

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 325 Coastal Management

**SPONSOR(S):** State Affairs Committee, LaMarca and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 446

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 0 N	Melkun	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	8 Y, 0 N	White	Pigott
3) State Affairs Committee	22 Y, 0 N, As CS	Melkun	Williamson

### SUMMARY ANALYSIS

Due to storm events, construction and maintenance of inlets, imprudent coastal developments, and other factors, 420.9 miles of Florida's beaches are critically eroded. The Beach Management Funding Assistance Program (program) within the Department of Environmental Protection (DEP) works with local sponsors to protect and restore the state's beaches through a comprehensive beach management planning program. Local sponsors submit annual funding requests to DEP for beach management and inlet management projects. DEP ranks the requests and provides a funding recommendation to the Legislature.

As it relates to beach management projects, the bill revises and provides more detail on the criteria DEP must consider when ranking beach management projects for funding consideration and requires DEP to implement a scoring system for annual project funding priorities that consists of criteria divided into four tiers. The bill assigns each tier a certain percentage of overall point value and requires that the criteria be equally weighted within each tier. The bill changes how DEP may utilize surplus funds and the procedures that must be followed.

For inlet management projects, the bill:

- Revises and updates the criteria DEP must consider when ranking inlet management projects for funding consideration, and requires DEP to weigh each criterion equally;
- Authorizes DEP to pay up to 75 percent of the construction costs of an initial major inlet management project component, and allows DEP to share the costs of the other components of inlet management projects equally with the local sponsor;
- Requires DEP to rank the inlet monitoring activities for inlet management projects as one overall subcategory request for funding separate from the beach management project funding requests; and
- Eliminates the requirement for the Legislature to designate one of the three highest ranked inlet management projects on the priority list as the Inlet of the Year.

The bill updates how DEP must develop and maintain a Comprehensive Long-Term Beach Management Plan that requires DEP to include, at a minimum, the following: a strategic beach management plan, critically eroded beaches report, and statewide long-range budget plan that includes a three-year work plan identifying beach nourishment and inlet management projects viable for implementation during the ensuing fiscal years.

The bill will have an insignificant negative fiscal impact on DEP.

The changes to the beach ranking criteria and the Comprehensive Long-Term Beach Management Plan criteria have an effective date of July 1, 2020. The other aspects of the bill have an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Beach Management**

###### Present Situation

###### *Beach Management Funding Assistance Program*

There are 825 miles of sandy shores lining Florida's coasts, fronting the Atlantic Ocean, Gulf of Mexico, and Straits of Florida. These beaches serve several important functions in maintaining the health of Florida's economy and environment. The coastal sandy beach system is home to hundreds of species of plants and animals that are dependent upon the beaches, dunes, and nearshore waters.<sup>1</sup> Beaches also serve as Florida's primary tourist attraction, generating millions of dollars for Florida's economy. The Office of Economic and Demographic Research (EDR) identified beaches as the most important feature of Florida and have the strongest effect in terms of attracting tourists.<sup>2</sup> Nourished beaches contribute to the expanding federal, state, and local tax bases; increase sales, income, and employment opportunities from resident and visitor spending; and enhance property values by protecting the developed shoreline from storm surges thereby preventing loss of upland property.<sup>3</sup> For every dollar spent by the state on beach restoration, \$5.40 of additional tax revenue was generated during the 2010-2011 through 2012-2013 fiscal years.<sup>4</sup>

Beaches are subject to both natural and manmade erosion. Sand naturally moves along the shore due to wind driven currents and tides, and storms can cause dramatic and immediate changes to the coastline. The majority of manmade erosion is caused by the creation and maintenance of inlets where the sand has historically been removed from the coastal system and the natural drift of sand along the shore is blocked by jetties, trapped in channels, or moved into ebb and flood shoals. The development and placement of infrastructure near the shore also contributes to coastal erosion by preventing the storage of sand in dunes and hardening the shore for protection of upland property.<sup>5</sup>

Due to storm events, construction and maintenance of inlets, imprudent coastal development, and other factors, 420.9 miles of Florida's beaches are critically eroded.<sup>6</sup> Recognizing the importance of the state's beaches and the problems presented by erosion, the Legislature declared a necessity to protect and restore the state's beaches through a comprehensive beach management planning program.<sup>7</sup> Under the planning program, the Department of Environmental Protection (DEP) evaluates beach

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<sup>1</sup> Department of Environmental Protection (DEP), *Beaches and Coastal Systems*, available at <https://floridadep.gov/water/beaches> (last visited Feb. 5, 2019).

<sup>2</sup> EDR, *Economic Evaluation of Florida's Investment in Beaches*, p. 9 (Jan. 2015), available at <http://edr.state.fl.us/Content/returnoninvestment/BeachReport.pdf> (last visited Feb. 5, 2019).

<sup>3</sup> DEP, *Strategic Beach Management Plan*, p. 1 (May 2018), available at [https://floridadep.gov/sites/default/files/SBMP-Introduction\\_0.pdf](https://floridadep.gov/sites/default/files/SBMP-Introduction_0.pdf) (last visited Feb. 5, 2019).

<sup>4</sup> EDR, *Economic Evaluation of Florida's Investment in Beaches*, p. 12 (Jan. 2015), available at <http://edr.state.fl.us/Content/returnoninvestment/BeachReport.pdf> (last visited Feb. 5, 2019).

<sup>5</sup> DEP, *Strategic Beach Management Plan*, p. 1 (May 2018), available at [https://floridadep.gov/sites/default/files/SBMP-Introduction\\_0.pdf](https://floridadep.gov/sites/default/files/SBMP-Introduction_0.pdf) (last visited Feb. 5, 2019).

<sup>6</sup> DEP, *Critically Eroded Beaches in Florida Report*, p. 5 (June 2018), available at <https://floridadep.gov/sites/default/files/CriticallyErodedBeaches.pdf> (last visited Feb. 5, 2019); A “critically eroded shoreline” is a segment of shoreline where natural processes or human activities have caused, or contributed to, erosion and recession of the beach and dune system to such a degree that upland development, recreational interests, wildlife habitat or important cultural resources are threatened or lost. Critically eroded shoreline may also include adjacent segments or gaps between identified critical erosion areas which, although they may be stable or slightly erosional now, their inclusion is necessary for continuity of management of the coastal system or for the design integrity of adjacent beach management projects; r. 62B-36.002(5), F.A.C.

<sup>7</sup> Sections 161.088 and 161.091, F.S.

erosion problems throughout the state seeking viable solutions.<sup>8</sup> The Beach Management Funding Assistance Program (program) serves as the primary vehicle to implement the beach management planning recommendations and works with local, state, and federal governmental entities to achieve the protection, preservation, and restoration of the coastal resources of the state.<sup>9</sup> The program provides cost-share to county and municipal governments, community development districts, or special taxing districts (collectively “local sponsors”) for shore protection and preservation activities to implement beach management and inlet management projects.<sup>10</sup> DEP annually evaluates and ranks beach management and inlet management project funding requests submitted by local sponsors and submits a recommendation to the Legislature for funding consideration.<sup>11</sup>

### *OPPAGA Report on Beach Management Funding*

In December 2014, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report evaluating DEP’s process for selecting and prioritizing local beach management and inlet management projects. The review considered the existing statutory criteria and related administrative rules and the funding request application process, information requirements, and timeline. Further, OPPAGA reviewed how DEP uses each ranking criteria for establishing the annual priority order for beach management and restoration projects.<sup>12</sup>

The report made several findings, including:

- Certain criteria accounts for the majority of the points awarded;
- Certain criteria only apply to a limited number of projects;
- The criteria do not adequately account for the economic impact of beach projects;
- The criteria do not adequately account for a project’s cost effectiveness or performance;
- The criteria do not account for the impacts of recent storms or current conditions of the shoreline;
- Stakeholders found the application requirements for funding to be too complicated and time consuming; and
- Stakeholders perceived a bias for projects that received federal funding.<sup>13</sup>

### *Beach Management Projects*

“Beach Management” is protecting, maintaining, preserving, or enhancing Florida’s beaches. Beach management activities include beach restoration<sup>14</sup> and nourishment<sup>15</sup> activities, dune protection and restoration, restoration of natural shoreline processes, removal of derelict structures and obstacles to natural shoreline process, and construction of erosion control structures (projects).<sup>16</sup> To receive funding, projects must be consistent with the adopted Strategic Beach Management Plan.<sup>17</sup> Funding for these projects comes from federal, state, and local government sources. DEP may provide financial assistance to local sponsors in an amount up to 75 percent of the project costs for projects located on critically eroded beaches fronting the Gulf of Mexico, Atlantic Ocean, or Straits of Florida.<sup>18</sup> However,

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<sup>8</sup> Section 161.101(2), F.S.

<sup>9</sup> DEP, *Beaches Funding Program*, available at <https://floridadep.gov/water/beaches-funding-program> (last visited Feb. 5, 2019).

<sup>10</sup> Rules 62B-36.001 and 62B-36.002(9), F.A.C.

<sup>11</sup> Sections 161.101 and 161.143, F.S.

<sup>12</sup> OPPAGA, *The Beach Management Funding Assistance Program Was Recently Improved, but Some Stakeholder Concerns Persist*, available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=14-12> (last visited Feb. 5, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> “Beach restoration” is the placement of sand on an eroded beach for the purposes of restoring it as a recreational beach and providing storm protection for upland properties; s. 161.021(4), F.S.

<sup>15</sup> “Beach nourishment” is the maintenance of a restored beach by the replacement of sand; s. 161.021(3), F.S.

<sup>16</sup> Rule 62B-36.002(3), F.A.C.

<sup>17</sup> Rule 62B-36.005(3), F.A.C.

<sup>18</sup> Sections 161.101(1) and 161.101(7), F.S.

until the unmet demand for repairing beaches and dunes is met, DEP may only provide cost-share up to 50 percent of the non-federal share.<sup>19</sup>

Projects must provide adequate public access, protect natural resources, and provide protection for endangered and threatened species.<sup>20</sup> Further, DEP may not fund projects that provide only recreational benefits. All funded activities must have an identifiable beach erosion control or beach preservation benefit directed toward maintaining or enhancing sand in the system.<sup>21</sup> Currently, local, state and federal entities manage approximately 227 miles of critically eroded beaches in Florida.<sup>22</sup>

Annually, local sponsors submit cost-share funding requests to DEP.<sup>23</sup> DEP must then evaluate and rank these requests based on the information submitted by the local sponsor.<sup>24</sup> DEP prioritizes the projects based on the following criteria:

- Severity of erosion conditions, the threat to existing upland development, and recreational or economic benefits;
- Availability of federal matching dollars;
- Extent of the local government sponsor financial and administrative commitment to the project;
- Previous state commitment and involvement in the project;
- Anticipated physical performance of the proposed project, including the frequency of periodic planned nourishment;
- Extent to which the proposed project mitigates the adverse impact of improved, modified, or altered inlets on adjacent beaches;
- Innovative, cost-effective, and environmentally sensitive applications to reduce erosion;
- Projects that provide enhanced habitat within or adjacent to designated refuges of nesting sea turtles;
- Extent to which local or regional sponsors of beach erosion control projects agree to coordinate the planning, design, and construction of their projects to take advantage of identifiable cost savings; and
- Degree to which the project addresses the state's most significant beach erosion problems.<sup>25</sup>

In the event that more than one project ranks equally, DEP must assign funding priority to those projects that are ready to proceed.<sup>26</sup> DEP adopted a point system for scoring projects based on the criteria in the statute. Each criterion can have more than one component. The following table illustrates how points are assigned.

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<sup>19</sup> Section 161.101(15), F.S.; rr. 62B-36.003(9) and 62B-36.007(1), F.A.C.; DEP may pay up to 100 percent of the costs of a project when the state is the upland riparian owner; s. 161.101(10), F.S.

<sup>20</sup> Section 161.101(12), F.S.

<sup>21</sup> Section 161.101(13), F.S.

<sup>22</sup> DEP, *Beaches Funding Program*, available at <https://floridadep.gov/water/beaches-funding-program> (last visited Feb. 5, 2019).

<sup>23</sup> Rule 62B-36.005(1), F.A.C.

<sup>24</sup> Rules 62B-36.005(3) and 62B-36.005(4), F.A.C.

<sup>25</sup> Section 161.101(14), F.S.

<sup>26</sup> *Id.*

Beach Management Ranking Points <sup>27</sup>		
Statutory Criteria	Number of Component Criteria	Available Points
Significance	6	20
Local Sponsor Financial and Administrative Commitment	6	10
Previous State Commitment	4	10
Availability of Federal Funds	3	10
Recreational and Economic Benefit	1	10
Severity of Erosion	1	10
Mitigation of Inlet Effects	1	10
Threat to Upland Structures	1	10
Project Performance	2	10
Innovative Technologies	2	5
Regionalization	1	5
Enhance Refuges of Nesting Sea Turtles	1	5

Once DEP creates a ranking list, the local sponsors have 21 days to review the list and provide clarification to support additional points.<sup>28</sup> Then, DEP considers the requests, finalizes a ranking, and submits a recommendation to the Legislature for funding consideration.<sup>29</sup> As part of the annual legislative budget request, DEP must prepare a summary of specific project activities for the current fiscal year, funding status, and changes to annual project lists.<sup>30</sup>

DEP must maintain active project listings on the website by fiscal year in order to provide transparency regarding projects receiving funding and to facilitate legislative reporting and oversight. DEP must notify the Governor and the Legislature if the funding levels of a given project significantly change from what the local sponsor initially requested in DEP's budget submission and subsequently included in approved annual funding allocations. The term "significant change" means changes exceeding 25 percent of a project's original allocation.<sup>31</sup> If there is surplus funding, DEP must notify the Governor and the Legislature to indicate whether the intention is to use the additional dollars for inlet management projects, reversion as part of the next appropriations process, or for other specified priority projects on active project lists.<sup>32</sup>

A local sponsor may at any time release, in whole or in part, appropriated project dollars by formal notification to DEP. DEP must then notify the Governor and the Legislature and indicate how the project dollars will be used.<sup>33</sup>

#### Effect of the Proposed Changes

The bill amends s. 161.101(14), F.S., to revise and clarify the criteria DEP must consider when ranking beach management projects for funding consideration. The bill requires DEP to implement a scoring system for annual project funding priorities that consists of criteria divided into a four-tier scoring system, assigns each tier a certain percentage of overall point value, and requires that the criteria be equally weighted within each tier.

<sup>27</sup> Rule 62B-36.006(1), F.A.C.; *see also*, ss. 161.101(1) – (6), F.S.

<sup>28</sup> Rule 62B-36.005(4), F.A.C.

<sup>29</sup> Section 161.161(2), F.S.

<sup>30</sup> Section 161.101(20)(b), F.S.

<sup>31</sup> Section 161.101(20)(a), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 161.101(20)(c), F.S.

Tier one addresses tourism-related return on investment and the economic impact of beach management projects and must account for 20 percent of the total score. DEP must weigh the following criteria equally in tier one:

- Return on investment by applying the ratio of the tourism-related tax revenues for the most recent year to the amount of state funding requested for the proposed project; and
- Economic impact of the project by applying the ratio of the tourism-related tax revenues for the most recent year to all county tax revenues for the most recent year.<sup>34</sup>

DEP must calculate the ratios in tier one by using state sales tax and tourism development tax data of the county with jurisdiction over the project area. If the proposed beach management project covers two jurisdictions, DEP must assess each county individually then calculate the average.

