

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 | | Nelson | Hoagland |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

HB 1311 exempts property owners in Walton County from obtaining permits from the Florida Department of Environmental Protection (DEP) for rigid coastal armoring structures constructed between July 10, 2005, and April 30, 2006. The bill deems the structures as "permanent," and requires DEP to develop an informational list of the structures.

The bill further provides that the property owners may complete existing temporary structures on their own property without obtaining a DEP permit within one year of the effective date of the bill if the construction began within the aforementioned dates and if the subsequent construction occurs on or landward of the armoring structure. Any work involving sand placement or other activities occurring seaward of an existing armoring structure will require a permit from DEP.

Certain structures must be continuously covered with three 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 that the structure does not meet these requirements, a property owner may submit a permit application for sand placement. DEP is required to order the removal of structures that fail to meet sand-cover and vegetation standards.

Any substantially damaged armoring structures must be removed within 90 days. The property owner may apply within 90 days for a permit for major reconstruction of the structure, but if the application is denied by DEP, the structure must be removed within 90 days.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Beach and Shore Preservation

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, this section provides the state's policy on rigid armoring structures, pursuant to ss. 161.041 and 161.053, F.S., for protection of private property and public infrastructure.

Section 161.041, F.S., requires that a permit be obtained from DEP before any coastal construction or reconstruction or change of existing structures, or any construction specifically taken for shore protection purposes, including seawalls. Section 161.053, F.S., provides for coastal construction and excavation permitting, and regulation on a county basis.

Chapter 62B-33.002(5), F.A.C., defines "armoring" as a manmade structure designed to either prevent erosion of upland property or protect eligible structures from the effects of coastal wave and current action. Armoring includes rigid coastal structures such as geotextile bags or tubes,¹ seawalls, revetments, bulkheads, retaining walls, or similar structures, but does not include jetties, groins, or other construction whose purpose is to add sand to the beach and dune system, alter the natural coastal currents, or stabilize the mouth of inlets.

In order to allow state and federal agencies, political subdivisions of the state, and municipalities to preplan for emergency response, DEP may issue permits pursuant to s. 161.085(2), F.S., for the present or future installation of rigid coastal armoring structures to protect private structures, public infrastructure, and private and public property. Structures built pursuant to permits granted under this subsection may be ordered removed by DEP only if such structures are determined to be unnecessary or to interfere with the installation of a beach restoration project.

Permits for existing installations may be issued if it is determined that public infrastructure or private structures are vulnerable to damage from frequent coastal storms. Also, permits for these structures may be issued where the installation is between and adjoins rigid coastal armoring structures at both ends, follows a continuous and uniform armoring structure construction line with existing coastal armoring structures, and is no more than 250 feet in length.

Permits for future installations of coastal armoring structures may be issued contingent upon the occurrence of specified changes to the coastal system which would leave upland structures vulnerable to damage from frequent coastal storms. DEP may assist agencies, political subdivisions of the state, or municipalities, at their request, in identifying areas within their jurisdictions which may require permits for future installations of rigid coastal armoring structures.

If a coastal storm causes erosion of the beach-dune system, under the authority of s. 161.085, F.S., and ch. 62B-33, 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:

- protection of the beach-dune system;
- siting and design criteria for the protective structure;

¹ Chapter 62B-33.002(27), F.A.C., defines a "geotextile container" as a bag or tube, made of blanket-like synthetic fibers manufactured in a woven or loose nonwoven manner, used as an agent to hold together a large mass of sand forming a rigid tubular structure.

- impacts on adjacent properties;
- preservation of public beach access; and
- protection of native coastal vegetation and nesting marine turtles, their hatchlings, and other nesting state or federally threatened or endangered species.

Structures constructed under this authority must be temporary and the local government or property owner is required to remove the structure or submit a permit application to the DEP for a permanent structure within 60 days after the emergency installation.

Walton County

Hurricane Dennis made landfall at Santa Rosa Island on July 10, 2005, and caused significant beach and dune erosion in Walton County. A day later, the Secretary of the Florida Department of Environmental Protection issued an emergency order authorizing counties to grant 60-day permits for temporary seawalls and other armoring structures to enable beachfront property owners to protect their homes.

According to a synopsis of events provided by an attorney representing Walton County homeowners:

- Walton County issued a total of 173 temporary permits and emergency armoring structures were constructed on approximately 232 properties.
- This armoring included everything from wood retaining walls and sheet pile walls to Hesco (wire-mesh) baskets and sand filled geotextile tubes.
- DEP received permanent permit applications for the “vast majority” of the emergency armoring structures before April 2006.
- To date, DEP has only taken final action on approximately 20 to 25 of the permit applications.
- If DEP were to take final action on all of the applications, it anticipates that it would deny most of the applications because they do not meet DEP siting and other rule provisions.
- The majority of the pending applications are in what is called “waived status.” Section 120.60, F.S., requires that DEP take action within 90 days of when an application is complete. However, applicants may request in writing that the 90-day provision be waived. The majority of the applicants have requested this waiver. Many other applications are still not complete.²

