

PCB ENRC 07-13

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1                                   A bill to be entitled

2           An act relating to sand source management; amending s.

3           161.021, F.S.; revising the definition of "access" or

4           "public access" to include certain lands; amending s.

5           161.085, F.S.; revising provisions relating to rigid

6           coastal armoring structures; prohibiting local governments

7           from installing certain rigid coastal armoring structures;

8           requiring adoption of rules implementing the section;

9           authorizing permitting for projects incorporating

10          geotextile containers and similar structures under certain

11          conditions; providing project requirements; requiring

12          applicants and property owners to bond certain activities;

13          requiring permittees to file public notice for certain

14          activities; requiring the department to remove certain

15          containers and structures under certain conditions;

16          authorizing the department to require certifications for

17          project activities; requiring the department to review and

18          evaluate certain dune restoration projects and make

19          recommendations to the Governor and the Legislature;

20          amending s. 161.141, F.S.; providing for an offset against

21          damages in lawsuits resulting from activities relating to

22          beach restoration projects; creating s. 161.144, F.S.;

23          providing legislative findings; directing the Department

24          of Environmental Protection to develop and maintain an

25          inventory of identified offshore sand sources as part of

26          its comprehensive long-term beach management plan;

27          requiring the department to provide maps of offshore sand

28          sources for public review; requiring the department to

29          provide written notice to the boards of county

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30 commissioners of certain coastal counties; requiring the  
 31 department to provide such boards with the opportunity to  
 32 comment during the planning and permitting stages of  
 33 certain projects; requiring the department to note and  
 34 transmit certain information to the Legislature; providing  
 35 an effective date.

36  
 37 Be It Enacted by the Legislature of the State of Florida:

38  
 39 Section 1. Subsection (1) of section 161.021, Florida  
 40 Statutes, is amended to read:

41 161.021 Definitions.--In construing these statutes, where  
 42 the context does not clearly indicate otherwise, the word,  
 43 phrase, or term:

44 (1) "Access" or "public access" as used in ss. 161.041,  
 45 161.052, and 161.053 means the public's right to laterally  
 46 traverse the sandy beaches of this state where such access exists  
 47 on or after July 1, 1987, or where the public has established an  
 48 accessway through private lands to lands seaward of the mean high  
 49 tide or water line by prescription, prescriptive easement, or any  
 50 other legal means.

51 Section 2. Subsections (3), (5), and (9) of section  
 52 161.085, Florida Statutes, are amended to read:

53 161.085 Rigid coastal armoring structures.--

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

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

- 66 (a) Protection of the beach-dune system.
- 67 (b) Siting and design criteria for the protective  
 68 structure.
- 69 (c) Impacts on adjacent properties.
- 70 (d) Preservation of public beach access.
- 71 (e) Protection of native coastal vegetation and nesting  
 72 marine turtles and their hatchlings.

73 (5) The department shall ~~may~~ adopt rules to implement the  
 74 provisions of this section.

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

82 (a) A permit may be granted by the department under this  
 83 subsection for dune restoration incorporating sand-filled  
 84 geotextile containers or similar structures, provided that such  
 85 projects:

- 86 1. Provide for the protection of an existing major  
 87 structure or public infrastructure, and notwithstanding any

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88 definition in department rule to the contrary, that major  
 89 structure or public infrastructure is vulnerable to damage from  
 90 frequent coastal storms or is upland of a beach-dune system that  
 91 has experienced significant beach erosion from such storm events.  
 92 2. Are constructed using native or beach-quality sand and  
 93 native salt-tolerant vegetation suitable for dune stabilization  
 94 as approved by the department.  
 95 3. May include materials other than native or beach-quality  
 96 sand, such as geotextile materials that are used to contain  
 97 beach-quality sand for the purposes of maintaining the stability  
 98 and longevity of the dune core.  
 99 4. Are continuously covered with at least 3 feet of native  
 100 or beach-quality sand and stabilized with native salt-tolerant  
 101 vegetation.  
 102 5. Are sited as far landward as practicable, balancing the  
 103 need to minimize excavation of the beach-dune system, impacts to  
 104 nesting marine turtles, and impacts to adjacent properties.  
 105 6. Are designed and sited in a manner that will minimize  
 106 the potential for erosion.  
 107 7. Do not materially impede access by the public.  
 108 8. Are designed to minimize adverse effects to nesting  
 109 marine turtles and turtle hatchlings, consistent with s. 370.12.  
 110 9. Are designed to facilitate easy removal of the  
 111 geotextile containers if needed.  
 112 10. Include an incidental take permit for marine turtles  
 113 pursuant to sections 7 and 10 of the Endangered Species Act  
 114 administered by the United States Fish and Wildlife Service if an  
 115 incidental take permit is required for the placement of the  
 116 structures.

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117        (b) The applicant or successive property owners shall  
 118 provide financial assurances in the form of surety bonds,  
 119 performance bonds, or other financial responsibility mechanisms  
 120 that the authorized geotextile containers or similar structures  
 121 will be removed if the requirements of this subsection and the  
 122 permit conditions are not met. The permittee shall file a notice  
 123 of formal permit conditions in the public records of the county  
 124 where the permitted activity is located.

125        (c) The department shall order removal of the geotextile  
 126 containers or similar structures if the conditions of  
 127 subparagraph (a)3. are not met, if the project ceases to function  
 128 due to irreparable damage, if the project is determined by the  
 129 department to have caused a significant adverse impact to the  
 130 beach-dune system, or if the United States Fish and Wildlife  
 131 Service revokes the incidental take permit required in  
 132 subparagraph (a)10.

