

FLORIDA HOUSE OF REPRESENTATIVES

BILL ANALYSIS

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BILL #: [HB 6043](#)

TITLE: Recreational Customary Use of Beaches

SPONSOR(S): Andrade and Abbott

COMPANION BILL: [SB 1622](#) (Trumbull)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Civil Justice & Claims](#)

14 Y, 0 N



[Natural Resources & Disasters](#)

17 Y, 0 N



[Judiciary](#)

18 Y, 0 N

SUMMARY

Effect of the Bill:

HB 6043 repeals [s. 163.035, F.S.](#), thereby allowing (but not requiring) a local government to adopt an ordinance or rule that finds, determines, relies on, or is based upon customary use of any portion of a beach above the mean high-water line without the need to first obtain a judicial declaration affirming a recreational customary use on such beach. Practically speaking, the bill would give local governments more authority to determine whether to allow the public to use the dry sand areas of the beach.

Fiscal or Economic Impact:

The bill may have a fiscal impact on state and local governments and an economic impact on the private sector.

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ANALYSIS

EFFECT OF THE BILL:

[Recreational Customary Use Doctrine](#)

The bill repeals [s. 163.035, F.S.](#), thereby allowing (but not requiring) a local government to adopt an ordinance or rule that finds, determines, relies on, or is based upon customary use of any portion of a beach above the [mean high-water line](#) without the need to first obtain a judicial declaration affirming a recreational customary use on such beach. Practically speaking, the bill would give local governments more authority to determine whether to allow the public to use the dry sand areas of the beach. (Section [1](#))

The bill provides an effective date of upon becoming a law. (Section [2](#))

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have a fiscal impact on the state court system. Whether that impact is positive or negative depends upon the extent to which changes made by the bill reduce the necessity for litigation relating to recreational customary use rights in the state court system.

LOCAL GOVERNMENT:

The bill may have a fiscal impact on local governments. Whether that impact will be positive or negative depends upon the extent to which a local government adopts an ordinance based upon customary use rights, which ordinance provides clarity to beach users and beachfront property owners and, accordingly, reduces the number of calls to local law enforcement for assistance in removing alleged beach trespassers. It may also save local governments costs associated with seeking a customary use right determination from a court, as such a determination may no longer be necessary.

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PRIVATE SECTOR:

The bill may have an economic impact on the private sector. Whether that impact will be positive or negative depends upon the extent to which a local government adopts an ordinance based upon customary use rights, which ordinance reduces the necessity for private parties to litigate the matter in the state court system and incur associated costs, or otherwise results in decreased property values or vacation rental income for beachfront property owners.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Public Trust Doctrine

The “public trust doctrine” in the Florida Constitution provides (in pertinent part) that, generally speaking, beaches below the [mean high-water line](#)¹ are held by the state, by virtue of its sovereignty, in trust for all the people.² Thus, persons are generally free to wander beaches up to the mean high-water line – that is, up to the point where the dry sand begins – even where the adjacent property is privately owned.

Recreational Customary Use Doctrine

The United States Supreme Court has long recognized that land ownership is subject to various limitations, including so-called “background principles” of property law derived from the common law as it has evolved over time.³ Florida courts generally recognize one such “background principle” – that is, the “recreational customary use doctrine”⁴ – and its application to Florida’s beaches.⁵ Under this doctrine, if a recreational use of a sandy area of beach adjacent to the mean high-water line has been ancient, reasonable, without interruption, and free from dispute, the courts typically find that such use should not be interfered with by ocean-front property owners; however, the courts also typically find that such a property owner may make any use of his or her property which is consistent with such public use and not calculated to interfere with the exercise of the public’s right to enjoy the dry sand area of the beach as a recreational adjunct of the wet sand or foreshore area.⁶

Establishment of Recreational Customary Use

Under the Florida Supreme Court’s “special injury rule,” to establish standing to sue over a particular dispute, a party must allege an injury that is different in degree and kind from the injury suffered by the community at large.⁷ This rule acts as a significant obstacle for members of the public who might wish to assert a recreational customary use in court after being denied access to a particular portion of a beach by a beachfront property owner, because, in most instances, everyone in the community would be denied the same access and, therefore, no one would have an injury different in degree and kind from the injury suffered by the community at large.⁸ However, the owner of a beachfront parcel may more easily challenge the public’s customary use of the adjacent beach and seek to have beach users trespass; in such an instance, the beach users would have the burden to prove the customary use.⁹

Interestingly, though, a beach user does not necessarily need to have a court adjudicate the public’s customary use of a portion of a beach before using said beach, and would not be trespassing where a customary use exists but has not yet been recognized by a court; neither, however, is there a presumption that the public has customary use

¹ Florida law defines the “mean high-water line” as the intersection of the tidal plane of mean high water with the shore. S. [177.27\(15\), F.S.](#)

² [Art. X, s. 11, Fla. Const.](#)

³ *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

⁴ The “recreational customary use doctrine” arose under feudal English common law, as the courts recognized and protected the longstanding use of the property of another (often the local lord) by a community of persons (often the subjects of the lord) who were accustomed to conducting their use for specific purposes since “time immemorial.” Alyson Flournoy, Thomas T. Ankersen, & Sasha Alvarenga, *Recreational Rights to the Dry Sand Beach in Florida: Property, Custom and Controversy*, available at <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1847&context=facultypub> (last visited Apr. 5, 2025).

