

By Senator Justice

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1                   A bill to be entitled  
2           An act relating to public access to beaches; creating  
3           part V of ch. 161, F.S.; providing definitions;  
4           providing policy and effect; declaring that the public  
5           policy of this state is to provide free access to  
6           public beaches; prohibiting persons from restricting  
7           access; prohibiting obstruction of beach access under  
8           certain conditions; prohibiting the use of signs  
9           declaring that a public beach is private property;  
10          providing that a violation of such prohibition is a  
11          first-degree misdemeanor; providing a penalty;  
12          prohibiting a governmental entity from placing an  
13          obstruction upon a public beach under certain  
14          conditions; prohibiting ordinances that limit public  
15          access; authorizing owners of land within a specified  
16          distance of certain coastal waters to record or revoke  
17          a notice concerning the granting of permission for the  
18          public's recreational use of the land; providing  
19          limitations on the duty or liability of an owner while  
20          such a notice is recorded; prohibiting an owner from  
21          preventing certain public uses of the land while such  
22          a notice is recorded; providing for the use of prima  
23          facie evidence in suits to exclude the public from  
24          accessing and using a sandy beach; requiring notice to  
25          the Board of Trustees of the Internal Improvement  
26          Trust Fund of the sale or closure of access to a  
27          public beach; providing for the purchase of such  
28          access by the board; providing an effective date.  
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Part V of chapter 161, Florida Statutes,  
33 consisting of sections 161.80, 161.81, 161.82, 161.83, 161.84,  
34 and 161.85, is created to read:

35 PART V

36 PUBLIC BEACH ACCESS

37 161.80 Definitions.—As used in this part, the term:

38 (1) "Beach access" means the public's right to laterally  
39 traverse and make recreational use of the sandy beaches of this  
40 state where such access exists on or after July 1, 1987, or the  
41 public has established an accessway through private lands to  
42 lands seaward of the mean high tide or water line by  
43 prescription, prescriptive easement, or any other legal means,  
44 and the public's right of ingress and egress to public beaches  
45 and the waters of the Gulf of Mexico, the Atlantic Ocean, or the  
46 Straits of Florida.

47 (2) "Public beach" means any sovereign beach, any  
48 recreational beach owned or operated by the state or a local  
49 government, or any sandy beach area where the public has  
50 established or acquired a right of use by prescription,  
51 dedication, custom, or any other legal means.

52 (3) "Recreational use" includes walking, hiking, fishing,  
53 swimming, surfing, sunbathing, nature study, any other  
54 traditional beach activities; visiting historical,  
55 archaeological, scenic, or scientific sites; accessing a public  
56 beach; and providing noncommercial parking areas in proximity to  
57 beach access points.

58 (4) "Sovereign beach" means that portion of a sandy beach

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59 lying seaward of the line of mean high water or a recorded  
60 erosion control line.

61 161.81 Declaration of policy and effect.-

62 (1) Under the Environmental Protection Act of 1971, a  
63 public beach is a natural resource, and it is the policy of this  
64 state that the public, individually and collectively, have free  
65 and unrestricted right to enter and use this resource.

66 (2) This part does not affect in any way the title held to  
67 land in this state which is adjacent to any beach on the Gulf of  
68 Mexico, the Atlantic Ocean, or the Straits of Florida, and does  
69 not reduce or limit in any way the rights of the public in  
70 public beaches which have been defined in law or custom.

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

75 161.82 Unlawful barriers to use of public beaches.-

76 (1) (a) A person may not:

77 1. Obstruct or cause obstruction of beach access by  
78 fencing, barricading, or causing any other obstruction, unless  
79 such obstruction is otherwise authorized by law.

80 2. Display or cause to be displayed on any public beach any  
81 sign, marker, or warning or communicate in any other manner that  
82 a public beach is private property.

83 (b) A person who violates this subsection commits a  
84 misdemeanor of the first degree, punishable as provided in s.  
85 775.082 or s. 775.083.

86 (2) A governmental entity may not:

87 (a) Place or cause to be placed any fencing, barricade, or

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88 any other obstruction upon a public beach, unless such  
89 obstruction is a response to public safety or an emergency or is  
90 otherwise authorized by law. This subsection does not prevent  
91 any agency, department, institution, subdivision, or  
92 instrumentality of the state or of the Federal Government from  
93 erecting or maintaining any groin, seawall, barrier, pass,  
94 channel, jetty, or other structure as an aid to navigation, as  
95 protection of the shore, or for fishing, safety, or other lawful  
96 purpose.

97 (b) Adopt an ordinance, resolution, or development order  
98 that has the effect of limiting the public's access to a public  
99 beach, except as necessary to protect the public's health,  
100 safety, and welfare.

101 161.83 Owner permission to access beaches; limitation of  
102 liability.-

103 (1) The holder of record title to land within 1,500 feet of  
104 the Gulf of Mexico, the Atlantic Ocean, or the Straits of  
105 Florida may record in any county in which any part of the land  
106 is situated a description of the land and a notice reading  
107 substantially as follows: "The right of the public or any person  
108 to make recreational use of the above described land or any  
109 portion thereof, other than any use expressly allowed by a  
110 written or recorded map, agreement, deed, or dedication, is by  
111 permission of owner pursuant to section 161.83, Florida  
112 Statutes." The holder of record title may revoke such notice by  
113 recording a notice of revocation in each county where the notice  
114 is recorded. The recording of a notice under this subsection  
115 does not affect any right of the public which was vested at the  
116 time of recording through prescription, dedication, custom, or

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117 other legal means.

