

# FLORIDA HOUSE OF REPRESENTATIVES

## FINAL BILL ANALYSIS

*This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.*

<b>BILL #:</b> <a href="#">HB 6043</a>	<b>COMPANION BILL:</b> <a href="#">CS/SB 1622</a> (Trumbull)
<b>TITLE:</b> Recreational Customary Use of Beaches	<b>LINKED BILLS:</b> None
<b>SPONSOR(S):</b> Andrade and Abbott	<b>RELATED BILLS:</b> None
<b>FINAL HOUSE FLOOR ACTION:</b> 108 Y's 0 N's	<b>GOVERNOR'S ACTION:</b> Pending

### SUMMARY

#### Effect of the Bill:

HB 6043 repeals [s. 163.035, F.S.](#), thereby allowing (but not requiring) a local government to adopt an ordinance or rule that finds, determines, relies on, or is based upon customary use of any portion of a beach above the mean high-water line without the need to first obtain a judicial declaration affirming a recreational customary use on such beach. Practically speaking, the bill would give local governments more authority to determine whether to allow the public to use the dry sand areas of the beach.

The bill also creates a new process for establishing an “erosion control line” for the purposes of a beach restoration project in specified counties, modifies how the Board of Trustees of the Internal Improvement Trust Fund must adopt such a line if one has not been established for a critically eroded shoreline, and specifies that:

- The Florida Department of Environmental Protection may proceed with beach restoration projects for specified critically eroded beaches.
- Beach restoration projects conducted pursuant to these provisions do not require a public easement.
- Any additions to property seaward of the erosion control line resulting from such restoration projects remain state sovereignty land.
- Such restoration projects are in the public interest.

#### Fiscal or Economic Impact:

The bill may have a fiscal impact on state and local governments and an economic impact on the private sector.

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### ANALYSIS

#### **EFFECT OF THE BILL:**

HB 6043 passed as [CS/SB 1622](#). (Please note that bill section parentheticals do not contain hyperlinks to bill sections for Senate bills.)

#### [Recreational Customary Use Doctrine](#)

The bill repeals [s. 163.035, F.S.](#), thereby allowing (but not requiring) a local government to adopt an ordinance or rule that finds, determines, relies on, or is based upon customary use of any portion of a beach above the [mean high-water line](#) without the need to first obtain a judicial declaration affirming a recreational customary use on such beach. Practically speaking, the bill would give local governments more authority to determine whether to allow the public to use the dry sand areas of the beach. (Section 1)

#### [Coastline Management](#)

The bill provides that, notwithstanding [s. 161.161\(5\) and \(6\), F.S.](#), for the purposes of a beach restoration project, the “erosion control line” for specified counties shall be the mean high-water line as determined by a survey conducted by the Board of Trustees of the Internal Improvement Trust Fund (“Board”), but declares that there is no intention on the part of the state to deprive any upland or submerged land owner of the legitimate and

**STORAGE NAME:** h6043z

**DATE:** 5/9/2025

constitutional use and enjoyment of his or her property. Under the bill, the counties to which this provision applies are those counties adjacent to the Gulf of America with:

- At least three municipalities; and
- An estimated population of less than 275,000, according to the most recent population estimate prepared pursuant to [s. 186.901, F.S.](#), excluding the inmate population.

The bill further provides that, if an erosion control line has not been established for a critically eroded shoreline, the Board must adopt the erosion control line by resolution and file:

- In the official records of the respective county, a copy of the resolution establishing the erosion control line's location; and
- In the book of plats of the respective county, a survey showing the area of beach to be restored and the erosion control line's location.