⁵ *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73 (Fla. 1974).

⁶ *City of Daytona Beach*, *supra* note 5.

⁷ *Henry L. Doherty & Co. v. Joachim*, 200 So. 238 (Fla. 1941).

⁸ Flournoy, et al., *supra* note 4.

⁹ *Id.*

rights as to any given beach.¹⁰ This lack of clarity created a particular dilemma for Walton County, Florida, which lacked an ordinance establishing customary use rights and, therefore, essentially had to take sides in every customary use dispute by either assuming the public lacked use rights as to a specific portion of a beach or that the public had such rights; in the first instance, the County risked violating the public's use rights if it removed them as trespassers, and in the second instance, the County risked angering beachfront property owners claiming the right to exclude the public from their private property.¹¹ Thus, in 2016, Walton County enacted an ordinance intended to codify customary use rights as to beaches in the County and reduce conflict between beachfront property owners and the public.¹²

Recent Legislation

In 2018, the Florida Legislature created [s. 163.035, F.S.](#), to generally prohibit a governmental entity¹³ from adopting or keeping in effect an ordinance or rule that finds, determines, relies on, or is based upon the recreational customary use of any portion of a beach above the mean high-water line, unless such ordinance or rule is based on a judicial declaration affirming the recreational customary use on such beach.¹⁴ Under that section, a governmental entity that seeks to affirm the existence of a recreational use on private property must follow procedures set forth in law, including:

- Adopting, at a properly-noticed public hearing, a formal notice of intent to affirm the existence of a recreational customary use on private property that specifically identifies:
 - The specific parcels of property, or the specific portions thereof, upon which a customary use affirmation is sought;
 - The detailed, specific, and individual use or uses of the parcels to which a customary use affirmation is sought; and
 - Each source of evidence that the governmental entity would rely upon to prove that a recreational customary use has been ancient, reasonable, without interruption, and free from dispute.
- Filing, within 60 days of the adoption of the notice of intent, a Complaint for Declaration of Recreational Customary Use with the circuit court in the county in which the properties subject to the notice of intent are located.
- Providing notice of the filing of the Complaint in a specified manner to the owner of each parcel subject to the Complaint, which notice must allow the owner receiving it to intervene in the proceeding within 45 days of receipt.

All resulting proceedings are *de novo*,¹⁵ and the court must determine whether the evidence presented demonstrates that the recreational customary use for the use or uses identified in the notice of intent have been ancient, reasonable, without interruption, and free from dispute. Further, the governmental entity has the burden of proof to show that a recreational customary use exists, but an owner of a parcel that is subject to the Complaint has the right to intervene as a party defendant in such proceeding.

However, [s. 163.035, F.S.](#), exempts from the law's application a governmental entity with an ordinance or rule that was adopted and in effect on or before January 1, 2016.

¹⁰ *Id.*

¹¹ *Id.*; Libertina Brandt, *Public Beach or Private? Homeowners in Florida Draw a Line in the Sand*, The Wall Street Journal (Sept. 5, 2024), <https://www.wsj.com/real-estate/luxury-homes/walton-county-florida-private-beach-war-e3fa3131> (last visited Apr. 5, 2025).

¹² Walton County, Fla., Code of Ordinances [§ 23-2](#) (effective Apr. 1, 2017).

¹³ "Governmental entity" includes any state agency, a regional or local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. S. [163.035\(1\), F.S.](#)

¹⁴ [Ch. 2018-94, Laws of Fla.](#)

¹⁵ When a court hears a case "*de novo*," it is deciding the issues without reference to any legal conclusion or assumption made by the previous court to hear the case. Legal Information Institute, *De Novo*, https://www.law.cornell.edu/wex/de_novo (last visited Apr. 5, 2025).

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2018	CS/HB 631	Edwards-Walpole; Roth	Passidomo	Took effect on July 1, 2018.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	14 Y, 0 N	3/27/2025	Jones	Mawn
Natural Resources & Disasters Subcommittee	17 Y, 0 N	4/1/2025	Moore	Gawin
Judiciary Committee	18 Y, 0 N	4/8/2025	Kramer	Mawn