~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

January 20, 2016

**S. 139**

Introduced by Senator Cleary

S. Printed 1/20/16--S. [SEC 1/21/16 12:53 PM]

Read the first time January 13, 2015.

**A** **BILL**

TO AMEND SECTION 48‑39‑130 OF THE 1976 CODE, RELATING TO PERMITS REQUIRED FOR COASTAL ZONE CRITICAL AREAS, TO ALLOW FOR CERTAIN ADDITIONAL TECHNOLOGIES, METHODOLOGIES, OR STRUCTURES WITH REGARD TO PROTECTING BEACH AND DUNE CRITICAL AREAS WHEN AN EMERGENCY ORDER IS ISSUED BY APPOINTED OFFICIALS OF COUNTIES AND MUNICIPALITIES; TO AMEND SECTION 48‑39‑280, TO PROHIBIT THE SEAWARD MOVEMENT OF THE BASELINE AFTER JULY 1, 2015, AND TO ELIMINATE THE RIGHT OF LOCAL GOVERNMENTS AND LANDOWNERS TO PETITION THE ADMINISTRATIVE LAW COURT TO MOVE THE BASELINE SEAWARD UPON COMPLETION OF A BEACH RENOURISHMENT PROJECT; TO AMEND SECTION 48‑39‑290, TO NARROW THE EXCEPTION OF GOLF COURSES FROM A PERMIT REQUIREMENT TO REPAIR AND MAINTENANCE OF EXISTING GOLF COURSES, TO PROVIDE FOR AN EXEMPTION FOR SANDFENCING, REVEGITATION OF DUNES, MINOR BEACH RENOURISHMENT, AND DUNE CONSTRUCTION; AND TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO APPROVE REPAIRS TO CERTAIN EROSION CONTROL DEVICES WHICH WOULD OTHERWISE BE PROHIBITED, TO PROVIDE FOR THE CIRCUMSTANCES UNDER WHICH REPAIRS MAY BE MADE; TO AMEND SECTION 48‑39‑320 BY ADDING A SUBSECTION TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MAY APPROVE EROSION CONTROL DEVICES NOT PROVIDED FOR IN THIS CHAPTER IF THE BOARD DETERMINES THAT A DEVICE WILL BE SUCCESSFUL WITH REGARD TO EROSION CONTROL; AND TO REPEAL SECTION 48‑39‑290(D)(2).

Amend Title To Conform

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

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

“Section 48‑39‑130. (D)(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~~ beach and 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~~ are allowed pursuant to this item~~.~~;

(a) sandbags, provided that a bond is supplied to reasonably estimate and cover the cost of removal;

(b) sandscraping;

(c) renourishment;

(d) any other technology, methodology, or structure pursuant to Section 48‑39‑320(C), provided that:

(i) the emergency order for use is only issued by the department; and

(ii) a bond is supplied to reasonably estimate and cover the cost of removal; or

(e) a combination of these techniques.”

SECTION 2. Section 48‑39‑290(A) of the 1976 Code, as last amended by Act 259 of 2011, is further 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 and constructed of wood or other department‑approved wood‑like material;

(2) small wooden decks no larger than one hundred forty‑four square feet and constructed of wood or other department‑approved wood‑like material;

(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~~ that existed on September 21, 1989, and that were privately owned, privately maintained, and not open to the public on ~~this~~ that date also may be rebuilt and used for the same purposes if they are constructed to the same dimensions;

(4) golf courses for repair and maintenance, and any action taken pursuant to Section 48‑39‑135;

(5) normal landscaping, sandfencing, revegetation of dunes, minor beach renourishment, and dune construction;

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

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

(8) existing groins, which may be reconstructed, repaired, and maintained. New groins may ~~only~~ be allowed only 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 ongoing 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 only 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~~ shall require either that the groin be reconfigured so that the erosion rate on the affected beach does not exceed the preconstruction 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~~ this 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), or both.

An adjacent or downdrift property owner ~~that~~ who claims a groin has caused or is causing an adverse impact shall notify the department of ~~such~~ the impact. The department shall render an initial determination within sixty days of such notification. Final agency action ~~shall~~ must 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). However, no permit is required ~~under~~ pursuant to 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. The department, in its discretion, may issue general permits for items (2) and (5) where issuance of the general permit would advance the implementation and accomplishment of the goals and purposes contained in Sections 48‑39‑250 through 48‑39‑360.”

SECTION 3. Section 48‑39‑290(D)(2) of the 1976 Code is amended to read:

“Section 48‑39‑290. (D)(2) The department’s Permitting Committee Coastal Division shall ~~is the committee to~~ consider applications for special permits.”

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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