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CS/HB 1427, Engrossed 1

2008 Legislature

1 A bill to be entitled
2 An act relating to beach management; amending s. 161.142,
3 F.S.; providing legislative intent and findings; providing
4 requirements concerning the quality and quantity of
5 dredged sand placed on certain beaches adjacent to inlets;
6 requiring an estimation of the requisite quantity of
7 beach-quality sand by the Department of Environmental
8 Protection and its consultants; revising exemptions from
9 certain permitting requirements and prohibitions for
10 certain construction activities; requiring compliance with
11 the applicable Florida Building Code; requiring the
12 protection of nesting shorebirds and marine turtles;
13 specifying requirements of certain ports concerning the
14 placement of dredged sand on adjacent eroding beaches;
15 authorizing such ports to sponsor or cosponsor inlet
16 management projects that are fully eligible for state
17 cost-sharing; providing requirements and findings
18 concerning the placement of dredged sand from federal
19 navigation projects; providing for assignment of
20 responsibility for the erosion caused by inlets;
21 specifying actions to be taken by the department in
22 disputes between local governments and property owners
23 concerning how much sand should bypass an inlet; creating
24 s. 161.143, F.S.; requiring that inlet management studies,
25 projects, and activities be supported by certain plans;
26 providing criteria governing the department's ranking of
27 inlet management projects and activities; specifying
28 conditions that must be met; requiring that the department

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29 establish funding priorities for projects and activities
30 concerning inlet management; providing for input from
31 interested governmental and private entities; providing
32 criteria for establishing priorities; authorizing funding
33 levels for inlet management projects under specified
34 conditions; requiring that the department annually provide
35 an inlet management project list to the Legislature;
36 providing requirements for the list; requiring that the
37 department make available certain moneys for projects on
38 the list; requiring that the department make available
39 certain moneys for projects on other legislatively
40 approved inlet management project lists; requiring that
41 the Legislature designate a certain inlet project as
42 "Inlet of the Year"; requiring the department to provide
43 an annual report to the Legislature concerning the success
44 of projects so designated; requiring rulemaking by the
45 department; providing an effective date.

46
47 Be It Enacted by the Legislature of the State of Florida:

48
49 Section 1. Section 161.142, Florida Statutes, is amended
50 to read:

51 161.142 Declaration of public policy relating to improved
52 navigation inlets.--The Legislature ~~hereby~~ recognizes the need
53 for maintaining navigation inlets to promote commercial and
54 recreational uses of our coastal waters and their resources. The
55 Legislature further recognizes that inlets interrupt or alter
56 the natural drift of beach-quality sand resources, which often

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57 results in these sand resources being deposited in nearshore
 58 ~~around shallow outer bar~~ areas or in the inlet channel, or in
 59 the inland waterway adjacent to the inlet, instead of providing
 60 natural nourishment to the adjacent eroding ~~down-drift~~ beaches.
 61 Accordingly, the Legislature finds it is in the public interest
 62 to replicate the natural drift of sand which is interrupted or
 63 altered by inlets to be replaced and for each level of
 64 government to undertake all reasonable efforts to maximize inlet
 65 sand bypassing to ensure that beach-quality sand is placed on
 66 adjacent eroding beaches. Such activities cannot make up for the
 67 historical sand deficits caused by inlets but shall be designed
 68 to balance the sediment budget of the inlet and adjacent beaches
 69 and extend the life of proximate beach-restoration projects so
 70 that periodic nourishment is needed less frequently. Therefore,
 71 in furtherance of this declaration of public policy and the
 72 Legislature's intent to redirect and recommit the state's
 73 comprehensive beach management efforts to address the beach
 74 erosion caused by inlets, the department shall ensure that:

75 (1) All construction and maintenance dredgings of beach-
 76 quality sand are ~~should be~~ placed on the adjacent eroding
 77 ~~down-drift~~ beaches unless, or, if placed elsewhere, an equivalent
 78 quality and quantity of sand from an alternate location is
 79 ~~should be~~ placed on the adjacent eroding ~~down-drift~~ beaches.

80 (2) On an average annual basis, a quantity of beach-
 81 quality sand is ~~should be~~ placed on the adjacent eroding
 82 ~~down-drift~~ beaches which is equal to the natural net annual
 83 longshore sediment transport. The department shall, with the
 84 assistance of university-based or other contractual resources

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85 that it may employ or call upon, maintain a current estimate of
 86 such quantities of sand for purposes of prioritizing, planning,
 87 and permitting.

