

**The Florida Senate**  
**COMMITTEE SUBSTITUTE ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/CS/SB 1672

INTRODUCER: Community Affairs Committee; Environmental Preservation and Conservation Committee; and Senators Jones and Gaetz

SUBJECT: Beach management

DATE: April 3, 2008                      REVISED: \_\_\_\_\_

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|-----------------|----------------|-----------|---------------|
| 1. | <u>Branning</u> | <u>Kiger</u>   | <u>EP</u> | <b>Fav/CS</b> |
| 2. | <u>Molloy</u>   | <u>Yeatman</u> | <u>CA</u> | <b>Fav/CS</b> |
| 3. | _____           | _____          | <u>GA</u> | _____         |
| 4. | _____           | _____          | _____     | _____         |
| 5. | _____           | _____          | _____     | _____         |
| 6. | _____           | _____          | _____     | _____         |

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The committee substitute (CS) clarifies public policy relating to improved navigation inlets by establishing legislative findings relating to the natural drift of sand which is altered by inlets, and reasonable efforts undertaken by each level of government to maximize inlet sand bypassing to ensure that beach-quality sand is placed on adjacent eroding beaches. The Department of Environmental Protection (DEP) is required to maintain an estimate of beach-quality sand that is available for inlet management projects, and such sand placed on a beach as part of a project must be suitable for marine turtle nesting. Deepwater ports must demonstrate reasonable efforts to place beach-quality sand from port-dredging and port-development projects on adjacent eroding beaches, and may sponsor or co-sponsor inlet management projects that are fully eligible for state cost sharing. The DEP may consider permitting nearshore or upland disposal of beach-quality sand under emergency conditions, and along with local government, is encouraged to undertake assessments that help identify the entity responsible for erosion caused by an inlet so that cost-sharing responsibility may be determined. In the event of a dispute involving the amount of sand to be bypassed, the DEP must protect its monetary investment in beach nourishment projects.

The CS provides for inlet management by requiring the DEP to establish funding priorities for studies, activities, or other projects that mitigate the erosive effect of inlets. A portion of legislative appropriations for beach nourishment and restoration projects may be used to cost-share studies, activities, and other inlet management projects with local governments or special districts. The DEP is authorized to contract for studies consistent with the legislative declarations in the CS, and must provide an inlet management project list in priority order as part of the department's legislative budget request. A funding formula for inlet management projects and studies is provided. The Legislature is authorized to annually designate an "Inlet of the Year", and the DEP must provide annual updates on the success of projects relating to the designated inlet. The DEP is provided with rulemaking authority.

The CS substantially amends s. 161.142, F.S., and creates s. 161.143, F.S.

## II. **Present Situation:**

In 1986, the Legislature enacted legislation recognizing that while improved inlets must be maintained for commercial and recreational navigation, these inlets interrupt or alter the natural flow of sand which significantly contributes to beach erosion on adjacent beaches. The Legislature also recognized that inlets alter the natural drift of beach-quality sand which often results in the sand being deposited around shallow outer-bar areas instead of providing natural nourishment to the downdrift beaches. Section 161.142, F.S., provides that:

- All sand resulting from the construction and maintenance dredging of beach-quality sand should be placed on the downdrift beaches; or if placed elsewhere, an equivalent quality and quantity of sand from an alternate location should be placed on the downdrift beaches.
- On an average annual basis, a quantity of sand should be placed on the downdrift beaches equal to the natural net annual longshore sediment transport.
- Certain construction waterward of the coastal construction control line on downdrift coastal areas is exempt from certain permitting requirements. This applies to construction on islands substantially created by the deposit of soil and located within 1 mile of the centerline of navigation channels or inlets. The timing and sequence of any construction in such coastal areas must comply with federal law relating to the protection of nesting sea turtles and hatchlings and their habitats and to native salt-resistant vegetation and endangered plant communities.
- The deepwater ports are not required to comply with requirements for the placement of beach-quality sands.

