

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 947 Volusia County

SPONSOR(S): Leek and others

TIED BILLS: **IDEN./SIM. BILLS:**

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 947 passed the House on February 20, 2020, and subsequently passed the Senate on March 11, 2020.

Florida Statutes generally prohibit vehicular traffic on dunes or native stabilizing vegetation of the dune system of coastal beaches. With certain exceptions, vehicular traffic is prohibited on coastal beaches except where a local government with jurisdiction over all or portions of the coastal beach authorized such traffic by at least a three-fifths vote of its governing body prior to 1985. This does not apply to counties that adopted unified countywide beach regulations prior to January 1, 1988, pursuant to a county home rule charter.

Driving on the beaches of Daytona Beach and New Smyrna Beach in Volusia County is a tradition dating back to the early days of the automobile. Before Daytona International Speedway opened in 1959, stock car racing in Volusia County occurred primarily on Daytona Beach and Ormond Beach. Volusia County's charter provides that the public has a right of access to the beaches and a right to use the beaches for recreation and other customary purposes. The charter directs the county council, as permitted by law, to authorize vehicular access to any part of the beach not reasonably accessible from public parking facilities. In 2013, the first reenactment of a historic beach race occurred, called the Legends Beach Parade, which was conducted annually at the North Turn Beach from 2013 to 2018. In 2019, the Volusia County Attorney raised concerns with the county council that questioned the authorization for continuing the historic race reenactment.

The bill allows Volusia County to permit, by ordinance, vehicular traffic upon a portion of coastal beach where vehicular traffic was not previously permitted, for the sole purpose of a low-speed reenactment of a historic automobile race on the original beach race course.

The bill does not appear to have a fiscal impact on the state. According to the Economic Impact Statement Volusia County would expend \$9,768 annually to help facilitate the event on the beach.

The bill was approved by the Governor on June 9, 2020, ch. 2020-193, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

State Beach Regulations

Florida law¹ limits construction and physical activity in Florida's coastal areas, regulates how that construction and activity can occur, and provides enforcement mechanisms for violations. In the 1970s, the Legislature added provisions regulating the construction seaward of a coastal construction control line² to protect beaches and coastal barrier dunes from imprudent construction.³

Florida law requires the Department of Environmental Protection (DEP) to establish coastal construction control lines on a county-by-county basis along the coasts of the state.⁴ These control lines must define that portion of the beach-dune system, which is subject to severe fluctuations based on 100-year storm surge, storm waves, or other predictable weather conditions.⁵ Once a control line is established, it is unlawful to "construct any structure whatsoever seaward thereof, make any excavation, remove any beach material, or otherwise alter existing ground elevations; [or] drive any vehicle on, over, or across any sand dune or damage or cause to be damaged such sand dune or the vegetation growing thereon seaward" unless a permit has been issued by DEP.⁶

In 1985, the Coastal Zone Protection Act⁷ established minimum standards governing construction in coastal areas and mandated that any such construction produce the "minimum adverse impact"⁸ on the "beach"⁹ and "dune system."¹⁰ In the Coastal Zone Protection Act, the Legislature found that coastal areas serve important aesthetic, ecological, and public health, safety, and welfare functions and have become subject to increasing growth pressures.¹¹ Although the Coastal Zone Protection Act provides for minimum construction standards, DEP may require permits or adopt and enforce standards for construction that is more restrictive than those minimum construction standards.¹²

Vehicular Traffic on Beaches

Florida Statutes provide that vehicular traffic,¹³ except as necessary for cleanup, repair, public safety, or traffic upon authorized local or state dune crossovers, is prohibited on dunes or native stabilizing

¹ Ch. 161, parts I and II, F.S., known as the Dennis L. Jones Beach and Shore Preservation Act, first adopted in 1965. *See* ch. 65-408, Laws of Fla.

² S. 161.053, F.S.

³ S. 161.05(1)(a), F.S.

⁴ S. 161.053(1)(a), F.S.

⁵ *Id.*; S. 161.053(2)(a), F.S.

⁶ S. 161.053(2)(a), F.S.

⁷ Ch. 161, part III, F.S.

⁸ S. 161.55, F.S.

⁹ "Beach" means the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves. S. 161.54(3), F.S.

¹⁰ "Dune" means a mound or ridge of loose sediments, usually sand-sized sediments, lying landward of the beach and deposited by any natural or artificial mechanism. S. 161.54(3), F.S.

¹¹ S. 161.53(1)-(5), F.S.

¹² S. 161.56(1), F.S.

¹³ The term "vehicular traffic" is not statutorily defined. *See City of Treasure Island v. Tahitian Treasure Island*, 253 So. 3d 649, 657 (Fla. 2d DCA Oct. 27, 2019) ("We are confident that vehicular traffic denotes the movement of vehicles as though it were happening along a public street or highway. We reach this conclusion because the alternative—the interpretation that vehicular traffic reaches any movement of vehicles—would put section 161.58's regulation of vehicular traffic on coastal beaches in substantial conflict with the authority granted the department in part I to authorize by permit construction and other activity on those same beaches.).

vegetation of the dune system of coastal beaches.¹⁴ Except as otherwise provided in statute, any person driving any vehicle on, over, or across any dune or native stabilizing vegetation of the dune system commits a second degree misdemeanor.¹⁵

On coastal beaches, vehicular traffic is prohibited except as necessary for cleanup, repair, public safety, or to maintain existing licensed and permitted traditional commercial fishing activities or existing authorized public accessways. Vehicular traffic is also permitted on a coastal beach where a local government with jurisdiction over all or portions of the beach, by at least a three-fifths vote of its governing body, has authorized such traffic prior to 1985. The local government must have determined by October 1989, in accordance with the DEP rules, that less than 50 percent of the peak user demand for off-beach parking was available.¹⁶ However, these requirements do not apply to counties that have adopted unified countywide beach regulations pursuant to a county home rule charter prior to January 1, 1988.¹⁷

A local government that so authorized such vehicular traffic on all or portions of its beaches may later prohibit such vehicular traffic on all or portions of the beaches under its jurisdiction, by a vote of at least three-fifths of its governing body.¹⁸ Local governments may charge a reasonable fee for vehicular traffic access, if the fee is adopted by a three-fifths vote of its governing body.¹⁹ The revenues from such fees must be used for beach maintenance or beach-related traffic management, parking, law enforcement, liability insurance, sanitation, or lifeguard or other staff purposes.²⁰ Unless authorized by the local government, any person driving any vehicle on, over, or across the beach is guilty of a second degree misdemeanor.²¹

Best Management Practices for Operating Vehicles on the Beach

For those local governments who have authorized vehicular traffic on their beaches, the Florida Fish and Wildlife Conservation Commission (FWC) has published best management practices for operating vehicles on the beach. FWC advises to avoid driving on the beach during sea turtle nesting season²² (May 1 through October 31) and beach-nesting bird season (active from mid-February through the end of August).²³ FWC advises individuals driving on the beach to take the following precautions:

- Enter the beach only at designated access points and proceed directly to the hard-packed sand near or below the high tide line. Avoid driving on the upper beach whenever possible, and never drive over any dunes or over beach vegetation. If beach conditions require driving above the high tide line, avoid those areas with known sea turtle nests or shorebird breeding areas;
- Avoid the wrack line²⁴ or areas of dense seaweed, which may contain sea turtle hatchlings or baby birds;
- Minimize ruts on the dry sandy beach by lowering tire pressure and using 4WD, particularly in front of sea turtle or bird nests;

¹⁴ S. 161.58(1), F.S.

¹⁵ *Id.*

¹⁶ S. 161.58(2), F.S.

¹⁷ S. 161.58(2)(b), F.S.

¹⁸ S. 161.58(3), F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Before you drive on the beach*, Florida Fish and Wildlife Conservation Commission, myfwc.com/conservation/you-conserve/wildlife/beach-driving (last visited Jan. 9, 2020). While May through October is considered sea turtle nesting season, some species of sea turtles have been known to nest as early as February, and hatchlings can emerge from their nests as late as the mid-winter months.

²³ *Id.*

²⁴ Beach wrack is the line of debris that gets pushed onshore by ocean tides and is an important component in the beach/dune ecosystem. *Beach Wrack what is it?*, Discover Palm Beach, discover.pbcgov.org/erm/Publications/BeachFactSheet.pdf (last visited Jan. 9, 2020).

