

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Nehr offered the following:

2
3 **Amendment to Amendment (551260) (with title amendment)**

4 Between lines 4 and 5, insert:

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

7 161.085 Rigid coastal armoring structures.-

8 (3) If erosion occurs as a result of a storm event which
9 threatens private structures or public infrastructure and a
10 permit has not been issued pursuant to subsection (2), unless
11 the authority has been revoked by order of the department
12 pursuant to subsection (8), an agency, political subdivision, or
13 municipality having jurisdiction over the impacted area may
14 install or authorize installation of rigid coastal armoring
15 structures, ~~exclusive of those authorized under subsection (9),~~
16 for the protection of private structures or public

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17 infrastructure, or take other measures to relieve the threat to
18 private structures or public infrastructure as long as the
19 following items are considered and incorporated into such
20 emergency measures:

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

22 (b) Siting and design criteria for the protective
23 structure.

24 (c) Impacts on adjacent properties.

25 (d) Preservation of public beach access.

26 (e) Protection of native coastal vegetation, nesting state
27 or federally threatened or endangered species, and nesting
28 marine turtles and their hatchlings.

29 (9) Notwithstanding any law or department rule to the
30 contrary, a general permit is created for ~~The department may~~
31 ~~authorize~~ dune restoration incorporating sand-filled geotextile
32 containers or similar structures proposed as the core of a
33 restored dune feature when the conditions of this subsection
34 ~~paragraphs (a) - (c) and the requirements of s. 161.053~~ are met.

35 (a) A general permit is transferable and shall ~~may~~ be
36 granted by the department under this subsection for construction
37 and maintenance of dune restoration incorporating geotextile
38 containers or similar structures provided that such projects:

39 1. Provide for the protection of an existing major
40 structure or public infrastructure, and, notwithstanding any
41 definition in department rule to the contrary, that major
42 structure or public infrastructure is vulnerable to damage from
43 frequent coastal storms, or is upland of a beach-dune system

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44 which has experienced significant beach erosion from such storm
45 events.

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

49 3. May include materials other than native or beach-
50 quality sand such as geotextile materials that are used to
51 contain beach-quality sand for the purposes of maintaining the
52 stability and longevity of the dune core.

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

56 5. Are sited as far landward as practicable, balancing the
57 need to minimize excavation of the beach-dune system, impacts to
58 nesting marine turtles and other nesting state or federally
59 threatened or endangered species, and impacts to adjacent
60 properties.

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

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

64 8. Are designed to minimize adverse effects to nesting
65 marine turtles and turtle hatchlings, consistent with s.
66 379.2431.

67 9. Are designed to facilitate easy removal of the
68 geotextile containers if needed.

69 10. The United States Fish and Wildlife Service has
70 approved an Incidental Take Permit for marine turtles and other
71 federally threatened or endangered species pursuant to s. 7 or
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72 s. 10 of the Endangered Species Act for the placement of the
73 structure, provided the United States Fish and Wildlife Service
74 has required ~~if~~ an Incidental Take Permit as a condition
75 precedent to placement of the structure ~~is required~~.

76 (b) An applicant seeking a general permit shall provide
77 the department with the information set forth in rule 62B-
78 56.050(3)(a), (b), (c), (e), (g), (i), (j), (k)1-4, (l), and
79 (m), Florida Administrative Code. The information shall be
80 submitted under seal by a professional engineer licensed to
81 practice in this state. In addition, the applicant shall submit
82 a fee of \$2,500, which shall be refunded to the applicant if the
83 application is not approved pursuant to this subsection.

84 (c) The department shall grant or deny in writing each
85 request for a general permit pursuant to this subsection within
86 30 days after receipt of the documentation required under
87 paragraph (b), unless the applicant agrees to an extension.
88 Unless the applicant agrees to another date, if the department
89 fails to act on the request within the 30-day period, the
90 request is approved. The department's denial of a request for a
91 general permit is subject to review under chapter 120. If the
92 general permit is denied, the denial shall be set aside and the
93 permit shall be issued in response to any administrative or
94 judicial proceeding for review unless the department can
95 demonstrate by clear and convincing evidence that the applicant
96 has not submitted the required documentation.