118 (2) During any period when notice concerning a parcel of  
119 land is recorded and not revoked:

120 (a) If the dedication of all or a portion of the parcel to  
121 public use or the public's prescriptive or customary right in  
122 all or a portion of the parcel is at issue in a legal  
123 proceeding, the recorded notice is conclusive evidence that the  
124 use of the parcel by the public or by any user for any purpose,  
125 other than a use expressly allowed by a written or recorded map,  
126 agreement, deed, or dedication, is permissive and with the  
127 consent of the holder of record title to the parcel.

128 (b) The holder of record title to the parcel may not  
129 prevent a public use of the parcel which is appropriate to the  
130 notice by physical obstruction, notice, or otherwise.

131 (c) The holder of record title to the parcel does not owe a  
132 duty of care to keep the parcel safe for entry or use by the  
133 public or to give warning to persons entering or going of any  
134 hazardous conditions, structures, or activities thereon, and  
135 such titleholder does not, by providing public recreational use  
136 of the parcel:

137 1. Extend any assurance that the parcel is safe for any  
138 purpose;

139 2. Incur any duty of care to any person who goes on the  
140 parcel; or

141 3. Become liable or responsible for any injury to persons  
142 or property caused by the act or omission of a person who goes  
143 on the parcel.

144 161.84 Prima facie evidence.—In a suit brought or defended  
145 under this part or whose determination is affected by this part,

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146 proof of record title to a sandy beach that is landward of a  
147 sovereign beach is not prima facie evidence that the titleholder  
148 has a right to exclude the public from accessing and using the  
149 sandy beach or any associated accessway. A showing that property  
150 lies within the area from mean low tide to the seasonal high-  
151 water line, as defined in s. 161.053(6) (a), is prima facie  
152 evidence that the title of the littoral owner does not include  
153 the right to prevent the public from using the property for  
154 access and use of a public beach or for ingress and egress to  
155 the waters of the Gulf of Mexico, the Atlantic Ocean, or the  
156 Straits of Florida.

157 161.85 Public purchase of beach access.-

158 (1) By January 1, 2010, each county and municipality shall  
159 provide a list to the Board of Trustees of the Internal  
160 Improvement Trust Fund of each dead-end street within its  
161 jurisdiction which may be used for the purpose of accessing and  
162 using a public beach. The list must specify the location of each  
163 street and be provided at no charge to the board.

164 (2) Notwithstanding any other provision of law, a county or  
165 municipality may not sell or convey any interest in beachfront  
166 land or abandon, close, relinquish, or vacate a street, road, or  
167 easement that provides an accessway to a public beach until the  
168 Board of Trustees of the Internal Improvement Trust Fund has an  
169 opportunity to receive or purchase such interest or accessway in  
170 accordance with the following:

171 (a) If a county or municipality receives a petition  
172 requesting that it sell, convey, abandon, close, relinquish, or  
173 vacate any such interest or accessway or decides to take such  
174 action without receiving a request, the county or municipality

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175 shall, before consideration of any private offers, notify the  
176 board that the interest or accessway is available. The notice  
177 must be sent by certified mail, return receipt requested.

178 (b) Within 45 days after receipt of the notice, the board  
179 shall determine by resolution whether it proposes to devote such  
180 interest or accessway to public use for the purpose of accessing  
181 and using the public beach. Such purpose is declared to be a  
182 public purpose.

183 1. If the board proposes to devote the interest or  
184 accessway in perpetuity for such purpose, within 120 days after  
185 receipt of the notice, it shall adopt a resolution that  
186 specifies such intent and provides a tentative plan for the  
187 development of the interest or accessway and a tentative  
188 schedule that specifies a date that development will commence,  
189 which must be within 2 years after the date of the resolution,  
190 and a date that development will be completed, which must be  
191 within 4 years after the date of the resolution. If appropriate,  
192 the board's agreement to maintain the land in its current use  
193 and condition shall be considered a sufficient plan of  
194 development. The board shall send a certified copy of the  
195 resolution to the county or municipality by certified mail,  
196 return receipt requested, within 5 days after adoption but  
197 before the end of the 120-day period. The county or municipality  
198 that timely receives the certified copy of the resolution shall  
199 convey the land to the board upon such terms and conditions and  
200 at such price as the county or municipality determines.

201 2. If the board decides not to devote such interest or  
202 accessway in perpetuity for such purposes, it shall adopt a  
203 resolution reflecting such determination and send a certified

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204 copy of the resolution to the county or municipality by  
205 certified mail, return receipt requested, within 5 days after  
206 adoption.

207 (c) The failure of the board to adopt and send a resolution  
208 pursuant to this subsection constitutes the board's  
209 determination not to devote such interest or accessway in  
210 perpetuity to a public use for the purpose of accessing and  
211 using a public beach.

212 Section 2. This act shall take effect July 1, 2009.