Section 161.161, F.S., directs the DEP to develop and maintain a comprehensive long-term management plan for the restoration and maintenance of the state's critically eroded beaches fronting the Atlantic Ocean, Gulf of Mexico, and the Straits of Florida. The state's beach management plan must include, among other things, an evaluation of each improved, modified, or altered inlet and a determination of whether the inlet is a significant cause of beach erosion. For each inlet identified, the plan must also include the extent to which the inlet causes beach

erosion and recommendations to mitigate the inlet's erosive impact<sup>1</sup>. Further, the plan must include cost estimates necessary to take inlet corrective measures and recommendations regarding cost-sharing among the beneficiaries of the inlet.

As part of the beach management plan, the DEP must establish a list of beach restoration and beach nourishment projects arranged in order of priority and the funding levels needed for each project. A process is in place for the DEP to determine annual funding priorities for all beach nourishment projects and to rank all of the projects for priority funding. The list is grouped into "priority projects" and "alternate projects." Once the Legislature has appropriated funding for beach restoration and nourishment projects, the DEP develops an agreement with the local sponsor for each of the priority projects in the amount shown on the priority list. The local government in which the beach is located is responsible for up to 50 percent of the project costs, and if the local government indicates that funds won't be used or obligated during that fiscal year, the DEP may reallocate all or portions of such funds to other projects on the priority or alternate project list. Projects will receive funding in priority order, beginning with projects that demonstrate a need for additional funding, until state funding has been exhausted. To date, approximately 200 miles of critically eroded beaches have been restored.

The demand for beach-quality sand for nourishment and restoration projects continues to grow but the availability of the sand is diminishing. Sand lost from the inlets may be of a quality that will supply natural nourishment to an adjacent eroding beach.

### III. **Effect of Proposed Changes:**

**Section 1** amends s. 161.142, F.S., to provide that the Legislature recognizes that inlets interrupt or alter the natural drift of beach-quality sand resources, which results in these sand resources being deposited in nearshore areas, in the inlet channel, or in the inland waterway adjacent to the inlet instead of providing natural nourishment to the adjacent eroding beaches. The Legislature finds that it is in the public interest to replicate the natural drift of sand which is interrupted or altered by inlets. It is also in the public interest for each level of government to undertake all reasonable efforts to maximize inlet sand bypassing to ensure that beach-quality sand is placed on adjacent eroding beaches. Such activities cannot make up for the historical sand deficits caused by inlets, but shall be designed to balance the sediment budget of the inlet and adjacent beaches and extend the life of proximate beach-restoration projects so that periodic nourishment is needed less frequently. In furtherance of the Legislature's intent to redirect and recommit the state's comprehensive beach management efforts to address the beach erosion caused by inlets, the DEP shall ensure that:

- All beach-quality sand resulting from construction and maintenance dredging is placed on the adjacent eroding beaches, unless, if placed elsewhere, an equivalent quality and quantity of sand from an alternate location is placed on the adjacent eroding beaches.
- On an average annual basis, a quantity of beach-quality sand is placed on the adjacent eroding beaches which is equal to the natural net annual longshore sediment transport. The

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<sup>1</sup> Only 17 of the estimated 56 inlets in the state (21 on the East Coast and 35 on the West Coast), have inlet management plans, and the last plan was adopted almost 8 years ago. Many of these plans have only been partially implemented and in some cases, very little inlet sand bypassing is occurring.

department shall maintain a current estimate of such quantities of sand for purposes of prioritizing, planning, and permitting.