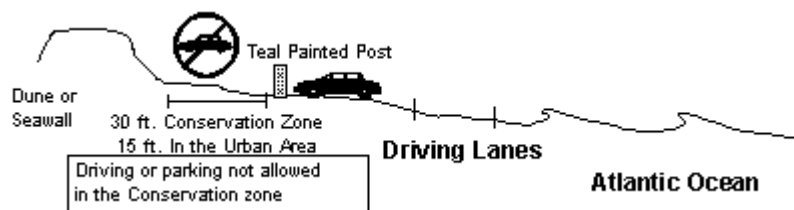
- Drive slowly in order to observe any bird eggs, chicks, or sea turtle hatchlings in the vehicle's line of travel;
- Whenever possible, avoid driving on the beach at night;
- Do not park vehicles adjacent to nests or posted areas, and if driving at night, turn headlights off when parking; and
- If you observe a sea turtle crawling out of the surf, stop the vehicle and turn off all lights.²⁵

Vehicular Beach Traffic in Volusia County

Driving on Daytona Beach and New Smyrna Beach in Volusia County is a tradition dating back to the early days of the automobile.²⁶ Volusia County's charter provides that the public has a right of access to the beaches and a right to use the beaches for recreation and other customary purposes.²⁷ The charter directs the county council, as permitted by law, to authorize vehicular access to any part of the beach not reasonably accessible from public parking facilities.²⁸

Daytona Beach and New Smyrna Beach are open to vehicles from 8:00 am to 7:00 p.m. or sundown (whichever is earlier) from May 1 through October 31, and between sunrise and sunset from November 1 to April 30, tides permitting.²⁹ The driving areas are designated by signs and wooden posts and drivers are required to drive only in those designated areas, observe the speed limit of 10 miles per hour (MPH),³⁰ and park east or seaward of the wooden posts.³¹

The diagram below indicates these designated areas:



Volusia County requires all persons driving on the beach to purchase either a daily or annual beach pass, which must be displayed on the vehicle's windshield.³² The following fees and passes are available at beach toll locations and inlet parks:

- \$20 daily beach entry per vehicle (one free re-entry/day/same vehicle)

²⁵ Florida Fish and Wildlife Conservation Commission, *supra* note 22.

²⁶ *Beach driving and Parking*, Volusia County, volusia.org/services/public-protection/beach-safety/beach-driving-and-parking.shtml (last visited Jan. 8, 2020).

²⁷ VOLUSIA COUNTY FLA., CHARTER, S. 205.1 (1996), available at Volusia.org/government/county-council/how-county-government-works/home-rule-charter-details.shtml.

²⁸ *Id.*

²⁹ VOLUSIA COUNTY, FLA. CODE OF ORDINANCES, S. 20-173 (2015), library.municode.com/fl/Volusia_county/code/code_of_ordinances?nodeID=PTIICOOR_CH20BECO_ARTVITRVE (last visited Jan. 8, 2019). The following areas of beach are traffic-free zones: all of the beach north of the northernmost boundary of the extension of Granada Avenue in Ormond Beach; the beach from the southernmost boundary of the extension of Emelia Avenue in Daytona Beach Shores to the northernmost boundary of the extension of Beach Street in the Town of Ponce Inlet; the beach from 100 feet north of the north jetty of the Ponce deLeon jetty southward to the southernmost limits of the Town of ponce Inlet; the beach north of the rock jetty along that portion of the beach boarding the south side of the Ponce deLeon Inlet channel; the beach from the southernmost boundary of the extension of 27th Street in New Smyrna Beach south to Canaveral National Seashore Park; the beach from the southern boundary of the extension of Seabreeze Boulevard to the northern boundary of the extension of International Speedway Boulevard; and the beach from a point 300 feet south of the southerly extension of University Boulevard extending southward 410 feet.

³⁰ VOLUSIA COUNTY, FLA. CODE OF ORDINANCES, S. 82-49(b)(2) (2011), https://library.municode.com/fl/volusia_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH82PARE_ARTIIRURECOLA_S82-49MOVE (last visited Jan. 11, 2020). Vehicular traffic is limited to 10 MPH on conservation lands.

³¹ Volusia County, *supra* note 29.

³² *Id.*

- \$10 daily inlet park entry per vehicle at Lighthouse Point and Smyrna Dunes Park (one free re-entry/day/same vehicle)
- \$25 resident annual beach pass (unlimited beach entry- 365 days from date of purchase)
- \$20 annual inlet park pass (unlimited beach entry- 365 days from date of purchase)
- \$100 non-resident annual beach pass (unlimited beach entry- 365 days from date of purchase)
- \$45 resident combo pass (beach and inlet parks unlimited entry- 365 days from date of purchase)
- \$120 non-resident combo pass (beach and inlet parks unlimited entry- 365 days from date of purchase)³³

