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COMMITTEE REPORT

February 27, 2014

**S. 1032**

Introduced by Senators Campsen and Verdin

S. Printed 2/27/14--S. [SEC 2/28/14 2:36 PM]

Read the first time February 19, 2014.

**THE COMMITTEE ON**

**AGRICULTURE AND NATURAL RESOURCES**

To whom was referred a Bill (S. 1032) to amend Section 48‑39‑130 of the 1976 Code, relating to permits required for coastal zone critical areas, to include temporary qualified wave dissipation devices as a technique, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 7, by striking lines 11‑14 and inserting:

SECTION 4. Section 48‑39‑320 of the 1976 Code is amended by adding:

“(C) The board, upon the recommendation of the Office of Ocean and Coastal Resource Management, may allow the use of any technology, methodology, or structures, whether or not referenced in this chapter, if it is anticipated that the action will be successful in addressing an erosional issue in a beach area.”

SECTION 5. This act takes effect upon approval by the Governor; however, Section 48‑39‑130, as amended, remains subject to the repeal provision pursuant to Section 5, Act 41 of 2011.

Renumber sections to conform.

Amend title to conform.

DANIEL B. VERDIN III for Committee.

**A** **BILL**

TO AMEND SECTION 48‑39‑130 OF THE 1976 CODE, RELATING TO PERMITS REQUIRED FOR COASTAL ZONE CRITICAL AREAS, TO INCLUDE TEMPORARY QUALIFIED WAVE DISSIPATION DEVICES AS A TECHNIQUE TO BE USED IN THE BEACH/DUNE CRITICAL AREA TO PROTECT THE PUBLIC HEALTH AND SAFETY; TO AMEND SECTION 48‑39‑270, RELATING TO TERMS PERTAINING TO COASTAL TIDELANDS AND WETLANDS, TO DEFINE QUALIFIED WAVE DISSIPATION DEVICE; AND TO AMEND SECTION 48‑39‑290, RELATING TO CONSTRUCTION RESTRICTIONS SEAWARD OF THE BASELINE, TO PROVIDE AN EXCEPTION FOR QUALIFIED WAVE DISSIPATION DEVICES.

Whereas, in Section 48‑39‑250, the General Assembly has found that South Carolina’s beach/dune system “protects life and property by serving as a storm barrier which dissipates wave energy and contributes to shoreline stability in an economical and effective manner”, “provides the basis for a tourism industry that generates approximately two‑thirds of South Carolina’s annual tourism industry revenue”, “provides habitat for numerous species of plants and animals, several of which are threatened or endangered”, and “provides a natural healthy environment for the citizens of South Carolina to spend leisure time which serves their physical and mental well‑being”; and

Whereas, in recognition of the State’s stewardship responsibilities, South Carolina has implemented the Beachfront Management Act to “protect, preserve, restore, and enhance the beach/dune system”; and

Whereas, the Beachfront Management Act encourages the replacement of hard erosion control devices to armor the beach/dune system with soft erosion inhibiting techniques and technologies without long‑term adverse effects; and

Whereas, the 2013 Blue Ribbon Committee on Shoreline Management has issued a final report detailing sixteen regulatory and policy recommendations for improved beachfront management; and

Whereas, the Blue Ribbon Committee recommended changing state policy from a policy of coastal retreat to a policy of preservation, which would include the use of sand fencing and native vegetation to create and stabilize the sand dune system.

Whereas, the Blue Ribbon Committee also recommended the creation of a uniform process for sandbagging permits due to concerns that sandbags are “often displaced and may wash out into the ocean” and can exacerbate erosion and degrade the accessibility of the public beach; and

Whereas, allowing a device that scientific studies show dissipates wave energy rather than merely buttresses the area landward of the device, as well as minimizes scouring seaward of the devices while protecting property, preventing down‑coast erosion, and limiting the negative impacts on public safety and welfare, beach access, and the health of the beach dune system, would be consistent with the purposes and policies behind the Beachfront Management Act and the recommendations of the Blue Ribbon Committee; and

Whereas, new wave dissipation device technology exists that accomplishes the above‑stated policies and should be allowed pursuant to permits and emergency orders issued by the Ocean and Coastal Resource Management Division of the South Carolina Department of Health and Environmental Control. Now, therefore,

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

SECTION 1. Section 48‑39‑130(D) of the 1976 Code is amended to read:

“(D) It shall not be necessary to apply for a permit for the following activities:

(1) The accomplishment of emergency orders of an appointed official of a county or municipality or of the State, acting to protect the public health and safety, upon notification to the department. However, with regard to the beach/dune critical area, only the use of ~~sandbags, sandscraping, or renourishment, or a combination of them~~ the following techniques, in accordance with guidelines provided by the department is allowed pursuant to this item:

(a) sandbags;

(b) sand scraping;

(c) renourishment;

(d) temporary qualified wave dissipation devices; or

(e) a combination of these techniques.

(2) Hunting, erecting duckblinds, fishing, shellfishing and trapping when and where otherwise permitted by law; the conservation, repletion and research activities of state agencies and educational institutions or boating or other recreation provided that such activities cause no material harm to the flora, fauna, physical or aesthetic resources of the area.

(3) The discharge of treated effluent as permitted by law; provided, however, that the department shall have the authority to review and comment on all proposed permits that would affect critical areas.

(4) Dredge and fill performed by the United States Corps of Engineers for the maintenance of the harbor channels and the collection and disposal of the materials so dredged; provided, however, that the department shall have authority to review and certify all such proposed dredge and fill activities.

(5) Construction of walkways over sand dunes in accordance with regulations promulgated by the department.

(6) Emergency repairs to an existing bank, dike, fishing pier, or structure, other than oceanfront erosion control structures or devices, which has been erected in accordance with federal and state laws or provided for by general law or acts passed by the General Assembly, if notice is given in writing to the department within seventy‑two hours from the onset of the needed repairs.

(7) Maintenance and repair of drainage and sewer facilities constructed in accordance with federal or state laws and normal maintenance and repair of any utility or railroad.

(8) Normal maintenance or repair to any pier or walkway provided that such maintenance or repair not involve dredge or fill.

(9) Construction or maintenance of a major utility facility where the utility has obtained a certificate for such facility under ‘The Utility Facility Siting and Environmental Protection Act’, Chapter 33 of Title 58 of the 1976 Code. Provided, however, that the South Carolina Public Service Commission shall make the department a party to certification proceedings for utility facilities within the coastal zone.

(10) Dredging in existing navigational canal community developments by counties or municipalities of manmade, predominately armored, recreational use canals and essential access canals conveyed to the State or dedicated to the public for that purpose between 1965 and the effective date of this act if the maintenance dredging is authorized by a permit from the United States Army Corps of Engineers pursuant to the Federal Clean Water Act, as amended, or the Rivers and Harbors Act of 1899. All other department administered certifications for such dredging are deemed waived.”

SECTION 2. Section 48‑39‑270 of the 1976 Code is amended by adding a new item at the end to read:

“(14) A ‘qualified wave dissipation device’ is a device that:

(a) is placed mostly parallel to the shoreline;

(b) is designed to dissipate wave energy;

(c) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(d) can be deployed within seventy‑two hours or less and can be removed within seventy‑two hours or less;

(e) does not negatively impact or inhibit sea turtle nesting or other fauna;

(f) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(g) has been determined by a study conducted pursuant to research activities of state agencies or educational institutions under Section 48‑39‑130(D)(2) to comply with the above sections and otherwise prevent down‑coast erosion, protect property, and limit negative impacts on public safety and welfare, beach access, and the health of the beach dune system. Any such study performed outside the State of South Carolina must be submitted to the Ocean and Coastal Resource Management Division of the Department for review and shall undergo a thirty day public comment period.

A qualified wave dissipation device is not an erosion control structure or device.”

