

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: General Government Appropriations Committee

BILL: CS/CS/SB 2008

INTRODUCER: General Government Appropriations Committee, Environmental Preservation and Conservation Committee, and Senator Jones

SUBJECT: Sand Source Management

DATE: April 24, 2007                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Kynoch</u>	<u>DeLoach</u>	<u>GA</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill provides for the development and maintenance of an inventory of identified offshore sand sources by the Department of Environmental Protection as part of its comprehensive long-term beach management plan. The bill provides for public review of maps of offshore sand sources. The bill provides for comment by coastal counties adjacent to sand sources. The bill directs the department to identify, in its required annual submission of projects to the Legislature, those projects that propose to use sand from another region or sub-region.

Additional provisions of the bill:

- Expands the definition of “access” or “public access” to include established accessways as those that must be retained for public use.
- Provides a method by which potential impacts to upland owners would be valued in conjunction with a beach renourishment project.

The department has indicated that they can meet the requirements of this legislation with current resources.

The bill amends sections 161.021 and 161.141, Florida Statutes

This bill creates section 161.144, Florida Statutes.

## II. Present Situation:

Coastal barrier dunes are among the most valuable natural resources in Florida because dunes serve as the final line of defense against the attack of storms, waves, and currents. Critical erosion of the state's beaches and damage to the dune system have advanced to emergency proportions and must be stabilized in order to protect against irreparable harm and to prevent further loss of natural resources and damage to property. Such erosion causes a significant threat to the economy, is a detriment to the state's vital tourism industry and beach-related employment, reduces coastal property values and beach access, and can severely impact the habitat used for nesting marine turtles.

### **Beach management planning**

Section 161.161, F.S., requires the department to develop and maintain a comprehensive long-term management plan for the restoration and maintenance of the state's critically eroded beaches fronting the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida. Pursuant to s. 161.161, F.S., the beach management plan shall:

- Address long-term solutions to the problem of critically eroded beaches in the state.
- Evaluate each improved, modified, or altered inlet and determine whether the inlet is a significant cause of beach erosion.
- Design criteria for beach restoration and beach renourishment projects.
- Evaluate the establishment of feeder beaches as an alternative to direct beach restoration and recommend the location of such feeder beaches and the source of beach-compatible sand.
- Identify causes of shoreline erosion and change, calculate erosion rates, and project long-term erosion for all major beach and dune systems by surveys and profiles.
- Identify shoreline development and degree of density and assess impacts of development and shoreline protective structures on shoreline change and erosion.
- Identify short-term and long-term economic costs and benefits of beaches, including recreational value to user groups, tax base, revenues generated, and beach acquisition and maintenance costs.
- Study dune and vegetation conditions.
- Identify beach areas used by marine turtles and their nests and nesting locations.
- Identify alternative management responses to preserve undeveloped beach and dune systems, restore damaged beach and dune systems, and prevent inappropriate development and redevelopment on migrating beaches; and consider beach restoration and nourishment, armoring, relocation and abandonment, dune and vegetation restoration, and acquisition.
- Establish criteria, including costs and specific implementation actions, for alternative management techniques.
- Select and recommend appropriate management measures for all of the state's sandy beaches in a beach management program.
- Establish a list of beach restoration and beach nourishment projects, arranged in order of priority, and the funding levels needed for such projects.

### **Upland beach owners' property rights**

Beach renourishment projects are preceded by the formal and noticed establishment of the Erosion Control Line (ECL) by the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund. The ECL is the line which demarks the landward extent of the state as the sovereign titleholder. In plain terms, land seaward of the ECL is sovereign, and the sand, usually the state's as well, placed seaward of the line as part of a renourishment project becomes public beach. Conversely, any additions to the upland property remain the property of the upland owner.

Additional provisions concerning property impacts include:

- Assurance that the resulting additions to upland property are also subject to a public easement for traditional uses of the beach that would have been allowed prior to the restoration.
- That it is not the intent of the state to extend claims of ownership or deprive land owners of their legitimate and constitutional uses of their property.
- A finding that any authorized project that would result in a taking must utilize the state's eminent domain procedures.

### **III. Effect of Proposed Changes:**

The bill amends s. 161.021, F.S., to expand the definition of "access" or "public access" to include those accessways through private lands that have an already established accessway by prescription, prescriptive easement, or any other legal means. In addition, a provision is also created that directs such accessways cannot be impacted by development or construction unless a comparable alternative is provided.

The bill amends, s. 161.141, F.S., to provide additional guidance to be utilized when evaluating the impacts of an alleged taking. The new provision directs that if a taking has been judicially determined to have occurred as a result of a beach restoration project, the enhancement in value shall be offset against the value of the damage, if any, resulting to such remaining adjoining property of the upland property owner. The enhancement in value shall not be offset against the value of the property or property right alleged to have been taken. If the enhancement in value exceeds the value of the damage there shall be no recovery over against the property owner for such excess.

This bill creates s. 161.144, F.S., to provide policy guidance related to sand source management. As stated in the bill, the Legislature recognizes that beach-quality sand for the nourishment of the state's critically eroded beaches is an exhaustible resource, in ever-decreasing supply, and must be carefully managed for the system-wide benefit of the state's beaches.

The department, pursuant to s. 161.161, F.S., and in cooperation with federal and local government agencies, shall develop and maintain an inventory of identified offshore sand sources as part of the regional elements of its comprehensive long-term beach management plan. Offshore sand sources in state or federal waters which are identified for potential, proposed, or permitted use shall be clearly mapped or otherwise noted and readily available for public review.

In addition, boards of county commissioners of coastal counties adjacent to sand sources proposed for use outside of the region or sub-region shall be provided written notice and an opportunity to comment during a specific project's planning and permitting stages.

The bill also requires the department, as part of their annual submission to the Legislature of proposed projects, to identify those projects that propose to use sand sources from another region or sub-region.

The bill has an effective date of October 1, 2007.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art. VII of the State Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

The Department of Environmental Protection has indicated that it will have to modify their Reconnaissance Offshore Sand Search (ROSS) database to develop the inventory called for in this bill. Specifically, the database will have to improve the detail of mapping and expand the coverage to areas outside existing regions. The department has estimated, based on past work performed on the database, that the cost could range from \$40,000 to \$100,000. This amount can be absorbed within existing funding.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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