

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 Environmental Preservation and Conservation Committee

COMMITTEE SUBSTITUTE: CS/SB 1672

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Jones

SUBJECT: Beach management

DATE: March 13 2008 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Kiger	EP	Fav/CS
2.	_____	_____	CA	_____
3.	_____	_____	GA	_____
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 provides legislative intent and findings relating to sand altered by inlets. Providing that each level of government undertake reasonable efforts to maximize inlet sand bypassing to ensure that beach-quality sand is placed on adjacent eroding beaches. Provides that beach-quality sand placed on a beach as part of an inlet management project must be suitable for marine turtle nesting. Provides that 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 Department of Environmental Protection (DEP or department). A port may sponsor or co-sponsor inlet management projects that are fully eligible for state cost sharing. Provides that the Department of Environmental Protection may consider permitting nearshore or upland disposal of beach-quality sand under emergency conditions. The DEP or local government is encouraged to undertake assessments that aid in specifying the responsible entity or entities to determine cost-sharing responsibilities. The DEP shall protect its monetary investment in beach nourishment projects in the event of a dispute involving the beneficiaries of the inlet.

Provides for inlet management. The department shall establish funding priorities for studies, activities, or other projects concerning inlet management. Specifies that a certain percentage of legislative appropriations pay for certain costs. Authorizes the department to contract for certain services. Provides that the department must provide an inlet management project list in priority order to the Legislature as part of the department's budget request. Provides that the department make available a certain percentage of the total amount appropriated each year for beach management to the three highest ranked inlet management projects. Provides that if an inlet management project will not be ready to proceed during a specified 18-month period, the funds shall be used for inlet management projects on legislatively approved lists. Provides for the designation of an annual "Inlet of the Year". Provides an effective date.

This committee substitute substantially amends s. 161.142, F.S., and creates s. 161.143, F.S.

## II. **Present Situation:**

In 1986, the Legislature passed legislation that recognized that while improved inlets have to be maintained for commercial and recreational navigation, these inlets interrupt or alter the natural flow of sand and have significantly contributed to beach erosion on adjacent beaches.

Section 161.142, F.S., provides for a declaration of public policy regarding the need to maintain navigation inlets to promote commercial and recreational uses of our coastal waters and their resources. The Legislature further recognized in this section that inlets alter the natural drift of beach-quality sand resources, which often results in these sand resources being deposited around shallow outer-bar areas instead of providing natural nourishment to the downdrift beaches. Specifically, s. 161.142, F.S., provides that:

- All construction and maintenance dredgings 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 provisions relating to the placement of beach-quality sand is not a requirement for the ports.

Section 161.161, F.S., directs the Department of Environmental Protection 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. This 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 determined to be significant cause of beach erosion, the plan must also include the

extent to which the inlet causes beach erosion and recommendations to mitigate the erosive impact of the inlet. Further, the plan must include cost estimates necessary to take inlet corrective measures and recommendations regarding cost sharing among the beneficiaries of the inlet.

Today of the estimated 56 inlets in the state, (21 on the East Coast and 35 on the West Coast), only 17 have inlet management plans. The last inlet management 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.

Approximately 200 miles of critically eroded beach have been restored. As part of the plan development, each improved, altered, or modified inlet is evaluated and recommendations are made to mitigate the erosive impacts.

The department is charged with developing and implementing a comprehensive, long-range statewide beach management plan. In fulfilling that responsibility, the department develops, in coordination with local governmental entities and the United States Army Corps of Engineers, a long-range budget plan and a prioritized list of beach erosion control projects.

A process is in place for the department to determine annual funding priorities for all beach nourishment projects and ranks all of the projects to determine funding priorities. The department is directed to cost-share with local governments up to 50 percent of the project costs.

The prioritized listing is grouped into those projects defined as “priority projects” and other eligible projects as “alternate projects.” Upon receipt of the annual legislative appropriation, the department develops an agreement with the local sponsor for each of the priority projects in the amount shown on the priority list. In the event the local government indicates that funds to be used for a priority project cannot be utilized or obligated during that fiscal year, the department 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 until state funding has been exhausted, beginning with priority projects that can demonstrate the need for additional funds.

The demand for sand for beach nourishment projects continues to grow and the availability of beach quality sand is diminishing. Sand lost from the inlets can be of a quality to place back on the adjacent eroding beaches.

### 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 or in the inlet channel 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 construction and maintenance dredgings of beach-quality sand are 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 department shall maintain a current estimate of such quantities of sand for purposes of prioritizing, planning, and permitting.
- 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>1</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 any disposal of the beach-quality sand from federal projects in the state which involve dredging for the purpose of navigation 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 resources for beach restoration and nourishment projects, the limited supply of such sand resources, and the cost of such projects, beach or nearshore sand placement is the least-cost 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 such an assessment, a shore-protection project investigation or report, or a state-approved inlet management plan.
- If the beneficiaries of the inlet, 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 concerning how much sand should 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

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<sup>1</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.

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.

The department shall establish annual funding priorities for studies, activities, or other projects concerning inlet management. Such inlet management 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 the provisions of ss. 161.101(14), 161.142, 161.161(1)(b), F.S., relating to beach management studies, public policy relating to inlets, and beach management plans, respectively. In establishing funding priorities and before transmitting the annual inlet project list to the Legislature, the department shall seek formal input from local coastal governments, beach and general government associations and other coastal interest groups, and university experts concerning annual funding priorities for inlet management projects. In order to maximize the benefits of efforts to address the inlet-caused beach erosion problems of this state, the ranking criteria used by the department to establish funding priorities for studies, activities, or other projects concerning inlet management must include certain specified considerations.

The department may, pursuant to s. 161.101, F.S., and notwithstanding s. 161.101(15), F.S., pay from legislative appropriations provided for these purposes 75 percent of the total costs or, if applicable, the nonfederal costs, of a study, activity, or other project concerning the management of an inlet. The balance must be paid by the local governments or special districts having jurisdiction over the property where the inlet is located.

The department 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 legislative appropriation to the statewide beach-management-support category of the department's fixed capital outlay funding request.

The department shall annually provide an inlet management project list, in priority order, to the Legislature as part of the department's budget request. The list must include studies, projects, or other activities that address the management of at least 10 separate inlets and that are ranked according to criteria specified in this committee substitute.

The department shall 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 department's 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.

The department shall designate one of three highest projects on the inlet management project list in any years as the "Inlet of the Year". The department shall annually report to the Legislature concerning the extent to which each inlet project designated as "Inlet of the Year" has succeeded 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 department is authorized to adopt rules to implement the provisions of this committee substitute

**Section 3** provides that the committee substitute 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 would benefit by returning the sand that was shifted and altered by inlet maintenance activities back to the adjacent beach and coastal areas.

C. Government Sector Impact:

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

The department will be 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 department must make available at least 10 percent of any annual appropriation for inlet management. This adds specific direction to the department to include inlet management plan funding each year from their annual appropriation, assuring that if any money is appropriated for beach nourishment projects, inlet management projects will be included.

**VI. Technical Deficiencies:**

None.

**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.)

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.