The county has confirmed that the temporary permits were issued with the understanding that a property owner would need to apply for a state permit within 60 days of completion of the structure in order for it to remain permanently in place. DEP also made this requirement abundantly clear.³

Among other factors, permitting by DEP has been delayed due to issues related to federally-protected threatened and endangered species that were identified in connection with the armoring by the U.S. Fish and Wildlife Service (USFWS) and various wildlife organizations. The public consternation that ensued culminated in a 2007 Intergovernmental Agreement between Walton County, DEP, USFWS, and the Florida Fish and Wildlife Conservation Commission. This agreement resulted in the county applying for a USFWS Incidental Take Permit (ITP) and, as part of that permit application, being responsible for creating a Habitat Conservation Plan for protection of sea turtles and other native species that rely on the beach area.⁴

On January 11, 2001, the Walton County Board of County Commissioners voted to send a letter of concern to Walton County’s legislative delegation regarding this bill. The letter stated that “[a]llowing all seawalls constructed after hurricane Dennis to remain in place and exempt from any permit conditions would be contrary to the overall best interest of the County in the protection and preservation of the beach and dune system.” The Board requested that permit applications for the structures be reviewed

² Memo provided on March 30, 2011, by Scott Shirley, Ard, Shirley & Rudolph, P.A.

³ Telephone conversation with Bill McKee, Environmental Manager, Walton County Planning and Development Division, on March 28, 2011.

⁴ June 26, 2007, “Seawall update from Walton County,” Ken Little, Citizen Services Director/Public Information Officer for Walton County.

by the state “to insure that the structures were properly constructed and will not have negative consequences to adjacent properties and the dune system,” but suggested that a compromise could be reached in which the state waived its current “eligibility and vulnerability” criteria in connection with armoring applications meeting all other requirements.⁵

Effect of Proposed Changes

HB 1311 exempts property owners in Walton County who constructed rigid coastal armoring structures between July 10, 2005 and April 30, 2006, from the requirement to obtain DEP permits under ss. 161.063 and 161.085 (3), F.S. The bill deems the structures as “permanent.”

The properties affected by this bill have not been identified. Although the properties are defined as “rigid coastal armoring structures” constructed between specific dates, no inventory has been provided and no information as to the exact nature of the structures has been made available.

Within 60 days of the effective date of the bill, DEP is required to develop an “informational list” of the structures, in coordination with Walton County, noting the type and location of each in relation to the nearest DEP “R” monument⁶ and the Walton County Coastal Construction Control Line.⁷

The bill provides that it is not to be construed as authorization to place or locate 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. However, the bill expressly limits additional construction to a person’s own property.

The bill authorizes property owners to complete construction on the existing temporary structures without a DEP permit if the construction began between the aforementioned dates and was not completed if:

- the construction occurs on or landward of the armoring structure on the property owner’s property; and
- the work is completed within one year after the effective date of the bill.

Any work that requires sand placement or other activities that occur seaward of the existing armoring structure will 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. These permit applications are exempt from the vulnerability requirements of s. 161.085(2)(a), F.S., but must comply with all other statutory and rule requirements.

Sand-filled geotextile containers or similar structures constructed between the aforementioned dates must be continuously covered with three 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 three feet of sand. DEP is required to order the removal of sand-filled geotextile containers that fail to meet the requirements of the bill.

Any substantially damaged armoring structures must be removed within 90 days. The bill defines “substantial damage” to mean that the cost of repair would exceed 50 percent of the replacement costs of a structure.

A property owner may apply within 90 days after such damage for a permit for major reconstruction of the armoring 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

⁵ According to a March 21, 2011, article in the Florida Tribune, this letter still reflects the position of Walton County, citing Ken Little.

⁶ Range monuments (R-monuments) are a statewide network of survey monumentation used by DEP.

⁷ See, s. 161.053, F.S., for a “discussion of coastal construction control lines.”

deteriorated. 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 provides that it does not exempt structures from requirements of the Endangered Species Act (ESA), including incidental take permits. The bill also 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 the bill as well as a copy of the coastal properties disclosure statement required by s. 161.57, F.S.,⁸ if the property contains coastal armoring authorized by the bill.

B. SECTION DIRECTORY:

Section 1: Provides permitting exemption for Walton County coastal armoring structures constructed during a specified time; provides conditions applicable to such structures.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? January 28, 2011

WHERE? The *Northwest Florida Daily News*, a daily newspaper of general circulation published in Walton County.

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 ☐

House local bill policy requires that the Economic Impact Statement be prepared at the local level by an individual who is qualified to establish fiscal data and impacts. This form was prepared by the Tallahassee attorneys representing the homeowners.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

⁸Section 161.57, F.S., requires a coastal properties disclosure statement. At or prior to the time a seller and a purchaser execute a contract for sale and purchase of any interest in real property located partially or totally seaward of the coastal construction control line as defined in s. 161.053, F.S., the seller must give a written disclosure statement to the prospective purchaser which may be set forth in the contract or in a separate writing. The statement must provide that the property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles.

Drafting Issues

None.

Other Comments

DEP provided the following fiscal comments regarding 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.

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to create exemptions to ch. 161, F.S., which requires property owners to obtain permits from DEP for coastal armoring structures.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES