

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: General Government Appropriations Committee

BILL: CS/SB 1472

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Saunders

SUBJECT: Beach and Shore Preservation

DATE: April 24, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Kynoch</u>	<u>DeLoach</u>	<u>GA</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill makes a series of changes involving the state’s beach renourishment program. Specific provisions:

- Expand the definition of “access” or “public access” to include established accessways as those that must be retained for public use.
- Allow the Department of Environmental Protection (DEP) to issue permits for dune restoration projects that incorporate geotextile containers or similar structures. The bill also provides a series of specific requirements governing the installation of these types of structures.
- Provide the method by which potential impacts to the upland owners would be valued in conjunction with the restoration project.
- Direct that a sand source inventory be developed which identifies offshore sand sources. Additionally, county commissions of coastal counties will be required to be notified when there is a proposal to use adjacent sand sources outside of the region.

The DEP has indicated that they can meet the requirements of this legislation with current resources.

This bill amends sections 161.021, 161.085, and 161.141, Florida Sections.

This bill creates section 161.144, Florida Statutes.

II. Present Situation:

Coastal barrier dunes are among the most valuable natural resources in the State of Florida because dunes serve as the final line of defense against the attack of storms, waves and currents. Critical erosion of the state's beaches and damage to the dune system have advanced to emergency proportions and must be stabilized in order to protect against irreparable harm and prevent further loss of natural resources and damage to property. Such erosion causes a significant threat to the economy, is a detriment to the state's vital tourism industry and beach-related employment, reduces coastal property values and beach access, and can severely impact the habitat used for nesting marine turtles.

Beach management planning

Section 161.161, F.S., requires the DEP to develop and maintain a comprehensive long-term management plan for the restoration and maintenance of the state's critically eroded beaches fronting the Atlantic Ocean, Gulf of Mexico, and Straits of Florida. Pursuant to s. 161.161, F.S., the beach management plan shall:

- Address long-term solutions to the problem of critically eroded beaches in the state.
- Evaluate each improved, modified, or altered inlet and determine whether the inlet is a significant cause of beach erosion.
- Design criteria for beach restoration and beach renourishment projects.
- Evaluate the establishment of feeder beaches as an alternative to direct beach restoration and recommend the location of such feeder beaches and the source of beach-compatible sand. Identify causes of shoreline erosion and change, calculate erosion rates, and project long-term erosion for all major beach and dune systems by surveys and profiles.
- Identify shoreline development and degree of density and assess impacts of development and shoreline protective structures on shoreline change and erosion.
- Identify short-term and long-term economic costs and benefits of beaches, including recreational value to user groups, tax base, revenues generated, and beach acquisition and maintenance costs.
- Study dune and vegetation conditions.
- Identify beach areas used by marine turtles and their nests and nesting locations.
- Identify alternative management responses to preserve undeveloped beach and dune systems to restore damaged beach and dune systems, and to prevent inappropriate development and redevelopment on migrating beaches, and consider beach restoration and nourishment, armoring, relocation and abandonment, dune and vegetation restoration, and acquisition.
- Establish criteria, including costs and specific implementation actions, for alternative management techniques.
- Select and recommend appropriate management measures for all of the state's sandy beaches in a beach management program.
- Establish a list of beach restoration and beach nourishment projects, arranged in order of priority, and the funding levels needed for such projects.

Coastal Armoring

There is a general recognition of the need to protect both private and public structures from the effects of erosion. Strategies, such as nourishment, restoration, landward relocation of structures and armoring are all effective. However, armoring has the potential to negatively impact the integrity and natural function of beach and dune systems. Because of the potential impact armoring may have s. 161.085, F.S., was created. Among the provisions of this section are the following criteria:

- A determination shall first be made that the structure is eligible. Eligible structures include: major structures on a foundation not designed to withstand undermining by storm events; those structures whose failure would damage a habitable structure; or significant public infrastructures.
- The armoring shall not result in a loss of public access along the beach.
- The construction of the armoring will not result in a significant adverse impact.
- Armoring shall be sited as far landward as practicable and designed to minimize adverse impacts to the system, including turtles, vegetation, existing structures, and shall not interfere with public access.
- Armoring shall be designed to minimize adverse impacts and with generally accepted engineering practices.

