

By Senator Justice

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1 A bill to be entitled
2 An act relating to public access to beaches; creating
3 part V of ch. 161, F.S.; providing definitions;
4 providing policy and effect; declaring that the public
5 policy of this state is to provide free access to
6 public beaches; prohibiting persons from restricting
7 access; prohibiting obstruction of beach access under
8 certain conditions; prohibiting the use of signs
9 declaring that a public beach is private property;
10 providing that a violation of such prohibition is a
11 first-degree misdemeanor; providing a penalty;
12 prohibiting a governmental entity from placing an
13 obstruction upon a public beach under certain
14 conditions; prohibiting ordinances that limit public
15 access; authorizing owners of land within a specified
16 distance of certain coastal waters to record or revoke
17 a notice concerning the granting of permission for the
18 public's recreational use of the land; providing
19 limitations on the duty or liability of an owner while
20 such a notice is recorded; prohibiting an owner from
21 preventing certain public uses of the land while such
22 a notice is recorded; providing for the use of prima
23 facie evidence in suits to exclude the public from
24 accessing and using a sandy beach; requiring notice to
25 the Board of Trustees of the Internal Improvement
26 Trust Fund of the sale or closure of access to a
27 public beach; providing for the purchase of such
28 access by the board; providing an effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Part V of chapter 161, Florida Statutes,
33 consisting of sections 161.80, 161.81, 161.82, 161.83, 161.84,
34 and 161.85, is created to read:

35 PART V

36 PUBLIC BEACH ACCESS

37 161.80 Definitions.—As used in this part, the term:

38 (1) "Beach access" means the public's right to laterally
39 traverse and make recreational use of the sandy beaches of this
40 state where such access exists on or after July 1, 1987, or the
41 public has established an accessway through private lands to
42 lands seaward of the mean high tide or water line by
43 prescription, prescriptive easement, or any other legal means,
44 and the public's right of ingress and egress to public beaches
45 and the waters of the Gulf of Mexico, the Atlantic Ocean, or the
46 Straits of Florida.

47 (2) "Public beach" means any sovereign beach, any
48 recreational beach owned or operated by the state or a local
49 government, or any sandy beach area where the public has
50 established or acquired a right of use by prescription,
51 dedication, custom, or any other legal means.

52 (3) "Recreational use" includes walking, hiking, fishing,
53 swimming, surfing, sunbathing, nature study, any other
54 traditional beach activities; visiting historical,
55 archaeological, scenic, or scientific sites; accessing a public
56 beach; and providing noncommercial parking areas in proximity to
57 beach access points.

58 (4) "Sovereign beach" means that portion of a sandy beach

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59 lying seaward of the line of mean high water or a recorded
60 erosion control line.

61 161.81 Declaration of policy and effect.-

62 (1) Under the Environmental Protection Act of 1971, a
63 public beach is a natural resource, and it is the policy of this
64 state that the public, individually and collectively, have free
65 and unrestricted right to enter and use this resource.

66 (2) This part does not affect in any way the title held to
67 land in this state which is adjacent to any beach on the Gulf of
68 Mexico, the Atlantic Ocean, or the Straits of Florida, and does
69 not reduce or limit in any way the rights of the public in
70 public beaches which have been defined in law or custom.

71 (3) Any sandy beach below the mean high water line or a
72 recorded erosion control line is declared public, and a private
73 entity, absent a board of trustees deed or authorization, may
74 not restrict access along the shoreline across such beaches.

75 161.82 Unlawful barriers to use of public beaches.-

76 (1) (a) A person may not:

77 1. Obstruct or cause obstruction of beach access by
78 fencing, barricading, or causing any other obstruction, unless
79 such obstruction is otherwise authorized by law.

80 2. Display or cause to be displayed on any public beach any
81 sign, marker, or warning or communicate in any other manner that
82 a public beach is private property.

83 (b) A person who violates this subsection commits a
84 misdemeanor of the first degree, punishable as provided in s.
85 775.082 or s. 775.083.

86 (2) A governmental entity may not:

87 (a) Place or cause to be placed any fencing, barricade, or

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88 any other obstruction upon a public beach, unless such
89 obstruction is a response to public safety or an emergency or is
90 otherwise authorized by law. This subsection does not prevent
91 any agency, department, institution, subdivision, or
92 instrumentality of the state or of the Federal Government from
93 erecting or maintaining any groin, seawall, barrier, pass,
94 channel, jetty, or other structure as an aid to navigation, as
95 protection of the shore, or for fishing, safety, or other lawful
96 purpose.

97 (b) Adopt an ordinance, resolution, or development order
98 that has the effect of limiting the public's access to a public
99 beach, except as necessary to protect the public's health,
100 safety, and welfare.