97 (d) ~~(b)~~ Subsequent to issuance of the general permit, but
98 prior to commencement of construction, the permittee shall
99 submit to the department a fee of \$1,500 and the information set
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100 forth in rule 62B-56.050(3)(h), (k)5-7, and (n), Florida
101 Administrative Code, certified by a professional engineer
102 licensed to practice in this state. In addition, the permittee
103 ~~The applicant or successive property owners shall provide~~
104 financial assurances in the form of surety or performance bonds
105 or other financial responsibility mechanisms that the authorized
106 geotextile containers will be removed if the requirements of
107 this subsection cannot reasonably be maintained ~~and the permit~~
108 ~~conditions are not met.~~ The permittee shall file a notice of the
109 general formal permit conditions in the public records of the
110 county where the permitted activity is located. Project
111 construction shall be undertaken by a contractor licensed in
112 this state.

113 (e) ~~(e)~~ The department shall order removal of the
114 geotextile container ~~if the conditions of subparagraph (a)4. are~~
115 ~~not met,~~ if the project can no longer ceases to function as
116 designed due to irreparable damage, ~~if the project is determined~~
117 ~~by the department to have caused a significant adverse impact to~~
118 ~~the beach dune system,~~ or if the United States Fish and Wildlife
119 Service revokes the Incidental Take Permit required in
120 subparagraph (a)10.

121 (f) In addition to paragraphs (a)-(e), a general permit is
122 granted for dune restoration incorporating geotextile containers
123 or similar structures approved by any state or local agency
124 pursuant to subsection (3) and constructed prior to July 2007 if
125 the applicant demonstrates that the project was designed by a
126 professional engineer licensed in this state and installed by a
127 contractor licensed in this state. The department shall order
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128 removal of the geotextile containers only if the permittee fails
129 to meet the conditions of paragraph (e).

130 (g) Any rules of the department inconsistent with this
131 subsection are repealed.

132 ~~(d) The department may require any engineering~~
133 ~~certifications that are necessary to ensure the adequacy of the~~
134 ~~design and construction of the permitted project.~~

135 ~~(e) Upon receipt of a permit application, the department~~
136 ~~must notify the applicant and agent of all the statutory~~
137 ~~provisions of this subsection.~~

138 ~~(f) The department shall review, with third party expert~~
139 ~~involvement, the performance of dune restoration incorporating~~
140 ~~geotextile sand-filled containers to determine whether such~~
141 ~~structures provide upland protection and to determine their~~
142 ~~impact on the beach dune system and adjacent properties. Such~~
143 ~~structures shall continue to be evaluated to determine if they~~
144 ~~are a more effective form of dune restoration than beach-~~
145 ~~compatible sand and native vegetation. Based on such analysis~~
146 ~~and peer review, the department shall recommend to the Governor,~~
147 ~~the President of the Senate, and the Speaker of the House of~~
148 ~~Representatives if the provisions of this subsection should be~~
149 ~~modified. It is the intent of the Legislature that until such~~
150 ~~recommendations are transmitted and considered by the~~
151 ~~Legislature, there shall be no changes in the requirements or~~
152 ~~conditions contained in this subsection.~~

153 ~~(g) The department shall not include structures authorized~~
154 ~~under this subsection in the statewide comprehensive beach~~
155 ~~management plan or the annual list of local government funding~~
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156 ~~requests submitted to the Legislature pursuant to ss. 161.091~~
157 ~~and 161.161.~~

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

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Remove line 635 and insert:

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An act relating to environmental control; amending s.

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161.085, F.S.; creating a general permit for dune

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restoration incorporating sand-filled geotextile

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containers or similar structures; providing application

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and issuance requirements for such permits; requiring the

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Department of Environmental Protection to issue permits

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for construction and maintenance of dune restoration

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structures; requiring permittees to submit specified fees;

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providing that permit denial is subject to review under

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ch. 120; revising provisions relating to the removal of

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geotextile containers; granting a permit for dune

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restoration incorporating geotextile containers or similar

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structures approved by any state or local agency meeting

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specified criteria; repealing specified rules of the

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department; deleting a provision authorizing the

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department to require certain engineering certifications;

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deleting a provision requiring the department to provide

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certain notice; deleting a provision requiring the

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department to conduct reviews of dune restoration

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activities and to provide recommendations to the Governor

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and the Legislature; deleting a provision prohibiting the

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184 department from including specified structures in the
185 statewide comprehensive beach management plan and the
186 annual list of local government funding requests; amending
187 s.