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## The 2007 Florida Statutes

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COUNTY ORGANIZATION AND  
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**161.141 Property rights of state and private upland owners in beach restoration project areas.**--The Legislature declares that it is the public policy of the state to cause to be fixed and determined, pursuant to beach restoration, beach nourishment, and erosion control projects, the boundary line between sovereignty lands of the state bordering on the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida, and the bays, lagoons, and other tidal reaches thereof, and the upland properties adjacent thereto; except that such boundary line shall not be fixed for beach restoration projects that result from inlet or navigation channel maintenance dredging projects unless such projects involve the construction of authorized beach restoration projects. However, prior to construction of such a beach restoration project, the board of trustees must establish the line of mean high water for the area to be restored; and any additions to the upland property landward of the established line of mean high water which result from the restoration project remain the property of the upland owner subject to all governmental regulations and are not to be used to justify increased density or the relocation of the coastal construction control line as may be in effect for such upland property. The resulting additions to upland property are also subject to a public easement for traditional uses of the sandy beach consistent with uses that would have been allowed prior to the need for the restoration project. It is further declared that there is no intention on the part of the state to extend its claims to lands not already held by it or to deprive any upland or submerged land owner of the legitimate and constitutional use and enjoyment of his or her property. If an authorized beach restoration, beach nourishment, and erosion control project cannot reasonably be accomplished without the taking of private property, the taking must be made by the requesting authority by eminent domain proceedings. In any action alleging a taking of all or part of a property or property right as a result of a beach restoration project, in determining whether such taking has occurred or the value of any damage alleged with respect to the owner's remaining upland property adjoining the beach restoration project, the enhancement, if any, in value of the owner's remaining adjoining property of the upland property owner by reason of the beach restoration project shall be considered. If a taking is judicially determined to have occurred as a result of a beach restoration project, the enhancement in value to the owner's remaining adjoining property by reason of the beach restoration project shall be offset against the value of the damage, if any, resulting to such remaining adjoining property of the upland property owner by reason of the beach restoration project, but such enhancement in the value shall not be offset against the value of the property or property right alleged to have been taken. If the enhancement in value shall exceed the value of the damage, if any, to the remaining adjoining property, there shall be no recovery over against the property owner for such excess.

**History.**--s. 1, ch. 70-276; s. 1, ch. 79-233; s. 1, ch. 82-144; s. 7, ch. 86-138; s. 18, ch. 87-97; ss. 28, 487, ch. 94-356; s. 1439, ch. 95-147; s. 11, ch. 2000-346; s. 3, ch. 2007-99.

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**161.151 Definitions; ss. 161.141-161.211.--As used in ss. 161.141-161.211:**

- (1) "Board of trustees" means the Board of Trustees of the Internal Improvement Trust Fund.
- (2) "Requesting authority" means any coastal county, municipality, or beach erosion control district which requests a survey by the board of trustees under the provisions of ss. 161.141-161.211.
- (3) "Erosion control line" means the line determined in accordance with the provisions of ss. 161.141-161.211 which represents the landward extent of the claims of the state in its capacity as sovereign titleholder of the submerged bottoms and shores of the Atlantic Ocean, the Gulf of Mexico, and the bays, lagoons and other tidal reaches thereof on the date of the recording of the survey as authorized in s. 161.181.
- (4) "Authorized beach restoration project" means a beach project authorized by the United States Congress or the department which involves a specific project engineering design and a project maintenance program for a period of not less than 10 years.

**History.--**s. 2, ch. 70-276; s. 1, ch. 70-439; s. 2, ch. 82-144.

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### 161.161 Procedure for approval of projects.--

(1) The department shall 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, Gulf of Mexico, and Straits of Florida. The beach management plan shall:

(a) Address long-term solutions to the problem of critically eroded beaches in this state.

(b) Evaluate each improved, modified, or altered inlet and determine whether the inlet is a significant cause of beach erosion. With respect to each inlet determined to be a significant cause of beach erosion, the plan shall include:

1. The extent to which such inlet causes beach erosion and recommendations to mitigate the erosive impact of the inlet, including, but not limited to, recommendations regarding inlet sediment bypassing; modifications to channel dredging, jetty design, and disposal of spoil material; establishment of feeder beaches; and beach restoration and beach nourishment; and

2. Cost estimates necessary to take inlet corrective measures and recommendations regarding cost sharing among the beneficiaries of such inlet.

(c) Design criteria for beach restoration and beach nourishment projects, including, but not limited to:

1. Dune elevation and width and revegetation and stabilization requirements; and

2. Beach profile.

(d) 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.

(e) 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.

(f) Identify shoreline development and degree of density and assess impacts of development and shoreline protective structures on shoreline change and erosion.

- (g) 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.
- (h) Study dune and vegetation conditions.
- (i) Identify beach areas used by marine turtles and develop strategies for protection of the turtles and their nests and nesting locations.
- (j) Identify alternative management responses to preserve undeveloped beach and dune systems, to restore damaged beach and dune systems, and to prevent inappropriate development and redevelopment on migrating beaches, and consider beach restoration and nourishment, armoring, relocation and abandonment, dune and vegetation restoration, and acquisition.
- (k) Establish criteria, including costs and specific implementation actions, for alternative management techniques.
- (l) Select and recommend appropriate management measures for all of the state's sandy beaches in a beach management program.
- (m) Establish a list of beach restoration and beach nourishment projects, arranged in order of priority, and the funding levels needed for such projects.

The beach management plan may be prepared at the regional level based upon areas of greatest need and probable federal funding. Such regional plans shall be components of the statewide beach management plan and shall serve as the basis for state funding decisions upon approval in accordance with chapter 86-138, Laws of Florida. In accordance with a schedule established for the submission of regional plans by the department, any completed plan must be submitted to the secretary of the department for approval no later than March 1 of each year. These regional plans shall include, but shall not be limited to, recommendations of appropriate funding mechanisms for implementing projects in the beach management plan, giving consideration to the use of single-county and multicounty taxing districts or other revenue generation measures by state and local governments and the private sector. Prior to presenting the plan to the secretary of the department, the department shall hold a public meeting in the areas for which the plan is prepared. The plan submission schedule shall be submitted to the secretary for approval. Any revisions to such schedule must be approved in like manner.

(2) Upon approval of the beach management plan, the secretary shall present to the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees recommendations for funding of beach erosion control projects. Such recommendations shall be presented to such members of the Legislature in the priority order specified in the plan and established pursuant to criteria contained in s. 161.101(14).

(3) Once a project is determined to be undertaken, a survey of all or part of the shoreline within the jurisdiction of the local government in which the beach is located shall be conducted in order to establish the area of beach to be protected by the project and locate an erosion control line. No

provision of ss. 161.141-161.211 shall be construed as preventing a local government from participating in the funding of erosion control projects or surveys undertaken in accordance with the provisions of ss. 161.141-161.211. In lieu of conducting a survey, the board of trustees may accept and approve a survey as initiated, conducted, and submitted by the appropriate local government if said survey is made in conformity with the appropriate principles set forth in ss. 161.141-161.211.

(4) Upon completion of the survey depicting the area of the beach erosion control project and the proposed location of the erosion control line, the board of trustees shall give notice of the survey and the date on which the board of trustees will hold a public hearing for the purpose of receiving evidence on the merits of the proposed erosion control line and, if approval is granted, of locating and establishing such requested erosion control line. Such notice shall be by publication in a newspaper of general circulation published in the county or counties in which the proposed beach erosion control project shall be located not less than once a week for 3 consecutive weeks and by mailing copies of such notice by certified or registered mail to each riparian owner of record of upland property lying within 1,000 feet (radial distance) of the shoreline to be extended through construction of the proposed beach erosion control project, as his or her name and address appear upon the latest tax assessment roll, in order that any persons who have an interest in the location of such requested erosion control line can be present at such hearing to submit their views concerning the precise location of the proposed erosion control line. Such notice shall be in addition to any notice requirement in chapter 120.

(5) The board of trustees shall approve or disapprove the erosion control line for a beach restoration project. In locating said line, the board of trustees shall be guided by the existing line of mean high water, bearing in mind the requirements of proper engineering in the beach restoration project, the extent to which erosion or avulsion has occurred, and the need to protect existing ownership of as much upland as is reasonably possible.

(6) In no event shall the department undertake a beach restoration or beach nourishment project where a local share is required without the approval of the local government or governments responsible for that local share.

(7) The department may adopt rules to administer this section.

**History.**--s. 3, ch. 70-276; s. 1, ch. 70-439; s. 23, ch. 78-95; s. 2, ch. 79-233; s. 9, ch. 86-138; s. 20, ch. 87-97; s. 29, ch. 94-356; s. 1440, ch. 95-147; s. 6, ch. 96-321; s. 3, ch. 96-371; s. 4, ch. 98-311; s. 12, ch. 2000-346.