Finally, the bill authorizes the Florida Department of Environmental Protection ("DEP") to proceed with beach restoration projects for any area designated by DEP as critically eroded in the Critically Eroded Beaches in Florida report dated August 2024. Under the bill, beach restoration projects conducted pursuant to these provisions do not require a public easement; further, any additions to property seaward of the erosion control line resulting from such restoration projects remain state sovereignty land, and such restoration projects are declared to be in the public interest. (Section 2)

#### Effective Date

Subject to the Governor's veto powers, the effective date of the bill is upon becoming a law. (Section 3)

#### **FISCAL OR ECONOMIC IMPACT:**

##### STATE GOVERNMENT:

The bill may have a fiscal impact on the state court system. Whether that impact is positive or negative depends upon the extent to which changes made by the bill reduce the necessity for litigation relating to recreational customary use rights in the state court system. The bill may also have a fiscal impact on the Board of Trustees of the Internal Improvement Trust Fund and any state agency acting as staff to the board, to the extent that compliance with the bill's erosion control provisions cannot be absorbed within existing resources.

##### LOCAL GOVERNMENT:

The bill may have a fiscal impact on local governments. Whether that impact will be positive or negative depends upon the extent to which a local government adopts an ordinance based upon customary use rights, which ordinance provides clarity to beach users and beachfront property owners and, accordingly, reduces the number of calls to local law enforcement for assistance in removing alleged beach trespassers. It may also save local governments costs associated with seeking a customary use right determination from a court, as such a determination may no longer be necessary.

##### PRIVATE SECTOR:

The bill may have an economic impact on the private sector. Whether that impact will be positive or negative depends upon the extent to which a local government adopts an ordinance based upon customary use rights, which ordinance reduces the necessity for private parties to litigate the matter in the state court system and incur associated costs, or otherwise results in decreased property values or vacation rental income for beachfront property owners. The impact's effect may also depend on whether compliance with the bill's erosion control provisions preserves and protects private coastal development and property interests.

## RELEVANT INFORMATION

### SUBJECT OVERVIEW:

#### Public Trust Doctrine

The “public trust doctrine” in the Florida Constitution provides (in pertinent part) that, generally speaking, beaches below the [mean high-water line](#)<sup>1</sup> are held by the state, by virtue of its sovereignty, in trust for all the people.<sup>2</sup> Thus, persons are generally free to wander beaches up to the mean high-water line – that is, up to the point where the dry sand begins – even where the adjacent property is privately owned.

#### Recreational Customary Use Doctrine

The United States Supreme Court has long recognized that land ownership is subject to various limitations, including so-called “background principles” of property law derived from the common law as it has evolved over time.<sup>3</sup> Florida courts generally recognize one such “background principle” – that is, the “recreational customary use doctrine”<sup>4</sup> – and its application to Florida’s beaches.<sup>5</sup> Under this doctrine, if a recreational use of a sandy area of beach adjacent to the mean high-water line has been ancient, reasonable, without interruption, and free from dispute, the courts typically find that such use should not be interfered with by ocean-front property owners; however, the courts also typically find that such a property owner may make any use of his or her property which is consistent with such public use and not calculated to interfere with the exercise of the public’s right to enjoy the dry sand area of the beach as a recreational adjunct of the wet sand or foreshore area.<sup>6</sup>

#### *Establishment of Recreational Customary Use*

Under the Florida Supreme Court’s “special injury rule,” to establish standing to sue over a particular dispute, a party must allege an injury that is different in degree and kind from the injury suffered by the community at large.<sup>7</sup> This rule acts as a significant obstacle for members of the public who might wish to assert a recreational customary use in court after being denied access to a particular portion of a beach by a beachfront property owner, because, in most instances, everyone in the community would be denied the same access and, therefore, no one would have an injury different in degree and kind from the injury suffered by the community at large.<sup>8</sup> However, the owner of a beachfront parcel may more easily challenge the public’s customary use of the adjacent beach and seek to have beach users trespass; in such an instance, the beach users would have the burden to prove the customary use.<sup>9</sup>

However, a beach user does not necessarily need to have a court adjudicate the public’s customary use of a portion of a beach before using said beach, and would not be trespassing where a customary use exists but has not yet been recognized by a court; neither, however, is there a presumption that the public has customary use rights as to any given beach.<sup>10</sup> This lack of clarity created a particular dilemma for Walton County, Florida, which lacked an ordinance establishing customary use rights and, therefore, essentially had to take sides in every customary use dispute by either assuming the public lacked use rights as to a specific portion of a beach or that the public had such rights; in the first instance, the County risked violating the public’s use rights if it removed them as trespassers, and in the second instance, the County risked angering beachfront property owners claiming the right

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<sup>1</sup> Florida law defines the “mean high-water line” as the intersection of the tidal plane of mean high water with the shore. S. [177.27\(15\), F.S.](#)

<sup>2</sup> [Art. X, s. 11, Fla. Const.](#)

<sup>3</sup> *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

<sup>4</sup> The “recreational customary use doctrine” arose under feudal English common law, as the courts recognized and protected the longstanding use of the property of another (often the local lord) by a community of persons (often the subjects of the lord) who were accustomed to conducting their use for specific purposes since “time immemorial.” Alyson Flournoy, Thomas T. Ankersen, & Sasha Alvarenga, *Recreational Rights to the Dry Sand Beach in Florida: Property, Custom and Controversy*, available at <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1847&context=facultypub> (last visited May 9, 2025).

<sup>5</sup> *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73 (Fla. 1974).

<sup>6</sup> *Id.*

<sup>7</sup> *Henry L. Doherty & Co. v. Joachim*, 200 So. 238 (Fla. 1941).

<sup>8</sup> Flournoy, et al., *supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

to exclude the public from their private property.<sup>11</sup> Thus, in 2016, Walton County enacted an ordinance intended to codify customary use rights as to beaches in the County and reduce conflict between beachfront property owners and the public.<sup>12</sup>

### *Recent Legislation*

In 2018, the Florida Legislature created [s. 163.035, F.S.](#), to generally prohibit a governmental entity<sup>13</sup> from adopting or keeping in effect an ordinance or rule that finds, determines, relies on, or is based upon the recreational customary use of any portion of a beach above the mean high-water line, unless such ordinance or rule is based on a judicial declaration affirming the recreational customary use on such beach.<sup>14</sup> Under that section, a governmental entity that seeks to affirm the existence of a recreational use on private property must follow procedures set forth in law, including:

- Adopting, at a properly-noticed public hearing, a formal notice of intent to affirm the existence of a recreational customary use on private property that specifically identifies:
  - The specific parcels of property, or the specific portions thereof, upon which a customary use affirmation is sought;
  - The detailed, specific, and individual use or uses of the parcels to which a customary use affirmation is sought; and
  - Each source of evidence that the governmental entity would rely upon to prove that a recreational customary use has been ancient, reasonable, without interruption, and free from dispute.
- Filing, within 60 days of the adoption of the notice of intent, a Complaint for Declaration of Recreational Customary Use with the circuit court in the county in which the properties subject to the notice of intent are located.
- Providing notice of the filing of the Complaint in a specified manner to the owner of each parcel subject to the Complaint, which notice must allow the owner receiving it to intervene in the proceeding within 45 days of receipt.

All resulting proceedings are *de novo*,<sup>15</sup> and the court must determine whether the evidence presented demonstrates that the recreational customary use for the use or uses identified in the notice of intent have been ancient, reasonable, without interruption, and free from dispute. Further, the governmental entity has the burden of proof to show that a recreational customary use exists, but an owner of a parcel that is subject to the Complaint has the right to intervene as a party defendant in such proceeding.

However, [s. 163.035, F.S.](#), exempts from the law's application a governmental entity with an ordinance or rule that was adopted and in effect on or before January 1, 2016.

### Coastline Management

Florida boasts approximately 825 miles of sandy coastline, which coastline is integral to Florida's economy and environment.<sup>16</sup> Significantly, Florida's sandy coastline is home to many plant and animal species, which species depend upon the state's beaches, dunes, and nearshore waters to thrive.<sup>17</sup> Florida's beaches also draw millions of tourists to the state annually, and the beach and dune system protects coastal infrastructure from storm waves, allowing for continued coastal development.<sup>18</sup>

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<sup>11</sup> *Id.*; Libertina Brandt, *Public Beach or Private? Homeowners in Florida Draw a Line in the Sand*, The Wall Street Journal (Sept. 5, 2024), <https://www.wsj.com/real-estate/luxury-homes/walton-county-florida-private-beach-war-e3fa3131> (last visited May 9, 2025).

<sup>12</sup> Walton County, Fla., Code of Ordinances [§ 23-2](#) (effective Apr. 1, 2017).

<sup>13</sup> "Governmental entity" includes any state agency, a regional or local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. [S. 163.035\(1\), F.S.](#)

<sup>14</sup> [Ch. 2018-94, Laws of Fla.](#)

<sup>15</sup> When a court hears a case "*de novo*," it is deciding the issues without reference to any legal conclusion or assumption made by the previous court to hear the case. Legal Information Institute, *De Novo*, [https://www.law.cornell.edu/wex/de\\_novo](https://www.law.cornell.edu/wex/de_novo) (last visited May 9, 2025).

<sup>16</sup> Florida Department of Environmental Protection, *Beaches*, <https://floridadep.gov/rcp/beaches> (last visited May 9, 2025).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

Florida's sandy coastline, like all such coastlines, faces constant "shoreline migration," a natural phenomenon in which the shoreline changes position over time in response to rising or receding sea levels, wave energy, and sand supply dynamics.<sup>19</sup> Generally, shoreline migration is harmless but, in some instances, such migration threatens coastal infrastructure and property interests; when this occurs, the phenomenon becomes known as "erosion."<sup>20</sup> Currently, more than half of Florida's sandy coastline miles are experiencing erosion, posing varying levels of threat to Florida's coastal infrastructure and property interests.<sup>21</sup>

### *Florida Erosion Initiatives*

In 1965, the Florida Legislature adopted the Florida Beach and Shore Preservation Act ("Preservation Act"), codified in Parts I and II of [ch. 161, F.S.](#) to establish programs, administered by the Florida Department of Environmental Protection ("DEP"), to protect and manage the state's beaches and adjacent coastal systems. In 1986, the Florida Legislature amended the Preservation Act to charge DEP with identifying Florida's critically eroded shorelines<sup>22</sup> and to develop and maintain a comprehensive long-term management plan for their restoration through beach nourishment – that is, the practice of adding sand to a beach seaward, generally from the point at which state sovereignty lands begin, to combat erosion and increase the beach's size.<sup>23</sup> In furtherance of this effort, DEP publishes an annual Critically Eroded Beaches in Florida report, which report provides an inventory of Florida's critically eroded beaches.<sup>24</sup>

Under the Preservation Act, before a beach restoration project may begin, the Board of Trustees of the Internal Improvement Trust Fund ("Board")<sup>25</sup> generally must establish an "erosion control line," which line will serve as the point from which the beach nourishment effort generally begins.<sup>26</sup> To establish such a line, the Board generally must first undertake a shoreline survey to establish the area of beach to be protected by the project; the Board must also consider the location of the mean high-water line along with the restoration project's engineering requirements, the extent to which erosion has occurred, and the need to protect existing ownership of as much private upland property as is reasonably possible.<sup>27</sup>

Upon completion of this survey, the Board must give notice of the survey and the proposed erosion control line and hold a public hearing for the purpose of receiving evidence on the proposed erosion control line's merits.<sup>28</sup> Such notice must be by publication in a newspaper of general circulation published in the county or counties in which the restoration project will occur not less than once a week for three consecutive weeks and by mailing copies of such notice by certified or registered mail to each owner of record of upland property lying within 1,000 feet of the shoreline to be extended through the restoration project.<sup>29</sup> After the hearing, the Board must then approve or disapprove the proposed erosion control line; once established, such line remains fixed in perpetuity, with lands seaward of the line generally remaining state sovereignty lands and private upland property generally remaining private property.<sup>30</sup> However, any additions to private upland property resulting from a restoration project are

