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Indicates New Matter

AMENDED

March 8, 2018

**H. 4683**

Introduced by Reps. Hewitt, Fry, Erickson, Clemmons, Duckworth, Yow, Martin, Hardee, Johnson, McGinnis, Crawford, Anderson, Herbkersman, Sottile, Hixon, Taylor, Arrington, D.C. Moss, Atwater, S. Rivers, Mace, Lucas, Bradley, Elliott, Atkinson, Bannister, Loftis, Williams, Jefferson and Hamilton

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Read the first time January 24, 2018.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “BEACHFRONT MANAGEMENT REFORM ACT”; TO AMEND SECTION 44‑1‑60, RELATING TO APPEALS FROM DECISIONS OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL GIVING RISE TO CONTESTED CASES, SO AS TO EXCLUDE DECISIONS TO ESTABLISH BASELINES OR SETBACK LINES FROM THE APPEAL PROCEDURES; TO AMEND SECTION 48‑39‑10, RELATING TO COASTAL TIDELANDS AND WETLANDS DEFINITIONS, SO AS TO REDEFINE THE TERM “PRIMARY OCEANFRONT SAND DUNE” FOR PURPOSES OF ESTABLISHING A BASELINE AND TO DEFINE THE TERM “STORM SURGE”; AND TO AMEND SECTION 48‑39‑280, RELATING TO THE STATE’S FORTY‑YEAR RETREAT POLICY, SO AS TO REQUIRE THE USE OF HISTORICAL AND SCIENTIFIC DATA THAT ACCOUNTS FOR EFFECTS OF NATURAL PROCESSES WHEN DETERMINING EROSION RATES, TO ESTABLISH THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MUST ESTABLISH BASELINES AND SETBACK LINES FOR CERTAIN AREAS AND UNDER CERTAIN GUIDELINES, TO PROHIBIT THE USE OF DATA FROM AN AREA IMPACTED BY A STORM SYSTEM OR EVENT NAMED BY THE NATIONAL WEATHER SERVICE FOR TWO YEARS AFTER THE STORM, TO REQUIRE THE DEPARTMENT TO GRANT A REVIEW OF A BASELINE OR SETBACK LINE FOR A LANDOWNER, A MUNICIPALITY, COUNTY, OR ORGANIZATION ACTING ON BEHALF OF A LANDOWNER THAT SUBMITS SUBSTANTIATING EVIDENCE SHOWING AN ADVERSE AFFECT ON HIS PROPERTY AND TO ESTABLISH GUIDELINES FOR REVIEW.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Beachfront Management Reform Act”.

SECTION 2. Section 44‑1‑60(A) of the 1976 Code is amended to read:

“(A) All department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case ~~shall~~ , except a decision to establish a baseline or setback line, must be made using the procedures set forth in this section.”

SECTION 3. Section 48‑39‑10 of the 1976 Code, as last amended by Act 41 of 2011, is further amended to read:

“Section 48‑39‑10. As used in this chapter:

(A) ‘Applicant’ means any person who files an application for a permit under the provisions of this chapter.

(B) ‘Coastal zone’ means all coastal waters and submerged lands seaward to the state’s jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown.

(C) ‘Division’ means the Coastal Division of the South Carolina Department of Health and Environmental Control.

(D) ‘CDPS’ means Coastal Division Permitting Staff.

(E) ‘Saline waters’ means those waters which contain a measurable quantity of sea water, at least one part chloride ion per thousand.

(F) ‘Coastal waters’ means the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high‑water mark. Provided, however, that the department may designate boundaries which approximate the mean extent of saline waters until such time as the mean extent of saline waters can be determined scientifically.

(G) ‘Tidelands’ means all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the department shall have the authority to designate its approximate geographic extent.

(H) ‘Beaches’ means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.

(I) ‘Primary ~~ocean front~~ oceanfront sand ~~dunes~~ dune’ means ~~those dunes which~~ the dune or dunes that constitute the front row of dunes adjacent to the Atlantic Ocean.

(1) a dune generally having a minimum height of thirty‑six inches, as measured vertically from the crest to the toe of the dune, and that forms a continuous ridge for five hundred feet parallel to the shore, irrespective of natural or man‑caused variations in the dune that may result in small sections being less than the minimum required height or length; or

(2) a continuous or nearly continuous dune located landward of the beach with a relatively steep seaward slope that is typically not eroded or overtopped during astronomical tides unaffected by storm surge, but that may be subject to erosion or overtopping due to storm surge and waves during major coastal storms.

