

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1311 Walton County
SPONSOR(S): Coley and others
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Deslatte	Blalock
2) Community & Military Affairs Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill exempts certain property owners within Walton County from obtaining permits from the Department of Environmental Protection (DEP) for rigid coastal armoring structures, including sand-filled geotextile containers, which are deemed permanent structures and were constructed between July 10, 2005 and April 30, 2006, if certain requirements are met.

The bill provides that within 60 days of the effective date, DEP must develop an informational list of the coastal armoring structures, including geotextile structures, constructed between July 10, 2005 and April 30, 2006. The list must provide the type and location of armoring structure in relation to the nearest DEP "R" monument and the Walton County Coastal Construction Control Line (CCCL).

The bill further provides that property owners may complete construction on existing temporary structures without obtaining a DEP permit if the structure began between the aforementioned dates but was not completed if:

- The construction occurs on or landward of the armoring structure on the property owner's property.
- The work is completed within 1 year after the effective date of this bill.

Any work that requires sand placement or other activities that would occur seaward of the existing armoring structure would require a permit from DEP. A sand cover monitoring and maintenance plan must be included in permit applications for sand coverage over sand-filled geotextile containers. Permit applications will be exempt from vulnerability requirements of s. 161.085(2)(a), F.S.¹, but must comply with all other statutory and rule requirements.

The bill provides that sand-filled geotextile containers constructed between the aforementioned dates must be continuously covered with 3 feet of beach-quality sand and stabilized with native salt-tolerant vegetation. Within 90 days after the effective date of the bill, or at any time it appears the structure does not meet the requirements, a property owner may submit a permit application for sand placement to cover those structures having less than 3 feet of sand. DEP must order the removal of sand-filled geotextile containers that fail to meet the bill's requirements.

Any substantially damaged armoring structures must be removed within 90 days after such damage. The property owner may apply within 90 days after such damage for a permit for major reconstruction of the damaged structure. If an application for major reconstruction is denied by DEP, the structure must be removed within 90 days after final denial of the permit application.

The bill does not appear to have a fiscal impact on state or local governments.

¹ Section 161.085(2)(a), F.S., states that permits for present installations may be issued if it is determined that private structures or public infrastructure is vulnerable to damage from frequent coastal storms.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1311a.ANRS

DATE: 3/22/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Pursuant to s. 161.085, F.S., the state recognizes the need to protect private structures and public infrastructure from damage or destruction caused by coastal erosion. Until the state takes measures to reduce erosion on a regional basis, there are state policies allowing emergency local government sanctioned measures utilizing rigid armoring structures for protection of private property and public infrastructure

DEP defines coastal armoring as manmade structures designed to either prevent erosion of the upland property or to protect eligible structures from the effects of coastal wave and current action. Examples include seawalls, revetments, bulkheads, retaining walls, sloped boulder revetments, sloped geotextile revetments, geotextile dune scour protection, or other similar structures.

If a coastal storm causes erosion of the beach-dune system, under the authority of Section 161.085, F.S. and Chapter 62B-33, Florida Administrative Code (F.A.C.), a local government may take emergency measures for the protection of threatened private residences or public infrastructure. Emergency relief measures may be taken as long as the following considerations are incorporated into such emergency measures:

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

Emergency relief measures that result in the installation of temporary armoring are permissible provided a DEP permit has not been issued for coastal armoring to protect the threatened structure. Structures constructed under this authority must be temporary and the local government or the property owner shall remove the structure or submit a permit application to the DEP for a permanent structure within 60 days after the emergency installation of the structure.

Permits may only be granted by the DEP for dune restoration using geotextile containers or similar structures provided that such projects:

- Provide for the protection of an existing major structure or public infrastructure and 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 storm events.
- Are constructed using native or beach-quality sand and native salt-tolerant vegetation suitable for dune stabilization as approved by the DEP.
- 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.
- Are continuously covered with 3 feet of native or beach-quality sand and stabilized with native salt-tolerant vegetation.
- Are sited for 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.
- Are designed and sited in a manner that will minimize the potential for erosion.

- Do not materially impede access by the public.
- Are designed to minimize adverse effects to nesting marine turtles and turtle hatchlings.
- Are designed to facilitate easy removal of the geotextile containers if needed.
- The U.S. Fish and Wildlife Service has approved an Incidental Take Permit for marine turtles and other federally threatened or endangered species pursuant to the Endangered Species Act for the placement of the structure if an Incidental Take Permit is required.

Exceptions include:

1. If all of the above criteria cannot be met, but a continuous line of rigid coastal armoring exists on either side of unarmored property and the gap does not exceed 250 feet, then armoring can be authorized where it closes the gap.
2. If all of the above criteria have been met, but construction of a beach restoration, beach nourishment, sand transfer or other protective project is to commence within nine months, and all permits and funding for the project are in place, then armoring cannot be authorized.

Structures built pursuant to permits granted under s. 161.053, F.S., may be ordered removed by the DEP only if such structures are determined to be unnecessary or to interfere with the installation of a beach restoration project.

Effect of Proposed Changes

The bill exempts certain property owners within Walton County from obtaining permits from DEP for rigid coastal armoring structures, including sand-filled geotextile containers, which are deemed permanent structures and were constructed between July 10, 2005 and April 30, 2006, if certain requirements are met.

The bill provides that within 60 days of the effective date, DEP must develop an informational list of the coastal armoring structures, including geotextile structures, constructed between July 10, 2005 and April 30, 2006. The list must provide the type and location of armoring structure in relation to the nearest DEP "R" monument and the Walton County Coastal Construction Control Line (CCCL).

This section does not authorize placing or locating any rigid coastal armoring structures on property that is not under the ownership or control of the individual or entity constructing the structure, unless the property owner consents in writing to the placement or location of that structure.

The bill further provides that property owners may complete construction on existing temporary structures without obtaining a DEP permit if the construction began between the aforementioned dates but was not completed if:

- The construction occurs on or landward of the armoring structure on the property owner's property.
- The work is completed within 1 year after the effective date of this bill.

Any work that requires sand placement or other activities that would occur seaward of the existing armoring structure, require a permit from DEP. A sand cover monitoring and maintenance plan must be included in permit applications for sand coverage over sand-filled geotextile containers. Permit applications will be exempt from vulnerability requirements of s. 161.085(2)(a), F.S.², but must comply with all other statutory and rule requirements.

The bill provides that sand-filled geotextile containers constructed between the aforementioned dates must be continuously covered with 3 feet of beach-quality sand and stabilized with native salt-tolerant vegetation. Within 90 days after the effective date of the bill, or at any time it appears the structure does not meet the requirements, a property owner may submit a permit application for sand placement

² *Id.*

to cover those structures having less than 3 feet of sand. DEP must order the removal of sand-filled geotextile containers that fail to meet the bill's requirements.

Any substantially damaged armoring structures must be removed within 90 days after such damage. The property owner may apply within 90 days after such damage for a permit for major reconstruction of the damaged structure. If an application for major reconstruction is denied by DEP, the structure must be removed within 90 days after final denial of the permit application.

The bill defines "substantial damage" to mean that the cost of repair would exceed 50% of the replacement costs of the structure. "Major reconstruction" is defined as the complete or partial replacement or rebuilding, to its original level of protection, of a significant portion of a structure that has failed or deteriorated.

The section does not exempt structures from requirements of the Endangered Species Act (ESA), including incidental take permits. The bill provides that the Walton County Conservation Plan/Incidental Take Permit program is an appropriate method for addressing requirements of the ESA.

Finally, a seller must provide a potential purchaser notification of the requirements of this section as well as a copy of the coastal properties disclosure statement if the property has coastal armoring on it.

B. SECTION DIRECTORY:

Section 1. Providing that certain rigid coastal armoring structures constructed during a specified time may remain without the need to obtain a DEP permit; providing conditions applicable to such structures; providing definitions.

Section 2. Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN?

January 28, 2011

WHERE?

Northwest Florida Daily News

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

DEP provided the following fiscal comments:

Private sector costs/benefits:

Direct Private Sector Benefits: Property owners with armoring structures covered by the bill will not have to incur additional expense to receive permits, or in the case of permit denials, incur expense to modify or remove the structure.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES