Agency Name: Coastal Council - Department of Health and Environmental Control

Statutory Authority: 44-1-60, 48-39-50, and 48-39-280(E)

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By Date Action Description Jt. Res. No. Expiration Date

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- 03/28/2018 Received by Lt. Gov & Speaker 03/25/2019

S 03/28/2018 Referred to Committee

H 04/03/2018 Referred to Committee

S 04/09/2018 Recalled from Committee on Medical Affairs

S 04/09/2018 Referred to Committee

S 04/17/2018 Resolution Introduced to Approve 1171

H 04/19/2018 Resolution Introduced to Approve 5283

- 05/11/2018 Withdrawn due to end of two-year session

Document No. 4810

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 30

Statutory Authority: 1976 Code Sections 44‑1‑60, 48‑39‑50, and 48‑39‑280(E)

30‑14. Administrative Procedures.

**Synopsis:**

The Department of Health and Environmental Control (“Department”) amends R.30‑14, Administrative Procedures, with respect to the review process for revising jurisdictional lines and erosion rates affecting beachfront properties. 1976 Code Section 48‑39‑280 requires the Department to establish and review the position of beachfront jurisdictional setback lines, baselines, and erosion rates once every seven (7) to ten (10) years. Existing Coastal Division R.30‑14.F provides that a landowner may request a review of the jurisdictional lines or erosion rate affecting his or her property within one (1) year of adoption. However, statutory changes under Act No. 387 of 2006 limit the review of a Department decision to fifteen (15) calendar days. This regulatory amendment clarifies the review process to allow sufficient time for affected landowners to understand the Department’s methodology in setting jurisdictional lines and erosion rates, and bring any substantiating evidence to the attention of the Department’s Office of Ocean and Coastal Resource Management for a staff determination. The amendment provides landowners a timely review and complies with Act No. 387 of 2006.

The Department published proposed revisions to the state’s beachfront jurisdictional setback lines, baselines, and erosion rates on October 6, 2017. Based on comments received from landowners, community leaders, the conservation community, and others during the initial thirty (30)‑day public comment period, the Department extended the public comment period to April 6, 2018. In March 2018, the public comment period was further extended for most beachfront locations until July 15, 2018. Existing jurisdictional lines will remain in place until final revised lines are adopted.

The Department had a Notice of Drafting for the proposed amendment published in the November 24, 2017, *State Register*.

The Administrative Procedures Act, S.C. Code Section 1‑23‑120(A), required General Assembly review of this promulgation.

Section‑by‑Section Discussion of Amendment

R.30‑14.F(1)

Language is amended to clarify the process for affected landowners to request a determination from the Department on whether revisions to the state’s beachfront setback line, baseline, or erosion rate is adopted in error.

R.30‑14.F(1)(a)

Language is amended to clarify the criteria for requesting a determination from the Department on whether revisions to the state’s beachfront setback line, baseline, or erosion rate is adopted in error.

R.30‑14.F(1)(b)

Language is amended to clarify how the Department proceeds if substantiating evidence supports that the revisions were adopted in error.

R.30‑14.F(1)(c)

Language is amended to clarify how the Department proceeds if substantiating evidence does not support that the revisions were adopted in error.

R.30‑14.F(2)

Language is amended to clarify that the appeals process of Department determinations is governed by Section 44‑1‑60.

**Instructions:**

Amend R.30-14 pursuant to each individual instruction provided with the text of the amendments below.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

30‑14. Administrative Procedures.

 F. Procedures for Appealing Baselines and Erosion Rates [Section 48‑39‑280(E)].

(1) Any landowner claiming ownership of affected property ~~who feels that the final or revised setback line, baseline, or erosion rate as adopted is in error, upon submittal of substantiating evidence~~ may, within one (1) year of the revision ~~date~~ related to the affected property, request in writing that the Department’s Coastal Division make a determination whether ~~must be granted a review of~~ the setback line, baseline, or erosion rate~~, or a review of all three~~ as adopted in the revision is in error. The Department’s Coastal Division ~~shall hear all requests for~~ must review substantiating evidence submitted by the landowner to make a determination. ~~The process is as follows:~~

 (a) The landowner’s request for a determination of whether the setback line, baseline, or erosion rate as adopted in the revision is in error must be submitted in writing, within one (1) year of the revision date, and include substantiating evidence to support the landowner’s position. Upon receipt of ~~a property~~ the landowner’s written request, ~~for review of the setback, baseline, or erosion rate, a request will be made of the property owner to provide~~ the Department ~~with substantiating evidence, as required in Section 48–39–280(E)~~ may ask that the landowner provide the Department with additional information. ~~If the property owner does not respond or if there is no evidence at all to support the request, a letter will be sent to the property owner denying the request.~~

 (b) If the Department ~~agrees with the property owner~~ determines that the substantiating evidence does support that the setback line~~s~~, baseline, or erosion rate as adopted ~~are~~ is in error, the line~~s~~ or erosion rate will be ~~moved~~ corrected and the Department will send written notification of the staff determination in accordance with Section 44‑1‑60.

 (c) If the Department ~~disagrees with the property owner, and believes that the location of the lines is correct, the property owner will be notified in writing~~ determines that the substantiating evidence does not support that the setback line, baseline, or erosion rate as adopted is in error, the lines and erosion rate will remain as adopted on the revision date, and the Department will send written notification of the staff determination in accordance with Section 44‑1‑60. ~~Any appeal of the Department’s decision under this section shall be made to the Administrative Law Judge Division.~~

 (2) ~~Appeals are governed by R.30–6.~~Any landowner claiming ownership of affected property may file a written request for review of the staff determination with the Department’s Board in accordance with Section 44‑1‑60.

**Fiscal Impact Statement:**

The Department estimates no additional cost incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of this amendment; therefore, the Department has requested no additional state funding. The Department used existing staff and resources in preparation of this amendment and will further utilize existing staff in the regulatory administration resulting from the amendments.

**Statement of Need and Reasonableness:**

The following presents an analysis of the factors listed in 1976 Code Section 1‑23‑115(C)(1)‑(3) and (9)‑(11):

DESCRIPTION OF REGULATION: R.30‑14, Administrative Procedures.

Purpose: 1976 Code Section 48‑39‑280 requires the Department to establish and review the position of jurisdictional setback lines, baselines, and erosions rates of beachfront jurisdiction once every seven (7) to ten (10) years. Existing Coastal Division R.30‑14.F provides that a landowner may request a review of the jurisdictional lines or erosion rate affecting his or her property within one (1) year of adoption. However, statutory changes under Act No. 387 of 2006 limit the review of a Department decision to fifteen (15) calendar days. This amendment of R.30‑14.F clarifies the review process to allow sufficient time for affected landowners to understand the Department’s methodology in setting jurisdictional lines and erosion rates, and bring any substantiating evidence to the attention of the Department’s Office of Ocean and Coastal Resource Management for staff determination. The amendment provides landowners a timely review and would comply with Act No. 387 of 2006.

Legal Authority: 1976 Code Sections 44‑1‑60, 48‑39‑50, and 48‑39‑280(E).

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to this proposed amendment. Additionally, printed copies are available for a fee from the Department’s Freedom of Information Office. Department personnel will take appropriate steps to inform the regulated community of the amendment and any associated information.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

These amendments are based on public comments received from landowners, community leaders, the conservation community, and others during the public comment period for the revision of the state’s beachfront jurisdictional lines. Existing Coastal Division R.30‑14.F provides that a landowner may request a review of the jurisdictional lines or erosion rate affecting his or her property within one (1) year of adoption. However, statutory changes under Act No. 387 of 2006 limit the review of a Department decision to fifteen (15) calendar days. The amendment of R.30‑14.F allows sufficient time for affected landowners to become familiarized with the Department’s methodology in setting the jurisdictional lines, and bring any substantiating evidence to the attention of the Department’s Coastal Division for a staff determination. These amendments provide landowners a timely review and complies with Act No. 387 of 2006.

The amendment is reasonable and necessary to manage the long‑term health and sustainability of the state’s beaches and beach/dune systems while providing sufficient public input into Department decisions. The amendment clarifies existing regulations to better enable Department staff to more effectively implement the stated policies of the South Carolina Beachfront Management Act (1976 Code Section 48‑39‑260).

DETERMINATION OF COSTS AND BENEFITS:

The Department does not anticipate additional cost to the state resulting from administration of this amendment. Benefits to the state includes improved management of coastal resources through increased clarity of the regulations while affording affected parties appropriate timely input into Department decisions. The Department does not anticipate additional cost to the regulated community as a result of this amendment.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Implementation of the amendment seeks to benefit the environment by providing more clarity to the Department’s Coastal Division statutory directives to manage the state’s beaches and beach/dune critical areas for its citizens. The amendment better enables Department staff to manage the state’s beaches and beach/dune system and provide a more effective response to those seeking to utilize these resources.

Detrimental Effects on the Environment and Public Health if the Regulation is not Implemented:

There is no anticipated detrimental effect on the environment and/or public health associated with these amendments.

**Statement of Rationale:**

1976 Code Section 48‑39‑280 requires the Department to establish and review the position of jurisdictional setback lines, baselines, and erosions rates of beachfront jurisdiction once every seven (7) to ten (10) years. Existing Coastal Division R.30‑14 provides that a landowner may request a review of the jurisdictional lines or erosion rate affecting his or her property within one (1) year of adoption. However, statutory changes under Act No. 387 of 2006 limit the review of a Department decision to fifteen (15) calendar days. This amendment of R.30‑14 clarifies the review process to allow sufficient time for affected landowners to understand the Department’s methodology in setting jurisdictional lines and erosion rates, and bring any substantiating evidence to the attention of the Department’s Office of Ocean and Coastal Resource Management for staff determination. The amendment provides landowners a timely review and would comply with Act No. 387 of 2006.