**South Carolina General Assembly**

122nd Session, 2017-2018

**S. 927**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Campsen, Rice, Davis, Campbell, Cromer and Senn

Document Path: l:\s-res\gec\016base.dmr.gec.docx

Introduced in the Senate on January 24, 2018

Currently residing in the Senate Committee on **Agriculture and Natural Resources**

Summary: Beachfront Management Reform Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/24/2018 Senate Introduced and read first time ([Senate Journal‑page 3](file:///h:\sj\20180124.docx))

1/24/2018 Senate Referred to Committee on **Agriculture and Natural Resources** ([Senate Journal‑page 3](file:///h:\sj\20180124.docx))

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**VERSIONS OF THIS BILL**

[1/24/2018](file:///p:\pprever\2017-18\927_20180124.docx)

**A** **BILL**

TO ENACT THE “BEACHFRONT MANAGEMENT REFORM ACT,” BY AMENDING SECTION 48-39-280 OF THE 1976 CODE, RELATING TO THE FORTY-YEAR RETREAT POLICY FOR COASTAL TIDELANDS AND WETLANDS, TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL SHALL ESTABLISH BASELINES AND SETBACK LINES FOR ALL GEOGRAPHIC AREAS WHERE BASELINES AND SETBACK LINES WERE ESTABLISHED ON OR BEFORE JANUARY 31, 2012, TO PROVIDE THAT THE BASELINES AND SETBACK LINES MUST BE ESTABLISHED ANEW NOT LESS THAN EVERY SEVEN YEARS BUT NOT MORE THAN EVERY TEN YEARS FOLLOWING AN ESTABLISHMENT CYCLE AND MUST BE BASED UPON THE BEST AVAILABLE DATA COLLECTED, TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL SHALL PROVIDE FOR A NOTICE AND COMMENT PERIOD TO THE PUBLIC REGARDING NEW BASELINES AND SETBACK LINES, TO PROVIDE THAT THE CREST OF A PRIMARY OCEANFRONT SAND DUNE MAY NOT BE LOCATED IN AN AREA WITHIN ONE YEAR FOLLOWING A SIGNIFICANT STORM EVENT, AND TO PROVIDE FOR A REVIEW PROCESS FOR LANDOWNERS WHO MAY BE ADVERSELY AFFECTED BY THE ESTABLISHMENT OF A BASELINE OR SETBACK LINE; BY AMENDING SECTION 44-1-60(A) OF THE 1976 CODE, RELATING TO APPEALS FROM DEPARTMENT OF ENVIRONMENTAL HEALTH AND CONTROL DECISIONS, TO EXEMPT THE DECISION TO ESTABLISH A BASELINE OR SETBACK LINE FROM THIS SECTION; AND BY DEFINING NECESSARY TERMS.

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 48-39-10(I) of the 1976 Code is amended to read:

“(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. For purposes of establishing a baseline for an erosion zone pursuant to Section 48-39-280, the most seaward of the following shall constitute the primary oceanfront sand dune:

(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.”

SECTION 3. Section 48-39-10 of the 1976 Code is amended by adding an appropriately lettered new subsection to read:

“( ) ‘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.~~

(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. In the determination of erosion rates, historical and scientific data that takes into account the effects of natural processes, groins, and historical patterns of, and long term commitments to, beach renourishment shall be used.

(C) The department~~, before July 3, 1991, must~~ shall establish ~~a final baseline~~ baselines and setback ~~line~~ lines for all geographic areas where baselines and setback lines were established on or before January 31, 2012 ~~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. After that revision, the~~ The ~~baseline~~ baselines 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 previous 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 proposed locations of baselines and setback lines for a geographic area:

(i) provide notice of the publication in both 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, all information and raw data upon which the department based its decisions and explanations for the department’s decisions;

(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).

~~(D)~~(E)(1) In order to locate the ~~baseline~~ baselines and the setback ~~line~~ 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) If an oceanfront area incurs extraordinary erosion due to the impact of a storm system or event named by the National Weather Service, then the surveyed topographical data collected from the impacted area within one year after the impact shall not be used to locate the crests of primary oceanfront sand dunes pursuant to this section or to establish baselines pursuant to items (A)(1) or (A)(3).

(4) Irrespective of the time guidelines set forth in subsection (C), the department may extend the establishment of baselines pursuant to subsection (A) for up to one year if the implementation of subsection (E)(3) would otherwise cause the department to miss such time guidelines.

(5) 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.

~~(E)~~(F)(1) A landowner claiming ownership of property adversely affected by the establishment of a baseline or setback line, ~~who feels that the final or revised setback line, baseline, or erosion rate as adopted is in error,~~ 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 thirty days 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 shall be a department staff decision.

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

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

(b) conduct a review conference in accordance with the provisions of subsection (F)(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, 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. 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) The 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 of 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. Section 44-1-60(A) of the 1976 Code is amended to read:

“Section 44-1-60. (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, except a decision to establish a baseline or setback line, shall be made using the procedures set forth in this section.”

SECTION 6. Notwithstanding the time guidelines established in Section 48-39-280(C), the Department of Health and Environmental Control shall establish new baselines and setback lines in accordance with the provisions of this act by no later than December 31, 2023. The department may extend the establishment of new baselines and setback lines if the implementation of Section 48-39-280(E) would otherwise cause the department to miss the time guideline established in this SECTION. Until new baselines and setback lines are established, the baselines and setback lines deemed in effect for landowners are the more seaward lines of the following: (1) the baselines and setback lines in effect on December 1, 2017, or (2) the baselines and setback lines proposed by the department on or about October 6, 2017.

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

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