

## **FINAL BILL ANALYSIS**

**BILL #:** HB 1311

**FINAL HOUSE FLOOR ACTION:**  
113 Y's 5 N's

**SPONSOR:** Rep. Coley

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** None

---

### **SUMMARY ANALYSIS**

HB 1311 passed the House on April 27, 2011, and subsequently passed the Senate on May 2, 2011. The bill was approved by the Governor on June 2, 2011, chapter 2011-261, Laws of Florida and took effect on June 2, 2011. The bill creates a limited exemption for rigid coastal construction armoring structures in Walton County meeting specified requirements.

Current law recognizes the need to protect private structures and public infrastructure from damage or destruction caused by coastal erosion. However, current law also requires that a permit be obtained from the Florida Department of Environmental Protection (DEP) before any coastal construction or reconstruction or change of existing structures, or any construction specifically taken for shore protection purposes. Where erosion occurs as a result of a storm event that threatens private structures or public infrastructure, the DEP or another agency, political subdivision, or municipality having jurisdiction over the impacted area may authorize the installation of rigid coastal armoring structures to protect such private structures and public infrastructure.

HB 1311 exempts property owners in Walton County from having to obtain permits from the 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.

For specific coastal armoring structures, the bill requires the structures to 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.

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

The bill takes effect upon becoming law.

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

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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,<sup>1</sup> 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.

---

<sup>1</sup> 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.

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;
- 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 DEP 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.
- The majority of the pending applications are in what is called “waived status.” Section 120.60, F.S., requires that the 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.<sup>2</sup>

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. The DEP also made this requirement abundantly clear.<sup>3</sup>

Among other factors, permitting by the 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

---

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

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

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.<sup>4</sup>

### **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.”

Within 60 days of the effective date of the bill, the DEP is required to develop, in coordination with Walton County, an “informational list” of the rigid coastal armoring structures constructed between July 10, 2005, and April 30, 2006. The list must describe the type and location of each structure in relation to the nearest DEP “R” monument<sup>5</sup> and the Walton County Coastal Construction Control Line.<sup>6</sup>

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 the 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. The DEP is required to order the removal of sand-filled geotextile containers that fail to meet the requirements of the bill.

---

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

<sup>5</sup> Range monuments (R-monuments) are a statewide network of survey monumentation used by DEP.

<sup>6</sup> See, s. 161.053, F.S., for a “discussion of coastal construction control lines.”

Any substantially damaged armoring structures must be removed within 90 days of the damage occurring. 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 the damage occurred 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 deteriorated. If an application for major reconstruction is denied by the DEP, the structure must be removed within 90 days after final denial of the permit application.

The bill provides that structures are not exempt 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.,<sup>7</sup> if the property contains coastal armoring authorized by the bill.

## **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.

---

<sup>7</sup>Section 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.