Environmental Impact of Driving on the Beach

Although a lawful and traditional activity in Volusia County, operating vehicles on the beach can destroy wildlife habitats and can be harmful or fatal to wildlife.³⁴ Beach driving has the potential to impact sea turtles and their nesting habitat as well as the critical wintering habitat of the federally threatened piping plover.³⁵ Additionally, the Southeastern Beach Mouse historically lived on barrier islands from Palm Beach County north to Ponce Inlet in Volusia County.³⁶ In 2001, the United States Fish and Wildlife Service (USFWS) designated 168 acres in the Ponce Inlet area as critical habitat for wintering piping plovers.³⁷ Three species of sea turtles regularly nest on Volusia County beaches, the Loggerhead, Green, and Leatherback, while two others are rare nesters, the Hawksbill and Kemp's Ridley.³⁸

Because driving on the beaches can impact these species, in 1996, Volusia County applied for and received an incidental taking permit (ITP)³⁹ that authorizes the taking incidental to beach driving and vehicular beach access-related activities regulated or managed by the county.⁴⁰ A "take" means activities that "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct."⁴¹ The ITP has been amended 11 times, the most recent of which extended its expiration term until December 31, 2030.⁴²

Entities seeking an ITP are required to have a Habitat Conservation Plan (HCP) as part of the application. The HCP describes the anticipated effects of the proposed taking, how those impacts will be minimized or mitigated, and how the HCP will be funded.

Between 1997 and 2001, only six sea turtle hatchlings were reported to have been directly impacted and one unmarked nest was reportedly run over by a public safety vehicle. Indirect impacts to sea turtles have been limited primarily to hatchling encounters with vehicle ruts. However, there is no

³³ *Id.*

³⁴ Florida Fish and Wildlife Conservation Commission, *supra* note 22. The eggs and flightless young of beach-nesting birds can be virtually invisible, especially from a vehicle. Sea turtles coming ashore to nest may be scared away by vehicles and hatchlings are vulnerable to being run over. Both adult and hatchling sea turtles can be disoriented by any form of artificial light, including headlights. Ruts made by vehicles can trap and disorient turtle hatchlings and baby birds.

³⁵ *Habitat Conservation Plan: A plan for the protection of sea turtles on the beaches of Volusia County, Florida*, Ecological Associates, Inc., (Nov. 2016- last revised June 2008), volsuia.org/core/fileparse.php/6466/urlt/HCB.pdf (last visited Jan. 9, 2020). The piping plover is a small, highly mobile, beach-dwelling bird of the plover family. The Atlantic Coast population was listed as threatened by the USFWS in 1986 (50 FR 50726-50734). The piping plover is also protected under Federal regulations through the Migratory Bird Treaty Act of 1918.

³⁶ *Id.* The Southeastern Beach mouse was afforded federal protection as a threatened species in 1989 (53 FR 20598-20602).

³⁷ *Id.*; see 50 C.F.R. 17.

³⁸ *Id.* The Loggerhead turtle was federally listed on July 28, 1978, as a threatened species under the Endangered Species Act (ESA) (43 FR 32800), the Green turtle in Florida and on the Pacific Coast of Mexico was federally listed as endangered in 1978 (43 FR 32800), the leatherback turtle was federally listed as an endangered species in 1970 (35 FR 8491), the Hawksbill turtle was federally listed as endangered in 1970 (35 FR 8491), and the Kemp's Ridley sea turtle was listed as endangered in 1970 under the U.S. Endangered Species Conservation Act, which was the predecessor to the ESA (35 FR 18320).

³⁹ An ITP authorizes the holder to engage in a legal activity that may result in the incidental taking of an endangered species.

⁴⁰ Ecological Associates, Inc., *supra* note 35.

⁴¹ 16 U.S.C. § 1532(19).

⁴² *Id.*

evidence to suggest that vehicular activity has affected either nesting success (the percentage of turtle crawls resulting in nests) or hatchling productivity.⁴³ In 2018, there were 2,167 Loggerhead nests, 142 Green nest, and 11 Leatherback nests in Volusia County⁴⁴

The HCP plan area encompasses the entire Volusia County coastline from the Flagler/Volusia County Line to the Volusia/Brevard County Line, including the sandy beaches bordering the Ponce De Leon Inlet.⁴⁵ Under the HCP, vehicles used for emergency responses, public safety, or engaged in activities necessary to implement the terms and conditions of the ITP are allowed unlimited access to all county beaches and may access other beaches within the Plan Area in support of public safety operations, if requested.⁴⁶ Vehicles involved in sanitation, beach maintenance, and permitted coastal construction projects may also access all areas, but under specific constraints governing access times, access locations, and operating procedures.⁴⁷ With few exceptions, concessionaires, commercial fishermen, and the general public may only access certain areas of the beach and only during daylight hours.⁴⁸