88 (3) Construction waterward of the coastal construction
 89 control line on downdrift coastal areas, on islands
 90 substantially created by the deposit of spoil, located within 1
 91 mile of the centerline of navigation channels or inlets,
 92 providing access to ports listed in s. 403.021(9)(b), which
 93 suffers or has suffered erosion caused by such navigation
 94 channel maintenance or construction shall be exempt from the
 95 permitting requirements and prohibitions of ~~subsections (2),~~
 96 ~~(5), and (6)~~ of s. 161.053(5) or (6); however, such construction
 97 shall comply with the applicable Florida Building Code adopted
 98 pursuant to s. 553.73. The timing and sequence of any
 99 construction activities associated with inlet management
 100 projects in such coastal areas shall comply with 44 C.F.R. part
 101 ~~60~~ and shall provide protection to nesting sea turtles and their
 102 hatchlings and their habitats, to nesting shorebirds, and to
 103 native salt-resistant vegetation and endangered plant
 104 communities. Beach-quality sand placed on the beach as part of
 105 an inlet management project must be suitable for marine turtle
 106 nesting.

107 (4) The provisions of subsections (1) and (2) shall not be
 108 a requirement imposed upon ports listed in s. 403.021(9)(b);
 109 however, such ports must demonstrate reasonable effort to place
 110 beach-quality sand from construction and maintenance dredging
 111 and port-development projects on adjacent eroding beaches in
 112 accordance with port master plans approved by the Department of

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113 Community Affairs, and permits approved and issued by the
114 department, to ensure compliance with this section. Ports may
115 sponsor or cosponsor inlet management projects that are fully
116 eligible for state cost-sharing.

117 (5) The department shall ensure that any disposal of the
118 beach-quality sand from federal projects in this state which
119 involve dredging for the purpose of navigation is on, or in the
120 nearshore area of, adjacent eroding beaches. The department may
121 consider permitting nearshore or upland disposal of such beach-
122 quality sand if emergency conditions exist. The state recognizes
123 that due to the growing demand for beach-quality sand resources
124 for beach restoration and nourishment projects, the limited
125 supply of such sand resources, and the cost of such projects,
126 beach or nearshore sand placement is the least-cost disposal
127 method.

128 (6) If federal investigations and reports or state-
129 approved inlet management plans do not specify the entity or
130 entities responsible for the extent of erosion caused by an
131 inlet, the department or local government, with the assistance
132 of university-based or other contractual resources that they may
133 employ or call upon, is encouraged to undertake assessments that
134 aid in specifying the responsible entity or entities and in more
135 accurately determining cost-sharing responsibilities for
136 measures to correct such erosion. The entity that is responsible
137 for maintenance dredging of an inlet may be deemed responsible
138 for the erosion caused by the inlet if another responsible party
139 is not specified in such an assessment, a shore-protection
140 project investigation or report, or a state-approved inlet

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141 management plan.

142 (7) If the beneficiaries of the inlet, the local
 143 governments having jurisdiction of lands adjacent to the inlet,
 144 or the owners of property adjacent to the inlet are involved in
 145 a dispute concerning how much sand should be bypassed, the
 146 department shall protect its monetary investment in beach
 147 nourishment projects within the inlet's physical zone of
 148 influence by taking all reasonable actions to balance the
 149 sediment budget of the inlet and adjacent beaches, including
 150 implementation of inlet sand bypassing and other inlet
 151 management projects.

152 Section 2. Section 161.143, Florida Statutes, is created
 153 to read:

154 161.143 Inlet management; planning, prioritizing, funding,
 155 approving, and implementing projects.--

156 (1) Studies, projects, and activities for the purpose of
 157 mitigating the erosive effects of inlets and balancing the
 158 sediment budget of the inlet and adjacent beaches must be
 159 supported by separately approved inlet management plans or inlet
 160 components of the statewide comprehensive beach management plan.
 161 Such plans in support of individual inlet projects or activities
 162 must, pursuant to s. 161.161(1)(b), evaluate each inlet to
 163 determine the extent of the inlet's erosive effect on adjacent
 164 beaches and, if significant, make recommendations to mitigate
 165 such ongoing erosive effects and provide estimated costs for
 166 such mitigation.

167 (2) The department shall establish annual funding
 168 priorities for studies, activities, or other projects concerning

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169 inlet management. Such inlet management projects include, but
 170 are not limited to, inlet sand bypassing, modifications to
 171 channel dredging, jetty redesign, jetty repair, disposal of
 172 spoil material, and the development, revision, adoption, or
 173 implementation of an inlet management plan. The funding
 174 priorities established by the department must be consistent with
 175 the requirements and legislative declaration in ss. 161.101(14),
 176 161.142, and 161.161(1)(b). In establishing funding priorities
 177 under this subsection and before transmitting the annual inlet
 178 project list to the Legislature under subsection (5), the
 179 department shall seek formal input from local coastal
 180 governments, beach and general government associations and other
 181 coastal interest groups, and university experts concerning
 182 annual funding priorities for inlet management projects. In
 183 order to maximize the benefits of efforts to address the inlet-
 184 caused beach erosion problems of this state, the ranking
 185 criteria used by the department to establish funding priorities
 186 for studies, activities, or other projects concerning inlet
 187 management must include consideration of:

188 (a) An estimate of the annual quantity of beach-quality
 189 sand reaching the updrift boundary of the improved jetty or
 190 inlet channel.

191 (b) The severity of the erosion to the adjacent beaches
 192 caused by the inlet and the extent to which the proposed project
 193 mitigates the erosive effects of the inlet.

194 (c) The overall significance and anticipated success of
 195 the proposed project in balancing the sediment budget of the
 196 inlet and adjacent beaches and addressing the sand deficit along

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197 the inlet-affected shorelines.

198 (d) The extent to which existing bypassing activities at
 199 an inlet would benefit from modest, cost-effective improvements
 200 when considering the volumetric increases from the proposed
 201 project, the availability of beach-quality sand currently not
 202 being bypassed to adjacent eroding beaches, and the ease with
 203 which such beach-quality sand may be obtained.

204 (e) The interest and commitment of local governments as
 205 demonstrated by their willingness to coordinate the planning,
 206 design, construction, and maintenance of an inlet management
 207 project and their financial plan for funding the local cost-
 208 share for initial construction, ongoing sand bypassing, channel
 209 dredging, and maintenance.

210 (f) The previous completion or approval of a state-
 211 sponsored inlet management plan or local-government-sponsored
 212 inlet study concerning the inlet addressed by the proposed
 213 project, the ease of updating and revising any such plan or
 214 study, and the adequacy and specificity of the plan's or study's
 215 recommendations concerning the mitigation of an inlet's erosive
 216 effects on adjacent beaches.

217 (g) The degree to which the proposed project will enhance
 218 the performance and longevity of proximate beach nourishment
 219 projects, thereby reducing the frequency of such periodic
 220 nourishment projects.

221 (h) The project-ranking criteria in s. 161.101(14) to the
 222 extent such criteria are applicable to inlet management studies,
 223 projects, and activities.

224 (3) The department may, pursuant to s. 161.101 and

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225 notwithstanding s. 161.101(15), pay from legislative
 226 appropriations provided for these purposes 75 percent of the
 227 total costs, or, if applicable, the nonfederal costs, of a
 228 study, activity, or other project concerning the management of
 229 an inlet. The balance must be paid by the local governments or
 230 special districts having jurisdiction over the property where
 231 the inlet is located.

232 (4) Using the legislative appropriation to the statewide
 233 beach-management-support category of the department's fixed
 234 capital outlay funding request, the department may employ
 235 university-based or other contractual sources and pay 100
 236 percent of the costs of studies that are consistent with the
 237 legislative declaration in s. 161.142 and that:

238 (a) Determine, calculate, refine, and achieve general
 239 consensus regarding net annual sediment transport volumes to be
 240 used for the purpose of planning and prioritizing inlet
 241 management projects; and

242 (b) Appropriate, assign, and apportion responsibilities
 243 between inlet beneficiaries for the erosion caused by a
 244 particular inlet on adjacent beaches.

245 (5) The department shall annually provide an inlet
 246 management project list, in priority order, to the Legislature
 247 as part of the department's budget request. The list must
 248 include studies, projects, or other activities that address the
 249 management of at least 10 separate inlets and that are ranked
 250 according to the criteria established under subsection (2).

251 (a) The department shall make available at least 10
 252 percent of the total amount that the Legislature appropriates in

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253 each fiscal year for statewide beach management for the three
254 highest-ranked projects on the current year's inlet management
255 project list.

256 (b) The department shall make available at least 50
257 percent of the funds appropriated for the feasibility and design
258 category in the department's fixed capital outlay funding
259 request for projects on the current year's inlet management
260 project list which involve the study for, or design or
261 development of, an inlet management project.

262 (c) The department shall make available all statewide
263 beach management funds that remain unencumbered or are allocated
264 to non-project-specific activities for projects on legislatively
265 approved inlet management project lists. Funding for local-
266 government-specific projects on annual project lists approved by
267 the Legislature must remain available for such purposes for a
268 period of 18 months pursuant to s. 216.301(2) (a). Based on an
269 assessment and the department's determination that a project
270 will not be ready to proceed during this 18-month period, such
271 funds shall be used for inlet management projects on
272 legislatively approved lists.

273 (d) The Legislature shall designate one of the three
274 highest projects on the inlet management project list in any
275 year as the Inlet of the Year. The department shall annually
276 report to the Legislature concerning the extent to which each
277 inlet project designated by the Legislature as Inlet of the Year
278 has succeeded in balancing the sediment budget of the inlet and
279 adjacent beaches, mitigating the inlet's erosive effects on
280 adjacent beaches, and transferring or otherwise placing beach-

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281 quality sand on adjacent eroding beaches.

282 (6) The department shall adopt rules under ss. 120.536(1)
283 and 120.54 to administer this section.

284 Section 3. This act shall take effect July 1, 2008.