(J) ‘Critical area’ means any of the following:

(1) coastal waters;

(2) tidelands;

(3) beaches;

(4) beach/dune system which is the area from the mean high‑water mark to the setback line as determined in Section 48‑39‑280.

(K) ‘Person’ means any individual, organization, association, partnership, business trust, estate trust, corporation, public or municipal corporation, county, local government unit, public or private authority and shall include the State of South Carolina, its political subdivisions and all its departments, boards, bureaus or other agencies, unless specifically exempted by this chapter.

(L) ‘Estuarine sanctuary’ means a research area designated as an estuarine sanctuary by the Secretary of Commerce.

(M) ‘Marine sanctuary’ means any water and wetland areas designated as a marine sanctuary by the Secretary of Commerce.

(N) ‘Minor development activities’ means the construction, maintenance, repair or alteration of any private piers or erosion control structure, the construction of which does not involve dredge activities.

(O) ‘Dredging’ means the removal or displacement by any means of soil, sand, gravel, shells or other material, whether of intrinsic value or not, from any critical area.

(P) ‘Filling’ means either the displacement of saline waters by the depositing into critical areas of soil, sand, gravel, shells or other material or the artificial alteration of water levels or water currents by physical structure, drainage ditches or otherwise.

(Q) ‘Submerged lands’ means those river, creek, and ocean bottoms lying below mean low‑water mark.

(R) ‘Oil’ means crude petroleum oil and all other hydrocarbons, regardless of specific gravity, that are produced in liquid form by ordinary production methods, but does not include liquid hydrocarbons that were originally in a gaseous phase in the reservoir.

(S) ‘Gas’ means all natural gas and all other fluid hydrocarbons not hereinabove defined as oil, including condensate because it originally was in the gaseous phase in the reservoir.

(T) ‘Fuel’ means gas and oil.

(U) ‘Emergency’ means any unusual incident resulting from natural or unnatural causes which endanger the health, safety or resources of the residents of the State, including damages or erosion to any beach or shore resulting from a hurricane, storm or other such violent disturbance.

(V) ‘Department’ means the South Carolina Department of Health and Environmental Control.

(W) ‘Board’ means the board of the department.

(X) ‘Maintenance dredging’ means excavation to restore the depth of underwater lands or restore channels, basins, canals, or similar waterway accesses to depths and dimensions that support and maintain prior or existing levels of use that previously have been dredged pursuant to a license issued by the department or an exemption as provided in Section 48‑39‑130(D)(10) as added by Act 41 of 2011.

(Y) ‘Storm surge’ means an abnormal rise of water generated by a storm over and above the predicted astronomical tide.”

SECTION 4. Section 48‑39‑280 of the 1976 Code is amended to read:

“Section 48‑39‑280. (A) A forty‑year policy of retreat from the shoreline is established. The department must implement this policy and utilize the best available scientific and historical data in the implementation. The department must establish a baseline that parallels the shoreline for each standard erosion zone and each inlet erosion zone. ~~Subject to Section 48‑39‑290(D), the baseline established pursuant to this section must not move seaward from its position on December 31, 2017~~ A baseline must not move seaward from its position in effect on December 31, 2017.

(1) The baseline for each standard erosion zone is established at the location of the crest of the primary oceanfront sand dune in that zone. In standard erosion zones in which the shoreline has been altered naturally or artificially by the construction of erosion control devices, ~~groins, or other manmade alterations,~~ the baseline must be established by the department using the best scientific and historical data, as where the crest of the primary oceanfront sand ~~dunes~~ dune for that zone would be located if the shoreline had not been altered.

(2) The baseline for inlet erosion zones that are not stabilized by jetties, terminal groins, or other structures must be determined by the department as the most landward point of erosion at any time during the past forty years, unless the best available scientific and historical data of the inlet and adjacent beaches indicate that the shoreline is unlikely to return to its former position. In collecting and utilizing the best scientific and historical data available for the implementation of the retreat policy, the department, as part of the State Comprehensive Beach Management Plan provided for in this chapter, among other factors, must consider historical inlet migration, inlet stability, channel and ebb tidal delta changes, the effects of sediment bypassing on shorelines adjacent to the inlets, and the effects of nearby beach restoration projects on inlet sediment budgets.

(3) The baseline within inlet erosion zones that are stabilized by jetties, terminal groins, or other structures must be determined in the same manner as provided for in item (1). However, the actual location of the crest of the primary oceanfront sand ~~dunes~~ dune of that erosion zone is the baseline of that zone, not the location if the inlet had remained unstabilized.