Upland beach owners property rights

Beach renourishment projects are preceded by the formal and noticed establishment of the Erosion Control Line (ECL) by the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund. The ECL is the line which demarks the landward extent of the state as the sovereign titleholder. In plain terms, land seaward of the ECL is sovereign, and the sand, usually the state's as well, placed seaward of the line as part of a renourishment project becomes public beach. Conversely, any additions to the upland property remain the property of the upland owner.

Additional provisions concerning property impacts include:

- Assurance that the resulting additions to upland property are also subject to a public easement for traditional uses of the beach that would have been allowed prior to the restoration.
- That it is not the intent of the state to extend claims of ownership or deprive land owners of their legitimate and constitutional uses of their property.
- A finding that any authorized project that would result in a taking must utilize the state's eminent domain procedures.

III. Effect of Proposed Changes:

The bill amends s. 161.021, F.S., to expand the definition of "access" or "public access" to include those accessways through private lands that have an already established accessway by prescription, prescriptive easement, or any other legal means. In addition, a provision is also

created that directs such accessways cannot be impacted by development or construction unless a comparable alternative is provided.

The bill creates a new provision in s. 161.085, F.S., to allow the DEP to permit dune restoration projects that incorporate geotextile containers or similar structures. Included in this permit authority are a series of conditions that must be satisfied.

- Must provide for the protection of an existing major structure or public infrastructure that must be vulnerable to damage from frequent coastal storms or is upland of a dune system experiencing significant erosion from such storms.
- Construction shall utilize native or beach quality sand and native vegetation.
- May use geotextile materials provided they are filled with native or beach quality sand.
- The container or structure be continuously covered with 3 feet of sand.
- Be sited as far landward as practicable and in a manner that will minimize erosion.
- Do not materially impede public access.
- Designed to minimize adverse effects to nesting state or federally endangered species.
- Can be easily removed if needed.
- Granted the necessary incidental take permits by the U.S. Fish and Wildlife Service.

The current property owner and successive property owners are required to provide financial assurance that these containers or structures can be removed if they fail to maintain compliance with the statutory requirements. Each permittee is required to file a notice detailing the permit conditions in the public records of the county where the container or structure is located.

The DEP is granted authority to order the removal of these structures or containers if they: fail to function due to irreparable damage; are determined to have caused significant adverse impacts; or the federal incidental take permits have been revoked.

The DEP is also authorized to require any necessary engineering certifications to ensure the adequacy of the design and construction of the structures or projects.

Upon receipt of a permit application, the DEP is directed to notify the applicant and agent of all the statutory criteria detailed in this subsection.

In developing the annual statewide list of beach management projects the DEP is prohibited from submitting funding requests for projects that include these structures or containers.

Finally, the DEP is directed, in cooperation with an independent third-party expert, to evaluate the performance and impacts of these structures or containers. Such evaluations shall be conducted in an on-going manner. The results of these evaluations are to be reported to the Legislature prior to any modifications being made to the criteria detailed in this subsection. The bill amends, s. 161.141, F.S., to provide additional guidance to be utilized when evaluating the impacts of an alleged taking. The new provision directs that if a taking has been judicially determined to have occurred as a result of a beach restoration project, the enhancement in value shall be offset against the value of the damage, if any, resulting to such remaining adjoining property of the upland property owner. The enhancement in value shall not be offset against the

value of the property or property right alleged to have been taken. If the enhancement in value exceeds the value of the damage there shall be no recovery over against the property owner for such excess.

This bill creates s. 161.144, F.S., to provide policy guidance related to sand source management. As stated in the bill, 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 system-wide benefit of the state's beaches.

The DEP, pursuant to s. 161.161, F.S., 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 and an opportunity to comment during a specific project's planning and permitting stages.

The bill also requires the DEP, as part of their annual submission to the Legislature of proposed projects to identify those projects that propose to use sand sources from another region or subregion.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

The DEP has indicated that they can meet the requirements of this legislation with current resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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