SECTION 3. Section 48‑39‑290(A) of the 1976 Code is amended to read:

“Section 48‑39‑290. (A) No new construction or reconstruction is allowed seaward of the baseline except:

(1) wooden walkways no larger in width than six feet;

(2) small wooden decks no larger than one hundred forty‑four square feet;

(3) fishing piers and associated amenity structures which are open to the public. Those fishing piers with their associated amenity structures including, but not limited to, baitshops, restrooms, restaurants, and arcades which existed September 21, 1989, may be rebuilt if they are constructed to the same dimensions and utilized for the same purposes and remain open to the public. In addition, those fishing piers with their associated amenity structures which existed on September 21, 1989, that were privately owned, privately maintained, and not open to the public on this date also may be rebuilt and used for the same purposes if they are constructed to the same dimensions;

(4) golf courses;

(5) normal landscaping;

(6) structures specifically permitted by special permit as provided in subsection (D);

(7) pools may be reconstructed if they are landward of an existing, functional erosion control structure or device;

(8) qualified wave dissipation devices;

(9) existing groins may be reconstructed, repaired, and maintained. New groins may only be allowed on beaches that have high erosion rates with erosion threatening existing development or public parks. In addition to these requirements, new groins may be constructed and existing groins may be reconstructed only in furtherance of an on‑going beach renourishment effort which meets the criteria set forth in regulations promulgated by the department and in accordance with the following:

(a) The applicant shall institute a monitoring program for the life of the project to measure beach profiles along the groin area and adjacent and downdrift beach areas sufficient to determine erosion/accretion rates. For the first five years of the project, the monitoring program must include, but is not necessarily limited to:

(i) establishment of new monuments;

(ii) determination of the annual volume and transport of sand; and

(iii) annual aerial photographs.

Subsequent monitoring requirements must be based on results from the first five‑year report.

(b) Groins may only be permitted after thorough analysis demonstrates that the groin will not cause a detrimental effect on adjacent or downdrift areas. The applicant shall provide a financially binding commitment, such as a performance bond or letter of credit that is reasonably estimated to cover the cost of reconstructing or removing the groin and/or restoring the affected beach through renourishment pursuant to subitem (c).

(c) If the monitoring program established pursuant to subitem (a) shows an increased erosion rate along adjacent or downdrift beaches that is attributable to a groin, the department must require either that the groin be reconfigured so that the erosion rate on the affected beach does not exceed the pre‑construction rate, that the groin be removed, and/or that the beach adversely affected by the groin be restored through renourishment.

(d) Adjacent and downdrift communities and municipalities must be notified by the department of all applications for a groin project.

(e) Nothing in the section shall be construed to create a private cause of action, but nothing in this section shall be construed to limit a cause of action under recognized common law or other statutory theories. The sole remedies, pursuant to this section, are:

(i) the reconstruction or removal of a groin; and/or

(ii) restoration of the adversely affected beach and adjacent real estate through renourishment pursuant to subitem (c).

An adjacent or downdrift property owner that claims a groin has caused or is causing an adverse impact shall notify the department of such impact. The department shall render an initial determination within sixty days of such notification. Final agency action shall be rendered within twelve months of notification. An aggrieved party may appeal the decision pursuant to the Administrative Procedures Act.

A permit must be obtained from the department for items (2) through ~~(8)~~(9). However, no permit is required under this chapter for associated amenity structures constructed on fishing piers if local governmental bodies having responsibility for the planning and zoning authorize construction of those amenity structures. Associated amenity structures do not include those employed as overnight accommodations or those consisting of more than two stories above the pier decking. Associated amenity structures, excluding restrooms, handicapped access features, and observation decks, may occupy no more than thirty‑five percent of the total surface area of the fishing pier or be constructed at a location further seaward than one‑half of the length of the fishing pier as measured from the baseline.”

SECTION 4. This act takes effect upon approval by the Governor; however, Section 48‑39‑130, as amended, remains subject to the repeal provision pursuant to Section 5, Act 41 of 2011.

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