- Construction which is exempt from the permitting requirements and prohibitions for coastal construction and excavation must comply with the Florida Building Code.
- Beach-quality sand placed on the beach as part of an inlet management project must be suitable for marine turtle nesting.
- Ports listed in s. 403.021(9), F.S.,<sup>2</sup> must demonstrate reasonable efforts to place beach-quality sand from construction and maintenance dredging and port-development projects on adjacent eroding beaches in accordance with port master plans approved by the Department of Community Affairs and with permits approved and issued by the DEP in order to ensure compliance with s. 161.142, F.S. A port may sponsor or co-sponsor inlet management projects that are fully eligible for state cost sharing.
- The department shall ensure that beach-quality sand from federal dredging projects in the state conducted for navigation purposes is placed on or in the nearshore area of adjacent eroding beaches. The department may consider permitting nearshore or upland disposal of such beach-quality sand if emergency conditions exist. The state recognizes that due to the growing demand for beach-quality sand for restoration and nourishment projects, the limited supply of such sand, and the cost of such projects, beach or nearshore sand placement is the least-costly disposal method.
- If federal investigations and reports or state-approved inlet management plans do not specify the entity or entities responsible for the extent of erosion caused by an inlet, the department or local government is encouraged to undertake assessments that aid in specifying the responsible entity or entities and to more accurately determine cost-sharing responsibilities for measures to correct such erosion. The entity that is responsible for maintenance dredging of an inlet may be deemed responsible for the erosion caused by the inlet if another responsible party is not specified in an assessment, a shore-protection project investigation or report, or a state-approved inlet management plan.
- If the beneficiaries of the inlet, or the local governments having jurisdiction of lands adjacent to the inlet, or the owners of property adjacent to the inlet, are involved in a dispute over the amount of sand to be bypassed, the department shall protect its monetary investment in beach nourishment projects within the inlet's physical zone of influence by taking all reasonable actions to balance the sediment budget of the inlet and adjacent beaches, including implementation of inlet sand bypassing and other inlet management projects.

**Section 2** creates s. 161.143, F.S., to provide for inlet management.

- Studies, projects, and activities for the purpose of mitigating the erosive effects of inlets and balancing the sediment budget of the inlet and adjacent beaches must be supported by separately approved inlet management plans or inlet components of the statewide comprehensive beach management plan.
- The plans in support of individual inlet projects or activities must evaluate each inlet to determine the extent of the inlet's erosive effect on adjacent beaches, and if significant, make recommendations to mitigate such ongoing erosive effects and provide estimated costs for such mitigation.

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<sup>2</sup> The listed ports include Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.

- The DEP must establish annual funding priorities for inlet management studies, activities, or other projects. Such projects include, but are not limited to, inlet sand bypassing, modifications to channel dredging, jetty redesign, jetty repair, disposal of spoil material, and the development, revision, adoption, or implementation of an inlet management plan.
- The funding priorities established by the department must be consistent with statutory provisions relating to beach management studies, public policy relating to inlets, and beach management plans.
- When establishing funding priorities and before transmitting the annual inlet project list to the Legislature, the department must seek formal input on funding priorities from local coastal governments, beach and general government associations and other coastal interest groups, and university experts.
- To maximize the benefits of efforts to address the inlet-caused beach erosion problems, the ranking criteria used by the DEP to establish funding priorities inlet management efforts must include consideration of:
  - An estimate of the sand reaching the updrift boundary of the improved jetty or inlet channel.
  - The severity of adjacent beach erosion and the project's mitigating effects.
  - The overall significance and success of the project in balancing the sediment budget of the inlet and adjacent beaches and the sand deficit along the inlet-affected shorelines.
  - The extent to which sand bypassing efforts may be improved, and the availability of beach-quality sand not currently being bypassed along with how easily the sand may be obtained.
  - The interest and commitment of the local government.
  - The previous completion of a state-sponsored inlet management plan or local-government sponsored inlet study, the ease in updating or revising the plan or study, and the adequacy and specificity of the plan or study's recommendations for mitigation.
  - How much a project will improve and lengthen the performance of a beach nourishment project.
  - Project ranking criteria for beach erosion control projects currently funded by the Legislature as they apply to inlet management efforts.
- Pursuant to s. 161.101, F.S. and notwithstanding subsection (15) of that section, the DEP may pay from legislative appropriations provided for these purposes, 75 percent of the total costs, or if applicable the nonfederal costs, of an inlet management effort. The balance must be paid by the local governments or special districts having jurisdiction over the property where the inlet is located.
- The DEP may employ university-based or other contractual sources and pay 100 percent of the costs of studies that are consistent with the legislative declaration in s. 161.142, F.S., using the funds appropriated for the statewide beach-management-support category of the DEP's fixed capital outlay funding request.
- The DEP must annually provide an inlet management project list, in priority order, to the Legislature as part of the agency's legislative budget request. The list must include inlet

studies, projects, or other activities that address the management of at least 10 separate inlets and prioritized using the ranking criteria above.