133        (d) The department may require any engineering  
 134 certifications necessary to ensure the adequacy of the design and  
 135 construction of the permitted project.

136        (e) The department shall review, with third-party expert  
 137 involvement, the performance of dune restoration incorporating  
 138 sand-filled geotextile containers or similar structures to  
 139 determine whether such structures provide upland protection and  
 140 to determine the impact on the beach-dune system and adjacent  
 141 properties. Such structures shall continue to be evaluated to  
 142 determine if they are a more effective form of dune restoration  
 143 than beach-compatible sand and native vegetation. Based on such  
 144 analysis and peer review, the department shall recommend to the  
 145 Governor, the President of the Senate, and the Speaker of the

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146 House of Representatives whether the provisions of this  
 147 subsection should be modified.

148 ~~(a) Demonstrates that the United States Fish and Wildlife~~  
 149 ~~Service has approved a habitat conservation plan that includes~~  
 150 ~~the shoreline where each structure will be placed;~~

151 ~~(b) Provides reasonable assurance that adequate sand cover~~  
 152 ~~will be maintained over the structure such that the structure~~  
 153 ~~will not interact with the beach dune system as rigid coastal~~  
 154 ~~armoring or adversely affect marine turtle nesting and provides~~  
 155 ~~for a responsible entity to conduct such maintenance; and~~

156 ~~(c) Provides reasonable assurance that each structure will~~  
 157 ~~be removed if the maintenance required by paragraph (b) proves to~~  
 158 ~~be not feasible.~~

159 Section 3. Section 161.141, Florida Statutes, is amended to  
 160 read:

161 161.141 Property rights of state and private upland owners  
 162 in beach restoration project areas.--The Legislature declares  
 163 that it is the public policy of the state to cause to be fixed  
 164 and determined, pursuant to beach restoration, beach nourishment,  
 165 and erosion control projects, the boundary line between  
 166 sovereignty lands of the state bordering on the Atlantic Ocean,  
 167 the Gulf of Mexico, or the Straits of Florida, and the bays,  
 168 lagoons, and other tidal reaches thereof, and the upland  
 169 properties adjacent thereto; except that such boundary line shall  
 170 not be fixed for beach restoration projects that result from  
 171 inlet or navigation channel maintenance dredging projects unless  
 172 such projects involve the construction of authorized beach  
 173 restoration projects. However, prior to construction of such a  
 174 beach restoration project, the board of trustees must establish

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175 the line of mean high water for the area to be restored; and any  
 176 additions to the upland property landward of the established line  
 177 of mean high water which result from the restoration project  
 178 remain the property of the upland owner subject to all  
 179 governmental regulations and are not to be used to justify  
 180 increased density or the relocation of the coastal construction  
 181 control line as may be in effect for such upland property. The  
 182 resulting additions to upland property are also subject to a  
 183 public easement for traditional uses of the sandy beach  
 184 consistent with uses that would have been allowed prior to the  
 185 need for the restoration project. It is further declared that  
 186 there is no intention on the part of the state to extend its  
 187 claims to lands not already held by it or to deprive any upland  
 188 or submerged land owner of the legitimate and constitutional use  
 189 and enjoyment of his or her property. If an authorized beach  
 190 restoration, beach nourishment, and erosion control project  
 191 cannot reasonably be accomplished without the taking of private  
 192 property, the taking must be made by the requesting authority by  
 193 eminent domain proceedings. In any action alleging a taking of  
 194 all or part of a littoral right or riparian right as a result of  
 195 a beach restoration project, any enhancement in value of the  
 196 remaining adjoining property of the upland property owner by  
 197 reason of the beach restoration project shall be offset against  
 198 the damage, if any, resulting to such remaining adjoining  
 199 property of the upland property owner by reason of the beach  
 200 restoration project. However, such enhancement in the value shall  
 201 not be offset against the value of the property right alleged to  
 202 have been taken, and if such enhancement in value shall exceed

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203 the damage, if any, to the upland property, there shall be no  
 204 recovery over against such property owner for such excess.

205 Section 4. Section 161.144, Florida Statutes, is created to  
 206 read:

207 161.144 Offshore sand sources.--

208 (1) The Legislature recognizes that beach-quality sand for  
 209 the nourishment of the state's critically eroded beaches is an  
 210 exhaustible resource in ever-decreasing supply and must be  
 211 carefully managed for the systemwide benefit of the state's  
 212 beaches. Therefore, the Department of Environmental Protection,  
 213 pursuant to s. 161.161 and in cooperation with federal and local  
 214 governmental agencies, is directed to develop and maintain an  
 215 inventory of identified offshore sand sources as part of the  
 216 regional elements of its comprehensive long-term beach management  
 217 plan.

218 (2) The department shall clearly map or otherwise note and  
 219 make readily available for public review any offshore sand  
 220 sources in state or federal waters which are identified for  
 221 potential, proposed, or permitted use. In addition, the  
 222 department shall provide the boards of county commissioners of  
 223 coastal counties adjacent to offshore sand sources proposed for  
 224 use outside of the region or subregion with written notice of  
 225 such activities and an opportunity to comment during a specific  
 226 project's planning and permitting stages.

227 (3) Any unresolved objections or concerns of the boards of  
 228 county commissioners shall be duly noted by the department and  
 229 transmitted to the President of the Senate and the Speaker of the  
 230 House of Representatives before the Legislature considers state  
 231 funding for a project or before regulatory action is taken if



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232 legislative funding precedes approval of the use of specific sand  
233 sources.

234 Section 5. This act shall take effect July 1, 2007.