

1 A bill to be entitled
 2 An act relating to sand source management; creating s.
 3 161.144, F.S.; providing for the development and
 4 maintenance of an inventory of identified offshore sand
 5 sources by the Department of Environmental Protection as
 6 part of its comprehensive long-term beach management plan;
 7 providing for public review of maps of offshore sand
 8 sources; providing for boards of county commissioners of
 9 coastal counties adjacent to sand sources proposed for use
 10 outside of the region or subregion to be notified and
 11 given adequate opportunity to comment during a project's
 12 planning and permitting stages; providing for objections
 13 or concerns of such coastal counties to be noted by the
 14 department and transmitted to the Legislature before
 15 funding considerations or before final regulatory action;
 16 amending 161.085, F.S.; restricting use of geotextile
 17 containers for emergency rigid coastal armoring; providing
 18 permitting for geotextile containers; providing
 19 conditions; providing for department evaluation; amending
 20 161.141, F.S.; providing for an offset against damages in a
 21 lawsuit resulting from a beach restoration project;
 22 providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

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 26 Section 1. Section 161.144, Florida Statutes, is created to
 27 read:

28 161.144 Policy guidance related to sand source management.-
 29 -The Legislature recognizes that beach-quality sand for the

30 nourishment of the state's critically eroded beaches is an
 31 exhaustible resource, in ever-decreasing supply, and must be
 32 carefully managed for the systemwide benefit of the state's
 33 beaches. Therefore, the Department of Environmental Protection,
 34 pursuant to s. 161.161 and in cooperation with federal and local
 35 government agencies, shall develop and maintain an inventory of
 36 identified offshore sand sources as part of the regional elements
 37 of its comprehensive long-term beach management plan. Offshore
 38 sand sources in state or federal waters which are identified for
 39 potential, proposed, or permitted use shall be clearly mapped or
 40 otherwise noted and readily available for public review. In
 41 addition, boards of county commissioners of coastal counties
 42 adjacent to sand sources proposed for use outside of the region
 43 or subregion shall be provided written notice and an opportunity
 44 to comment during a specific project's planning and permitting
 45 stages. Any unresolved objections or concerns of such coastal
 46 counties shall be duly noted by the department and transmitted to
 47 the Legislature before it considers state funding for a project
 48 or before regulatory action is taken if legislative funding
 49 precedes approval of the use of specific sand sources.

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

52 161.085 Rigid coastal armoring structures.—

53 (3) If erosion occurs as a result of a storm event which
 54 threatens private structures or public infrastructure and a
 55 permit has not been issued pursuant to subsection (2), unless the
 56 authority has been revoked by order of the department pursuant to
 57 subsection (8), an agency, political subdivision, or municipality
 58 having jurisdiction over the impacted area may install or

59 authorize installation of rigid coastal armoring structures,
60 exclusive of those authorized under subsection (9), for the
61 protection of private structures or public infrastructure, or
62 take other measures to relieve the threat to private structures
63 or public infrastructure as long as the following items are
64 considered and incorporated into such emergency measures:

65 (a) Protection of the beach-dune system.

66 (b) Siting and design criteria for the protective
67 structure.

68 (c) Impacts on adjacent properties.

69 (d) Preservation of public beach access.

70 (e) Protection of native coastal vegetation and nesting
71 marine turtles and their hatchlings.

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

78 (a) ~~Demonstrates that~~ The United States Fish and Wildlife
79 Service has approved an Incidental Take Permit for marine turtles
80 pursuant to Section 7 or 10 of the Endangered Species Act for the
81 placement of the a habitat conservation plan that includes the
82 ~~shoreline where each structure will be placed;~~

83 (b) The applicant provides reasonable assurance that
84 adequate sand cover will be maintained over the structure such
85 that the structure will not interact with the beach dune system
86 as rigid coastal armoring or adversely affect marine turtle
87 nesting and provides for a responsible entity to conduct such

88 maintenance; and

89 (c) The applicant provides reasonable assurance that each
 90 structure will be removed if the maintenance required by
 91 paragraph (b) proves to be not feasible.

92 (10) In order to test the effectiveness of the use of
 93 sand-filled geotextile containers or similar structures as the
 94 core of a restored dune feature along a shoreline where private
 95 or public infrastructure is not yet vulnerable to damage from
 96 frequent coastal storms, notwithstanding paragraph (2)(a), the
 97 department may authorize a one-time pilot project for an area
 98 along the sandy beach of Walton County if such pilot project
 99 otherwise meets all requirements of subsection (9). Any such
 100 authorization shall require adequate monitoring to ensure that
 101 permit conditions are met and to evaluate the effectiveness of
 102 the pilot project. The department shall submit a report on the
 103 effectiveness of the pilot project to the Governor, President of
 104 the Senate and Speaker of the House of Representatives after the
 105 project has been in place for five years, unless the pilot
 106 project is terminated and all structures removed prior to that
 107 time, in which case the report shall be submitted following
 108 termination of the project. This subsection shall expire on July
 109 1, 2014.

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

112 161.141 Property rights of state and private upland owners
 113 in beach restoration project areas.--The Legislature declares
 114 that it is the public policy of the state to cause to be fixed
 115 and determined, pursuant to beach restoration, beach nourishment,
 116 and erosion control projects, the boundary line between

117 | sovereignty lands of the state bordering on the Atlantic Ocean,
118 | the Gulf of Mexico, or the Straits of Florida, and the bays,
119 | lagoons, and other tidal reaches thereof, and the upland
120 | properties adjacent thereto; except that such boundary line shall
121 | not be fixed for beach restoration projects that result from
122 | inlet or navigation channel maintenance dredging projects unless
123 | such projects involve the construction of authorized beach
124 | restoration projects. However, prior to construction of such a
125 | beach restoration project, the board of trustees must establish
126 | the line of mean high water for the area to be restored; and any
127 | additions to the upland property landward of the established line
128 | of mean high water which result from the restoration project
129 | remain the property of the upland owner subject to all
130 | governmental regulations and are not to be used to justify
131 | increased density or the relocation of the coastal construction
132 | control line as may be in effect for such upland property. The
133 | resulting additions to upland property are also subject to a
134 | public easement for traditional uses of the sandy beach
135 | consistent with uses that would have been allowed prior to the
136 | need for the restoration project. It is further declared that
137 | there is no intention on the part of the state to extend its
138 | claims to lands not already held by it or to deprive any upland
139 | or submerged land owner of the legitimate and constitutional use
140 | and enjoyment of his or her property. If an authorized beach
141 | restoration, beach nourishment, and erosion control project
142 | cannot reasonably be accomplished without the taking of private
143 | property, the taking must be made by the requesting authority by
144 | eminent domain proceedings. In any action alleging a taking of
145 | all or part of a littoral or riparian right as a result of a

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draft language for recommendation

2007

146 beach restoration project the enhancement, if any, in value of
147 the remaining adjoining property of the upland property owner by
148 reason of the beach restoration project shall be offset against
149 the damage, if any, resulting to such remaining adjoining
150 property of the upland property owner by reason of the beach
151 restoration project. However, such enhancement in the value shall
152 not be offset against the value of the property right alleged to
153 have been taken, and if such enhancement in value shall exceed
154 the damage, if any, to the upland property, there shall be no
155 recovery over against such property owner for such excess.

156 Section 4. This act shall take effect July 1, 2007.
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