- The DEP must make available at least 10 percent of the total amount that the Legislature appropriates in each fiscal year for statewide beach management for the three highest-ranked projects on the current year's inlet management project list.
- The department shall make available all statewide beach management funds that remain unencumbered or are allocated to non-project-specific activities for projects on legislatively approved inlet management project lists.
- Funding for local-government-specific projects on annual project lists approved by the Legislature must remain available for such purposes for a period of 18 months. Based on an assessment and the determination that a project will not be ready to proceed during this 18-month period, such funds shall be used for inlet management projects on legislatively approved lists.
- Each year the Legislature must designate one of three highest projects on the inlet management project list as the "Inlet of the Year". The DEP must annually report to the Legislature concerning the extent to which the designated project succeeds in balancing the sediment budget of the inlet and adjacent beaches, mitigating the inlet's erosive effects on adjacent beaches, and transferring or otherwise placing beach-quality sand on adjacent eroding beaches.
- The DEP is authorized to adopt rules to implement the provisions of this committee substitute

**Section 3** provides that the CS will take effect July 1, 2008.

#### IV. **Constitutional Issues:**

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

#### V. **Fiscal Impact Statement:**

##### A. Tax/Fee Issues:

None.

##### B. Private Sector Impact:

Property owners adjacent to inlets will benefit by the returning sand that was shifted and altered by inlet maintenance activities back to the adjacent beach and coastal areas.

**C. Government Sector Impact:**

The CS authorizes a 75/25 state/local cost-share for inlet management projects. This provision will benefit those local governments seeking state funds for inlet management projects.

The DEP is required to prioritize inlet management projects to be submitted annually with the legislative budget request. This list must contain at least 10 separate inlets and the DEP must set aside at least 10 percent of the annual appropriation for statewide beach management for the three highest ranked inlet management projects.

**VI. Technical Deficiencies:**

This CS contains several technical deficiencies:

- On lines 77-84, the CS requires the DEP to maintain a current estimate of quantities of sand for the purpose of prioritizing, planning, and permitting without referencing what is being prioritized, planned or permitted.
- On lines 106-107, the CS references port master plans approved by the Department of Community Affairs. However, a port master plan is incorporated into the coastal management element of a local comprehensive plan and is reviewed by the department as part of that element.
- On lines 123-126, the CS provides that if "federal investigations and reports" or "state-approved inlet management plans" do not specify the entity responsible for inlet erosion, the DEP or a local government can conduct an assessment to specify the responsible party. However, the CS goes on to provide that if the assessment, the state-approved inlet management plan, or a "shore protection project investigation or report" doesn't identify the responsible party, then the entity responsible for inlet dredging will be deemed responsible for inlet erosion.
- On lines 259-263, the CS references legislatively approved inlet management project lists but there are no provisions in the CS requiring legislative approval of the inlet management project priority list developed by DEP and submitted as part of the legislative budget request. In addition, the CS references funding for local-government specific projects on annual project lists approved by the Legislature. It is unclear whether the Legislature is required to approve the inlet management project priority list developed by DEP or if the CS is referencing community budget issue requests submitted by members of the Legislature on behalf of a local government and included in the General Appropriations Act.
- Revisions to ss. 161.088 and 161.161 are necessary to conform with s. 161.143, F.S., being created in the CS.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the committee substitute.)

**CS by Community Affairs Committee on April 3, 2008:**

The CS clarifies legislative recognition relating to the deposit of beach-quality sand in nearshore areas, inlet channels, or in inland waterways adjacent to inlet channels. The bill clarifies that certain construction waterward of the coastal construction line is exempt from permitting requirements and prohibitions relating to coastal construction and excavation but must comply with the provisions of the Florida Building Code.

**CS by Environmental Preservation and Conservation Committee on March 13, 2008:**

The words “reinstate longshore sand transport” and other similar phrasing is replaced with “balance the sediment budget of the inlet and adjacent beaches” in several places in the committee substitute.

Ports must demonstrate reasonable efforts to place beach-quality sand from construction and maintenance dredging and port-development projects on adjacent eroding beaches in accordance with port master plans approved by the Department of Community Affairs and with permits approved and issued by the DEP in order to ensure compliance with s. 161.142, F.S. A port may sponsor or cosponsor inlet management projects that are fully eligible for state cost sharing.

**B. Amendments:**

None.