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<sup>19</sup> Thomas K. Ruppert, *Eroding Long-Term Prospects for Florida's Beaches: Florida's Coastal Construction Control Line Program*, <https://scholarship.law.ufl.edu/facultypub/709/> (last visited May 9, 2025).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Many beaches not designated as critically eroded have experienced significant erosion, but the erosion process does not currently threaten public or private interests; thus, these areas are designated as non-critically eroded beaches and closely monitored in case the conditions become critical. Florida Department of Environmental Protection, *Critically Eroded Beaches of Florida, August 2024*, [https://floridadep.gov/sites/default/files/FDEP\\_Critically%20Eroded%20Beaches\\_08-2024\\_0.pdf](https://floridadep.gov/sites/default/files/FDEP_Critically%20Eroded%20Beaches_08-2024_0.pdf) (last visited May 9, 2025).

<sup>23</sup> Ss. 161.021, 161.101, and [161.161, F.S.](#); Patricia Escobar Torres, *Tell Me About: Beach Nourishment in Florida*, Thompson Earth Systems Institute (Aug. 23, 2024), <https://www.floridamuseum.ufl.edu/earth-systems/blog/tell-me-about-beach-nourishment-in-florida/> (last visited May 9, 2025).

<sup>24</sup> DEP, *supra* note 22.

<sup>25</sup> The Board, composed of the Florida Governor and the Cabinet (that is, the Florida Attorney General, the Florida Commissioner of Agriculture, and the Florida Chief Financial Officer), is charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of state-owned lands. S. [253.03, F.S.](#)

<sup>26</sup> S. [161.161, F.S.](#)

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Ss. 161.141 and 161.161, F.S.

thereafter subject to a public easement<sup>31</sup> for those traditional uses of the sandy beach that would have been allowed before the need for the restoration project.<sup>32</sup>

### *Federal Erosion Initiatives*

In pertinent part, the federal Water Resources Development Act (“WRDA”), generally enacted every two years and codified in [33 United States Code § 36](#), authorizes the U.S. Army Corps of Engineers (“USACE”) to work with local governments on specified beach restoration projects under stated cost-sharing guidelines; any such authorization for a given beach usually persists for 50 years, during which time periodic beach nourishment activities may occur.<sup>33</sup> As part of this ongoing effort, the USACE often seeks easements on private property adjacent to the beach to be restored to give the USACE beach access, a place to store equipment and stage staff, and a right to place sand, where necessary, on the property subject to the easement; such easements are virtually perpetual in nature, lasting until Congress deauthorizes the particular project for which the easement was obtained.<sup>34</sup>

### RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2018	<a href="#">CS/HB 631</a>	Edwards-Walpole; Roth	Passidomo	Took effect on July 1, 2018.

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<sup>31</sup> An easement grants to the easement-holder a non-possessory property interest in the property of another. An easement may be affirmative, in that it gives the easement-holder the right to do something on the property (such as travel across a road or path on the property to access an adjacent property, or use a sandy portion of a beach), or it may be negative, in that give the easement-holder the right to prevent the property owner from doing something on his or her land (such as building a structure that obscures light or a scenic view). Legal Information Institute, *Easement*, <https://www.law.cornell.edu/wex/easement> (last visited May 9, 2025).

<sup>32</sup> S. [161.141, F.S.](#)

<sup>33</sup> U.S. Army Corps of Engineers, *Frequently Asked Questions: Material Placement of Beaches*, [https://www.saj.usace.army.mil/Portals/44/docs/Civil%20Works/Shore%20Protection/FAQ\\_Easements\\_FINAL\\_May\\_%202017.pdf](https://www.saj.usace.army.mil/Portals/44/docs/Civil%20Works/Shore%20Protection/FAQ_Easements_FINAL_May_%202017.pdf) (last visited May 9, 2025).

<sup>34</sup> *Id.*