101 161.83 Owner permission to access beaches; limitation of
102 liability.-

103 (1) The holder of record title to land within 1,500 feet of
104 the Gulf of Mexico, the Atlantic Ocean, or the Straits of
105 Florida may record in any county in which any part of the land
106 is situated a description of the land and a notice reading
107 substantially as follows: "The right of the public or any person
108 to make recreational use of the above described land or any
109 portion thereof, other than any use expressly allowed by a
110 written or recorded map, agreement, deed, or dedication, is by
111 permission of owner pursuant to section 161.83, Florida
112 Statutes." The holder of record title may revoke such notice by
113 recording a notice of revocation in each county where the notice
114 is recorded. The recording of a notice under this subsection
115 does not affect any right of the public which was vested at the
116 time of recording through prescription, dedication, custom, or

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117 other legal means.

118 (2) During any period when notice concerning a parcel of
119 land is recorded and not revoked:

120 (a) If the dedication of all or a portion of the parcel to
121 public use or the public's prescriptive or customary right in
122 all or a portion of the parcel is at issue in a legal
123 proceeding, the recorded notice is conclusive evidence that the
124 use of the parcel by the public or by any user for any purpose,
125 other than a use expressly allowed by a written or recorded map,
126 agreement, deed, or dedication, is permissive and with the
127 consent of the holder of record title to the parcel.

128 (b) The holder of record title to the parcel may not
129 prevent a public use of the parcel which is appropriate to the
130 notice by physical obstruction, notice, or otherwise.

131 (c) The holder of record title to the parcel does not owe a
132 duty of care to keep the parcel safe for entry or use by the
133 public or to give warning to persons entering or going of any
134 hazardous conditions, structures, or activities thereon, and
135 such titleholder does not, by providing public recreational use
136 of the parcel:

137 1. Extend any assurance that the parcel is safe for any
138 purpose;

139 2. Incur any duty of care to any person who goes on the
140 parcel; or

141 3. Become liable or responsible for any injury to persons
142 or property caused by the act or omission of a person who goes
143 on the parcel.

144 161.84 Prima facie evidence.—In a suit brought or defended
145 under this part or whose determination is affected by this part,

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146 proof of record title to a sandy beach that is landward of a
147 sovereign beach is not prima facie evidence that the titleholder
148 has a right to exclude the public from accessing and using the
149 sandy beach or any associated accessway. A showing that property
150 lies within the area from mean low tide to the seasonal high-
151 water line, as defined in s. 161.053(6) (a), is prima facie
152 evidence that the title of the littoral owner does not include
153 the right to prevent the public from using the property for
154 access and use of a public beach or for ingress and egress to
155 the waters of the Gulf of Mexico, the Atlantic Ocean, or the
156 Straits of Florida.

157 161.85 Public purchase of beach access.-

158 (1) By January 1, 2010, each county and municipality shall
159 provide a list to the Board of Trustees of the Internal
160 Improvement Trust Fund of each dead-end street within its
161 jurisdiction which may be used for the purpose of accessing and
162 using a public beach. The list must specify the location of each
163 street and be provided at no charge to the board.

164 (2) Notwithstanding any other provision of law, a county or
165 municipality may not sell or convey any interest in beachfront
166 land or abandon, close, relinquish, or vacate a street, road, or
167 easement that provides an accessway to a public beach until the
168 Board of Trustees of the Internal Improvement Trust Fund has an
169 opportunity to receive or purchase such interest or accessway in
170 accordance with the following:

171 (a) If a county or municipality receives a petition
172 requesting that it sell, convey, abandon, close, relinquish, or
173 vacate any such interest or accessway or decides to take such
174 action without receiving a request, the county or municipality

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175 shall, before consideration of any private offers, notify the
176 board that the interest or accessway is available. The notice
177 must be sent by certified mail, return receipt requested.

178 (b) Within 45 days after receipt of the notice, the board
179 shall determine by resolution whether it proposes to devote such
180 interest or accessway to public use for the purpose of accessing
181 and using the public beach. Such purpose is declared to be a
182 public purpose.

183 1. If the board proposes to devote the interest or
184 accessway in perpetuity for such purpose, within 120 days after
185 receipt of the notice, it shall adopt a resolution that
186 specifies such intent and provides a tentative plan for the
187 development of the interest or accessway and a tentative
188 schedule that specifies a date that development will commence,
189 which must be within 2 years after the date of the resolution,
190 and a date that development will be completed, which must be
191 within 4 years after the date of the resolution. If appropriate,
192 the board's agreement to maintain the land in its current use
193 and condition shall be considered a sufficient plan of
194 development. The board shall send a certified copy of the
195 resolution to the county or municipality by certified mail,
196 return receipt requested, within 5 days after adoption but
197 before the end of the 120-day period. The county or municipality
198 that timely receives the certified copy of the resolution shall
199 convey the land to the board upon such terms and conditions and
200 at such price as the county or municipality determines.

201 2. If the board decides not to devote such interest or
202 accessway in perpetuity for such purposes, it shall adopt a
203 resolution reflecting such determination and send a certified

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204 copy of the resolution to the county or municipality by
205 certified mail, return receipt requested, within 5 days after
206 adoption.

207 (c) The failure of the board to adopt and send a resolution
208 pursuant to this subsection constitutes the board's
209 determination not to devote such interest or accessway in
210 perpetuity to a public use for the purpose of accessing and
211 using a public beach.

212 Section 2. This act shall take effect July 1, 2009.