The HCP protects turtles from vehicles through four basic mechanisms:

- Public access is limited to daylight hours and public safety vehicles that operate at night must follow specific guidelines;
- Public driving is limited primarily to those areas where nest densities are lowest;
- In those areas where public driving is permitted, all driving and parking must occur outside a marked Conservation Zone near the dune, where the majority of nests are typically deposited; and
- All nests are conspicuously marked so they can be avoided.⁴⁹

Legends Beach Parade

Before Daytona International Speedway opened in 1959, stock car racing in Volusia County occurred primarily on Daytona Beach and Ormond Beach.⁵⁰ In 2013, the first reenactment of a historic beach race occurred, called the Legends Beach Parade, which was conducted annually at the North Turn Beach from 2013 to 2018.⁵¹ In 2019, the Volusia County Attorney raised concerns with the county council that questioned the authorization for continuing the historic race reenactment. The attorney believes that allowing the Legends Beach Parade to continue could jeopardize the county's ITP, which

⁴³ *Id.*

⁴⁴ 2018 Statewide Nesting Totals, Florida Fish and Wildlife Conservation Commission, myfwc.com/research/wildlife/sea-turtles/nesting/statewide (last visited Jan. 9, 2020).

⁴⁵ Ecological Associates, Inc., *supra* note 35. The HCP is bounded on the east by the mean low water line and on the west by the bulkhead line or line of permanent vegetation. Within the plan area, Volusia County exercises regulatory authority over those 35.6 miles of beaches extending from the southern boundary of the North Peninsula State Recreation Area to the northern boundary of the Canaveral National Seashore.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* Additionally, the posting and enforcement of a 10 MPH speed limit for vehicles on the beach and the placement of signs warning drivers to look out for wildlife reduces the potential for collisions with the resting plovers. An annual winter census of piping plovers within the federally designated Critical Habitat is conducted to determine the extent of the habitat utilization by the bird species on county beaches.

⁵⁰ Florida Frontiers "Racing on the Beach," The Florida Historical Society, myfloridahistory.org/frontiers/article/131 (last visited Jan. 9, 2020).

⁵¹ Casmira Harrison, *Volusia lawmakers to back Legends Beach Parade law*, Daytona Beach News-Journal (Nov. 20, 2019), <https://www.news-journalonline.com/news/20191120/volusia-lawmakers-to-back-legends-beach-parade-law> (last visited Jan. 9, 2020). According to the Economic Impact Statement, vehicles will travel at speeds of 5 to 10 MPH.

is up for review in 2030.⁵² Volusia County was also concerned with a recent court case, which blocked a city from allowing parking and traffic on beaches during public events and festivals.⁵³

Effect of the Bill

The bill allows Volusia County to allow vehicular traffic on its beaches, by ordinance, for the sole purpose of reenacting a historic beach race.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to the Economic Impact Statement, Volusia County would expend \$9,768 annually to help facilitate the event on the beach.

C. ECONOMIC IMPACT STATEMENT FILED? Yes No

D. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 12, 2019

WHERE? The *News-Journal*, a daily newspaper of general circulation published in Volusia County, Florida.

E. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

⁵² Dustin Wyatt, *Familiar beach driving foe involved in Volusia Legends parade dispute*, *Daytona Beach-News Journal* (Sept. 30, 2019), <https://www.msn.com/en-us/news/us/familiar-beach-driving-for-involved-in-volusia-legends-parade-dispute> The County Attorney was concerned that the County's ITP, which is up for review in 2030, may be jeopardized without the county receiving proper permitting from USFWC. THE USFWC told U.S. Representative Bill Posey that it has known about the event for many years and since it occurs outside of turtle nesting season, it poses no issues to the Volusia County's ITP.

⁵³ See *City of Treasure Island*, 253 So. 3d, *supra* at 662, which held the s. 161.58(2), F.S., prohibition on vehicular traffic upon coastal beaches means the statute generally prohibits using the beach as though it was a public street absent a local government ordinance prior to 1985 allowing traffic on the beach. The Court held the city violated the statute by operating public access ways that run from a paved lot near the walkway between the dunes, onto the beach, and into temporary lots. The city operated these access ways during public events and festivals.)

