

## Committee Substitute for Senate Bill No. 1472

An act relating to beaches and shores; amending s. 161.021, F.S.; amending a definition; amending s. 161.085, F.S.; restricting the use of geotextile containers for emergency rigid coastal armoring; providing permitting for geotextile containers; providing conditions; providing for evaluation by the Department of Environmental Protection; amending s. 161.141, F.S.; providing additional legislative intent; creating s. 161.144, F.S.; providing for the development and maintenance of an inventory of identified offshore sand sources by the department as part of its comprehensive long-term beach management plan; providing for public review of maps of offshore sand sources; providing for boards of county commissioners of coastal counties adjacent to sand sources proposed for use outside of the region or subregion to be notified and given adequate opportunity to comment during a project's planning and permitting stages; providing for the inclusion of certain information in the department's annual funding request; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 161.021, Florida Statutes, is amended to read:

161.021 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

(1) “Access” or “public access” as used in ss. 161.041, 161.052, and 161.053 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 accessway is provided.

Section 2. Subsections (3), (5), and (9) of section 161.085, Florida Statutes, are amended to read:

161.085 Rigid coastal armoring structures.—

(3) If erosion occurs as a result of a storm event which threatens private structures or public infrastructure and a permit has not been issued pursuant to subsection (2), unless the authority has been revoked by order of the department pursuant to subsection (8), an agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of rigid coastal armoring structures, exclusive of those authorized under subsection (9), for the protection of private structures or public infrastructure, or take other measures to relieve the threat to private structures or public infrastructure as long as the following items are considered and incorporated into such emergency measures:

- (a) Protection of the beach-dune system.
- (b) Siting and design criteria for the protective structure.
- (c) Impacts on adjacent properties.
- (d) Preservation of public beach access.
- (e) Protection of native coastal vegetation, nesting state or federally threatened or endangered species, and nesting marine turtles and their hatchlings.

(5) The department shall ~~may~~ adopt rules to implement the provisions of this section.

(9) The department, ~~or an agency, political subdivision, or municipality described in subsection (3),~~ may authorize dune restoration incorporating sand-filled geotextile containers tubes or similar structures proposed as the core of a restored dune feature when the conditions of paragraphs (a) through (c) and the requirements of s. 161.053 are met. ~~if the applicant meets the requirements of this section and:~~

(a) A permit may be granted by the department under this subsection for dune restoration incorporating geotextile containers or similar structures provided that such projects:

1. Provide for the protection of an existing major structure or public infrastructure, and, notwithstanding any definition in department rule to the contrary, that major structure or public infrastructure is vulnerable to damage from frequent coastal storms, or is upland of a beach-dune system which has experienced significant beach erosion from such storm events.

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

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

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

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

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

7. Do not materially impede access by the public.

8. Are designed to minimize adverse effects to nesting marine turtles and turtle hatchlings, consistent with s. 370.12.

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

10. The United States Fish and Wildlife Service has approved an Incidental Take Permit for marine turtles and other federally threatened or endangered species pursuant to Section 7 or 10 of the Endangered Species Act for the placement of the structure if an Incidental Take Permit is required.

(b) The applicant or successive property owners shall provide financial assurances in the form of surety or performance bonds or other financial responsibility mechanisms that the authorized geotextile containers will be removed if the requirements of this subsection and the permit conditions are not met. The permittee shall file a notice of formal permit conditions in the public records of the county where the permitted activity is located.

(c) The department shall order removal of the geotextile container if the conditions of subparagraph (a)4. are not met, if the project ceases to function due to irreparable damage, if the project is determined by the department to have caused a significant adverse impact to the beach-dune system, or if the United States Fish and Wildlife Service revokes the Incidental Take Permit required in subparagraph (a)10.

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

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

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

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

~~(a) Demonstrates that the United States Fish and Wildlife Service has approved a habitat conservation plan that includes the shoreline where each structure will be placed;~~

~~(b) Provides reasonable assurance that adequate sand cover will be maintained over the structure such that the structure will not interact with the beach dune system as rigid coastal armoring or adversely affect marine turtle nesting and provides for a responsible entity to conduct such maintenance; and~~

~~(c) Provides reasonable assurance that each structure will be removed if the maintenance required by paragraph (b) proves to be not feasible.~~

Section 3. Section 161.141, Florida Statutes, is amended to read:

161.141 Property rights of state and private upland owners in beach restoration project areas.—The Legislature declares that it is the public policy of the state to cause to be fixed and determined, pursuant to beach restoration, beach nourishment, and erosion control projects, the boundary line between sovereignty lands of the state bordering on the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida, and the bays, lagoons, and other tidal reaches thereof, and the upland properties adjacent thereto; except that such boundary line shall not be fixed for beach restoration projects that result from inlet or navigation channel maintenance dredging projects unless such projects involve the construction of authorized beach restoration projects. However, prior to construction of such a beach restoration project, the board of trustees must establish the line of mean high water for the area to be restored; and any additions to the upland property landward of the established line of mean high water which result from the restoration project remain the property of the upland owner subject to all governmental regulations and are not to be used to justify increased density or the relocation of the coastal construction control line as may be in effect for such upland property. The resulting additions to upland property are also subject to a public easement for traditional uses of the sandy beach consistent with uses that would have been allowed prior to the need for the restoration project. It is further declared that there is no intention on the part of the state to extend its claims to lands not already held by it or to deprive any upland or submerged land owner of the legitimate and constitutional use and enjoyment of his or her property. If an authorized beach restoration, beach nourishment, and erosion control project cannot reasonably be accomplished without the taking of private property, the taking must be made by the requesting authority by eminent domain proceedings. In any action alleging a taking of all or part of a property or property right as a result of a beach restoration project, in determining whether such taking has occurred or the value of any damage alleged with respect to the owner's remaining upland property adjoining the beach restoration project, the enhancement, if any, in value of the owner's remaining adjoining property of the upland property owner by reason of the beach restoration project shall be considered. If a taking is judicially determined to have occurred as a result of a beach restoration project, the enhancement in value to the owner's remaining adjoining property by reason of the beach restoration project shall be offset against the value of the damage, if any, resulting to such remaining adjoining property of the upland property owner by reason of the beach restoration project, but such enhancement in the value shall not be offset against the value of the property or property right alleged to have

been taken. If the enhancement in value shall exceed the value of the damage, if any, to the remaining adjoining property, there shall be no recovery over against the property owner for such excess.

Section 4. Section 161.144, Florida Statutes, is created to read:

161.144 Policy guidance related to sand source management.—The Legislature recognizes that beach-quality sand for the nourishment of the state's critically eroded beaches is an exhaustible resource, in ever-decreasing supply, and must be carefully managed for the systemwide benefit of the state's beaches. Therefore, the Department of Environmental Protection, pursuant to s. 161.161 and in cooperation with federal and local government agencies, shall develop and maintain an inventory of identified offshore sand sources as part of the regional elements of its comprehensive long-term beach management plan. Offshore sand sources in state or federal waters which are identified for potential, proposed, or permitted use shall be clearly mapped or otherwise noted and readily available for public review. In addition, boards of county commissioners of coastal counties adjacent to sand sources proposed for use outside of the region or subregion shall be provided written notice by the department and an opportunity to comment during a specific project's planning and permitting stages. The department shall identify in its annual list of local government funding requests submitted to the Legislature, pursuant to s. 161.091, those projects that propose to use sand sources from another region or subregion at the time the list is submitted.

Section 5. This act shall take effect July 1, 2007.

Approved by the Governor June 12, 2007.

Filed in Office Secretary of State June 12, 2007.