |         |                |           |        |
| 6. |         |                |           |        |

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This CS creates part V of Chapter 161, F.S.; providing definitions; declaring the policy and effect; declaring sandy beaches in this state public; prohibiting private entities from restricting access; prohibiting obstruction of beach access under certain conditions; prohibiting the use of signs declaring that a public beach is private property; providing that a violation of such prohibition is a first-degree misdemeanor; providing a penalty; prohibiting a governmental agency from placing an obstruction upon a public beach under certain conditions; defining the term “recreational use”; authorizing owners of land within a specified distance of coastal waters to record or revoke a notice concerning the granting of permission for the public’s recreational use of the land; providing limitations on the duty or liability of an owner while such a notice is recorded; prohibiting an owner from preventing certain public uses of the land while such a notice is recorded; providing an effective date.

The CS creates Part V of chapter 161, F.S., consisting of sections 161.80, 161.81, 161.82, and 161.83, Florida Statutes.

The CS provides for an effective date of July 1, 2008.

## II. Present Situation:

Currently, section 253.03, F.S. designates the Board of Trustees of the Internal Improvement Trust Fund (Trustees)<sup>1</sup> with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by, or which may hereafter inure to, the state or any of its agencies, departments, boards, or commissions, excluding lands held for transportation corridors and canal rights-of-way, spoil areas and lands required for disposal of materials, or borrow pits; any land, title to which is vested or may become vested in any port authority, flood control district, water management district, or navigation district or agency created by any general or special act; and any lands including the Camp Blanding Military Reservation, which have been conveyed to the state for military purposes only, and which are subject to reversion if conveyed by the original grantee or if the conveyance to the Trustees under this act would work a reversion from any other cause, or where any conveyance of lands held by a state agency which are encumbered by or subject to liens, trust agreements, or any form of contract which encumbers state lands for the repayment of funded debt.

Included in the list of lands vested in the Trustees are: all lands owned by the state by the right of its sovereignty and all lands covered by shallow waters of the ocean or gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water.

Section 253.03(7)(b), F.S., states that with regards to administering, controlling, and managing sovereignty submerged lands, it is clearly stated that the regulations must not interfere with commerce or the transitory operation of vessels through navigable water, but shall control the use of sovereignty submerged lands as a place of business or residence.

Section 253.03(15), F.S., states that Trustees shall encourage the use of sovereign submerged lands for water-dependent uses and public access.

As established by the Trustees, the Erosion Control Line (ECL) is the line which demarks the landward extent of the state as the sovereign titleholder. The land seaward of the ECL is sovereign, and the sand placed seaward of the line as part of a renourishment project becomes public beach.

Section 161.191, F.S., states that upon the filing of a copy of a trustees' resolution and the recording of the survey showing the location of the erosion control line and the area of beach to be protected as provided is s. 161.181, F.S., title to all lands seaward of the ECL shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of such line shall be vested in the riparian upland owners whose lands either abut the erosion control line or would have abutted the line if it had been located directly on the line of mean high water on the date the board of trustees' survey was recorded.

Part I of Chapter 161, F.S., the Beach and Shore Preservation Act, regulates coastal construction seaward of the Coastal Construction Control Line in order to protect the beach and dune system from development, storm damage, and adjacent properties, and for the preservation of public

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<sup>1</sup> The Board of Trustees of the Internal Improvement Trust Fund is comprised of the Governor, the Commissioner of Agriculture and Consumer Services, the Chief Financial Officer, and the Attorney General

beach access. This part defines public beach access as: "Access" or "public access" which 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 access way is provided.

According to the analysis done by the Department of Environmental Protection (DEP), Florida's Growth Management Act, Chapter 163, F.S., and its implementing rule, 9J-5, F.A.C., specify that cities and counties must include beach access in their comprehensive plans. The Department of Community Affairs (DCA) is responsible for implementing this policy. Several state funding assistance programs are available to assist local governments in acquisition and development of beach access, including the DEP's Florida Recreation Development Assistance Program grants and DCA's Florida Communities Trust grants. DEP's Coastal Zone Management Program provides signs at no cost to local governments who request them. In addition, most local governments promote their beach access and amenities as part of their economic development and recreational activities programs.

### **III. Effect of Proposed Changes:**

The CS creates part V of chapter 161, F.S., consisting of sections 161.80, 161.81, 161.82, and 161.83.

Section 161.80, F.S., would establish definitions:

- (1) "Beach access" means the public's right to laterally traverse and make recreational use of the sandy beaches of this state where such access exists on or after July 1, 1987, or 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, and the public's right of ingress and egress to public beaches and the waters of the Gulf of Mexico, the Atlantic Ocean, or the Straits of Florida.
- (2) "Public beach" means any sovereign beach, any recreational beach owned or operated by the state or a local government, or any sandy beach area where the public has established or acquired a right of use by prescription, dedication, custom, or any other legal means.
- (3) "Sovereign beach" means that portion of a sandy beach lying seaward of the line of mean high water or a recorded erosion control line.

Section 161.81, F.S., declares:

- (1) It is the policy of this state that the public, individually and collectively, shall have the free and unrestricted right to enter and use public beaches.
- (2) This part does not affect in any way the title held to land in this state which is adjacent to any beach on the Gulf of Mexico, the Atlantic Ocean, or the Straits of Florida, and does not reduce or limit in any way the rights of the public in public beaches which have been defined in law or custom.

- (3) Any sandy beach below the mean high water line or a recorded erosion control line (ECL) is declared public and a private entity, absent a board of trustees deed authorization, may not restrict access along the shoreline across such beaches.

Section 161.82, F.S., establishes that a person may not obstruct or cause the obstruction of beach access or by communicating in any manner that a public beach is private property, commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. It also states that a governmental entity may not place or cause to be placed any obstruction upon a public beach unless such obstruction is a response to public safety or an emergency or is otherwise authorized by law.

Section 161.83, F.S., defines the term “recreational use”, establishes a process for recording permission to access beaches, and establishes a limitation of liability, which establishes that the holder of record title to the parcel does not owe a duty to keep the parcel safe for entry or use by the public or to give warning to persons entering or leaving of any hazardous conditions, structures, or activities thereon.

The bill establishes that this act shall take effect July 1, 2008.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unknown, but potentially significant litigation costs between competing interest groups.

C. Government Sector Impact:

Unknown, but potentially significant litigation costs associated with enforcing and implementing the provisions of this act.

**VI. Technical Deficiencies:**

DEP also acknowledges that the bill defines a public beach as all beach areas where the public has established or acquired a right of use by prescription, dedication, custom, or any other legal means. The establishment of public beaches under this definition will require judicial determinations resulting in legal easement descriptions for each case.

The DEP analysis states that providing that the public has a “right” to enter a public beach would appear to grant new rights that may create conflicts with upland landowners relative to the public's perceived ability to cross upland private property to access the beach.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Environmental Preservation and Conservation on April 9, 2008**

The Committee Substitute (CS) adds subsection 161.81(3), F.S., to state that any sandy beach below the mean high water line or a recorded erosion control line is declared a public entity and a private entity may not restrict access along the shoreline of such beaches.

The CS amends section 161.82, by deleting subsection 161.82(1), F.S., which provided that a local government may not exclude nonresidents or a particular class of user from a public beach, and renumbering the following sections accordingly.

The CS amends 161.82(2), F.S., to allow for a governmental agency to obstruct access to a public beach if it is a response to public safety.

Subsection 161.83(1), F.S., and subsection 161.83(2), F.S., are amended to make technical changes.

The title is amended appropriately.

- B. **Amendments:**

None.