(B) To implement the retreat policy provided for in subsection (A), a setback line must be established landward of the baseline a distance which is forty times the average annual erosion rate or not less than twenty feet from the baseline for each erosion zone based upon the best historical and scientific data adopted by the department as a part of the State Comprehensive Beach Management Plan.

(C) ~~The department, before July 3, 1991, must establish a final baseline and setback line for each erosion zone based on the best available scientific and historical data as provided in subsection (B) and with consideration of public input. The baseline and setback line must not be revised before July 1, 1998, nor later than July 1, 2000.~~ Between the establishment cycle of January 1, 2016, and December 31, 2019, the department must use the established baselines and setback lines that were established by January 31, 2012. After December 31, 2023, the department must initiate baselines and setback lines for all geographic areas where baselines and setback lines were established by January 31, 2012. ~~After that revision,~~ The baseline and setback ~~line~~ lines must be ~~revised~~ established anew during establishment cycles that are not less than every seven years, but not more than every ten years ~~after each preceding revision~~ following the establishment cycle and must be based upon the best available data. The department shall establish the baseline and setback line for all locations where the baseline and setback line were established on or before January 31, 2012. Nothing in this section allows the seaward movement of the baseline after December 31, 2017. ~~In the establishment and revision of the baseline and setback line, the department must transmit and otherwise make readily available to the public all information upon which its decisions are based for the establishment of the final baseline and setback line. The department must hold one public hearing before establishing the final baseline and setback lines.~~ Until the department establishes new baselines and setback lines for a geographic area, the existing baselines and setback lines for the geographic area must be used. ~~The department may stagger the revision of the baselines and setback lines of the erosion zones so long as every zone is revised in accordance with the time guidelines established in this section.~~

(D)(1) In each new establishment cycle of the baselines and setback lines, the department must:

(a) stagger the establishment of the baselines and setback lines by geographic area and provide a tentative schedule of establishment for each geographic area on the department’s website at least one hundred twenty days prior to beginning a new establishment cycle;

(b) publish proposed locations of baselines and setback lines for a geographic area on the department’s website for public input at least one hundred twenty days prior to establishing the baselines and setback lines for the geographic area;

(c) on the date of the publication of the proposed locations of baselines and setback lines for a geographic area:

(i) provide notice of the publication in a newspaper of general statewide circulation and a newspaper of local circulation in the geographic area; and

(ii) make readily available to the public, including on the department’s website, the information and raw data the department used in making its decision and an explanation for the decision;

(d) hold at least one public hearing in the county or municipality of a geographic area at least ninety days prior to establishing the baselines and setback lines for the geographic area; and

(e) accept and review data up to thirty days prior to establishing baselines and setback lines for a geographic area to determine if a proposed baseline or setback line for the geographic area should be revised.

(2) Baselines and setback lines for a geographic area are in effect upon the date of establishment and are subject to review pursuant to the provisions of subsection (F).

(E)(1) In order to locate the ~~baseline and the setback line~~ baselines and the setback lines, the department must establish monumented and controlled survey points in each county fronting the Atlantic Ocean. The department must acquire sufficient surveyed topographical information on which to locate the ~~baseline~~ baselines.

(2) Surveyed topographical data typically must be gathered at two thousand foot intervals. However, in areas subject to significant near‑term development and in areas currently developed, the interval, at the discretion of the department, may be more frequent. The resulting surveys must locate the crest of the primary oceanfront sand ~~dunes~~ dune to be used as the baseline for computing the forty‑year erosion rate. In cases where no primary oceanfront sand ~~dunes exist~~ dune exists, a study conducted by the department is required to determine where the upland location of the crest of the primary oceanfront sand dune would be located if the shoreline had not been altered.

(3) The department, by regulation, may exempt specifically described portions of the coastline from the survey requirements of this section when, in its judgment, the portions of coastline are not subject to erosion or are not likely to be developed by virtue of local, state, or federal programs in effect on the coastline which would preclude significant development, or both.

(4) If an oceanfront area incurs extraordinary erosion due to the impact of a storm system or event named by the National Weather Service after June 1, 2018, the surveyed topographical data collected from the impacted oceanfront area since the last establishment cycle may not be used to locate the crests of primary oceanfront sand dunes or to establish baselines pursuant to subsection (A)(1) or (A)(3). The department must use data collected during previous cycles from the oceanfront area to locate the crests of primary oceanfront sand dunes and to establish baselines pursuant to items (A)(1) or (A)(3).