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**161.181 Recording of resolution and survey of board of trustees.**--If no review is taken within the time prescribed from the decision of the board of trustees or, if review be timely taken, in the absence of a final decision of a court of competent jurisdiction preventing the implementation of a beach erosion control project or invalidating, abolishing, or otherwise preventing the establishment and recordation of the erosion control line as provided herein, the board of trustees shall file in the public records of the county or counties in which the erosion control line lies, a copy of its resolution approving the beach erosion control project and locating the erosion control line and shall also file and cause to be recorded in the book of plats of said county or counties a survey showing the area of beach to be protected and the location of the erosion control line.

**History.**--s. 5, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

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### 161.191 Vesting of title to lands.--

(1) Upon the filing of a copy of the board of trustees' resolution and the recording of the survey showing the location of the erosion control line and the area of beach to be protected as provided in s. 161.181, title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of such line shall be vested in the riparian upland owners whose lands either abut the erosion control line or would have abutted the line if it had been located directly on the line of mean high water on the date the board of trustees' survey was recorded.

(2) Once the erosion control line along any segment of the shoreline has been established in accordance with the provisions of ss. 161.141-161.211, the common law shall no longer operate to increase or decrease the proportions of any upland property lying landward of such line, either by accretion or erosion or by any other natural or artificial process, except as provided in s. 161.211(2) and (3). However, the state shall not extend, or permit to be extended through artificial means, that portion of the protected beach lying seaward of the erosion control line beyond the limits set forth in the survey recorded by the board of trustees unless the state first obtains the written consent of all riparian upland owners whose view or access to the water's edge would be altered or impaired.

**History.**--s. 6, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

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**161.201 Preservation of common-law rights.**--Any upland owner or lessee who by operation of ss. 161.141-161.211 ceases to be a holder of title to the mean high-water line shall, nonetheless, continue to be entitled to all common-law riparian rights except as otherwise provided in s. 161.191(2), including but not limited to rights of ingress, egress, view, boating, bathing, and fishing. In addition the state shall not allow any structure to be erected upon lands created, either naturally or artificially, seaward of any erosion control line fixed in accordance with the provisions of ss. 161.141-161.211, except such structures required for the prevention of erosion. Neither shall such use be permitted by the state as may be injurious to the person, business, or property of the upland owner or lessee; and the several municipalities, counties and special districts are authorized and directed to enforce this provision through the exercise of their respective police powers.

**History.**--s. 7, ch. 70-276.

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### 161.211 Cancellation of resolution for nonperformance by board of trustees.--

(1) If for any reason construction of the beach erosion control project authorized by the board of trustees is not commenced within 2 years from the date of the recording of the board of trustees' survey, as provided in s. 161.181, or in the event construction is commenced but halted for a period exceeding 6 months from commencement, then, upon receipt of a written petition signed by those owners or lessees of a majority of the lineal feet of riparian property which either abuts or would have abutted the erosion control line if the same had been located at the line of mean high water on the date the board of trustees' survey was recorded, the board of trustees shall forthwith cause to be canceled and vacated of record the resolution authorizing the beach erosion control project and the survey locating the erosion control line, and the erosion control line shall be null and void and of no further force or effect.

(2) If the state, county, municipality, erosion control district, or other governmental agency charged with the responsibility of maintaining the protected beach fails to maintain the same and as a result thereof the shoreline gradually recedes to a point or points landward of the erosion control line as established herein, the provisions of s. 161.191(2) shall cease to be operative as to the affected upland.

(3) In the event a substantial portion of the shoreline encompassed within the erosion control project recedes landward of the erosion control line, the board of trustees, on its own initiative, may direct or request, or, upon receipt of a written petition signed by the owners or lessees of a majority of the lineal feet of riparian property lying within the erosion control project, shall direct or request, the agency charged with the responsibility of maintaining the beach to restore the same to the extent provided for in the board of trustees' recorded survey. If the beach is not restored as directed or requested by the board of trustees within a period of 1 year from the date of the directive or request, the board of trustees shall forthwith cause to be canceled and vacated of record the resolution authorizing the beach erosion control project and the survey locating the erosion control line, and the erosion control line shall be null and void and of no further force or effect.

**History.**--s. 8, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.