~~(E)~~(F)(1) A landowner claiming ownership of property adversely affected ~~who feels that the final or revised setback line, baseline, or erosion rate as adopted is in error,~~ by the establishment of a baseline or setback line, upon submittal of substantiating evidence, must be granted a review of the baseline or setback line~~, baseline, or erosion rate, or a review of all three~~. Alternatively, the municipality or county in which the property is situated, acting on behalf of the landowner with his written authorization, or an organization acting on behalf of the landowner with his written authorization, upon submittal of substantiating evidence, must be granted a review of the baseline and setback line. ~~The requests must be forwarded to~~ A review is initiated by filing a request for a review conference with the department board ~~in accordance with Section 44‑1‑60, and the final decision of the board may be appealed to the Administrative Law Court, as provided in Chapter 23 of Title 1~~ via certified mail within one year of the establishment of the baseline or setback line and must include a one hundred dollar review fee per property.

(2) The initial decision to establish a baseline or setback line must be a department staff decision.

(3) No later than sixty calendar days after the receipt of a request for review, the board must:

(a)decline to schedule a review conference in writing; or

(b) conduct a review conference in accordance with the provisions of item (4).

(4) A review conference may be conducted by the board, its designee, or a committee of three members of the board appointed by the chair. The board shall set the place, date, and time for the conference; give twenty calendar days’ written notice of the conference; and advise the landowner or the county, municipality, or organization acting on behalf of the landowner that evidence may be presented at the conference. The review conference must be held as follows:

(a) Review conferences are open to the public; however, the officers conducting the conference may meet in closed session to deliberate on the evidence presented at the conference. The burden of proof in a conference is upon the landowner or the county, municipality, or organization acting on behalf of the landowner. During the course of the review conference, the staff must explain the staff decision and the materials relied upon to support its decision. The landowner or the county, municipality, or organization acting on behalf of the landowner shall state the reasons for contesting the staff decision and may provide evidence to support amending the staff decision. The staff may rebut information and arguments presented by the landowner or the county, municipality, or organization acting on behalf of the landowner, and the landowner or the county, municipality, or organization acting on behalf of the landowner may rebut information and arguments presented by the staff. Any review conference officer may request additional information and may question the landowner or the county, municipality, or organization acting on behalf of the landowner and the staff.

(b) After the review conference, the board, its designee, or a committee of three members of the board appointed by the chair shall issue, based upon the evidence presented, a written decision to the landowner or the county, municipality, or organization acting on behalf of the landowner via certified mail no later than thirty calendar days after the date of the review conference. The written decision must explain the basis for the decision and inform the landowner or the county, municipality, or organization acting on behalf of the landowner of the right to request a contested case hearing before the Administrative Law Court.

(5) A landowner or the county, municipality, or organization acting on behalf of the landowner may file a request with the Administrative Law Court, in accordance with Chapter 23, Title 1, for a contested case hearing within thirty calendar days after:

(a) written notice is received by the landowner or the county, municipality, or organization acting on behalf of the landowner that the board declines to hold a review conference;

(b) the sixty‑calendar‑day deadline to hold the review conference has lapsed and no conference has been held; or

(c) the final agency decision resulting from the review conference is received by the landowner or the county, municipality, or organization acting on behalf of the landowner.”

SECTION 5. Notwithstanding the provisions of Section 48-39-280, the baseline or setback line in effect for a landowner is:

(1) the baseline or setback line established during the 2009 through 2012 establishment cycle until the Department of Health and Environmental Control establishes a new baseline and setback line if the baseline established during the 2009 through 2012 establishment cycle is seaward of or at the same location as the baseline proposed by the department on October 6, 2017.

(2) the baseline or setback line proposed by the department on October 6, 2017, until the department establishes a new baseline and setback line if the baseline established during the 2009 through 2012 establishment cycle is landward of the baseline proposed by the department on October 6, 2017.

(3) If a proposed baseline under review or appeal prior to January 1, 2018, is revised by a consent order, court order, or otherwise by the department to a location seaward of both the baseline established during the 2009 through 2012 establishment cycle and the baseline proposed on October 6, 2017, then both the revised proposed baseline as well as the revised proposed setback line will be in effect for the landowner until the department establishes a new baseline and setback line.

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 7. This act takes effect upon approval by the Governor.

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