Tier two accounts for 45 percent of the total score, and requires DEP to weigh the following criteria equally:

- Availability of federal matching dollars considering federal authorization, the federal cost-share percentage, and the status of the funding award;<sup>35</sup>
- The storm damage reduction benefit of the beach management project based on following considerations:
  - The current condition of the project area, including any recent storm damage impact, as a percentage of volume of sand lost since the most recent beach nourishment event or most recent beach surveys. DEP must use the historical background erosion rate if the project has not been previously restored;<sup>36</sup>
  - The overall potential threat to existing upland development, including public and private infrastructure, based on a percentage of vulnerable structures within the project boundaries;<sup>37</sup> and
  - The value of upland property benefiting from the protection provided by the project and subsequent maintenance. DEP must only consider property within one quarter of a mile from the project boundaries when creating this score;
- The cost-effectiveness of the proposed beach management project based on yearly cost per volume per mile of proposed beach fill placement.<sup>38</sup> When assessing cost effectiveness, DEP must also consider:
  - Existence of projects with proposed structural or design components that extend the beach nourishment interval;<sup>39</sup>
  - Existence of beach nourishment projects that reduce upland damage cost by incorporating new or enhanced dune structures or new or existing dune restoration and revegetation projects;<sup>40</sup>
  - Proposed innovative technologies designed to reduce project costs;<sup>41</sup> and
  - Regional sediment management strategies and coordination to conserve sand source resources and reduce project costs.<sup>42</sup>

<sup>34</sup> This is similar to existing criteria in s. 161.101(14)(a), F.S., and r. 62B-36.006(1)(c), F.A.C.

<sup>35</sup> This is similar to existing criteria in s. 161.101(14)(b), F.S., and r. 62B-36.006(1)(d), F.A.C.

<sup>36</sup> This is similar to existing criteria in s. 161.101(14)(a), F.S., and r. 62B-36.006(1)(a), F.A.C.; These criteria will measure the volume of sand lost from the last beach nourishment or most recent beach survey and not the last beach restoration, define beach restoration as the placement of sand on an eroded beach, define beach nourishment as the maintenance of a restored beach, and will prevent DEP from using data on the sand lost from the initial placement of sand on an eroding beach unless a recent beach survey has been performed.

<sup>37</sup> This is similar to existing criteria in s. 161.101(14)(a), F.S., and r. 62B-36.006(1)(b), F.A.C.

<sup>38</sup> This is similar to existing criteria in s. 161.101(14)(g), F.S., and r. 62B-36.006(1)(g), F.A.C.

<sup>39</sup> This is similar to existing criteria in s. 161.101(14)(e), F.S., and r. 62B-36.006(1)(g), F.A.C.

<sup>40</sup> This is similar to existing criteria in s. 161.101(14)(e), F.S., and r. 62B-36.006(1)(g), F.A.C. This revised criterion will only consider beach nourishment projects incorporating new or enhanced dune structures or new or existing dune restoration and revegetation projects and will not consider beach restoration projects that incorporate such dune structures; thus, only applying to projects that have already accomplished one maintenance event.

<sup>41</sup> This is similar to existing criteria in s. 161.101(14)(g), F.S., and r. 62B-36.006(1)(i), F.A.C.

<sup>42</sup> This is similar to existing criteria in s. 161.101(14)(i), F.S., and r. 62B-36.006(1)(k), F.A.C.

Tier three accounts for 20 percent of the total score and requires DEP to weigh the following criteria equally:

- Previous state commitment, considering previously funded phases, the total amount of previous state funding, and previous partial appropriations for the proposed project;<sup>43</sup>
- Recreational benefit of the beach management project based on:
  - Accessibility of the beach area added to the project, which is a new criteria; and
  - Percentage of linear footage within the project boundaries that is zoned as recreational or open space, for commercial use, and to otherwise allow public lodging establishments;<sup>44</sup>
- Extent that the beach management project mitigates adverse impacts of improved, modified, or altered inlets on adjacent beach;<sup>45</sup> and
- Degree that the beach management project addresses most significant beach erosion problems based on the ratio of the linear footage of the project shoreline to the cubic yards of sand placed per mile per year.<sup>46</sup>

Tier four accounts for 15 percent of the total score and requires DEP to weigh the following criteria equally:

- Increased prioritization for projects continually ranked on a DEP project list for successive years that have not previously secured state funding for project implementation;
- Environmental habitat enhancement, recognizing state or federal critical habitat areas for threatened or endangered species that may be subject to extensive shoreline armoring or recognizing areas where extensive shoreline armoring threatens the availability or quality of habitat for such species. The bill allows DEP to consider turtle-friendly designs, dune and vegetation projects for areas with redesigned or reduced fill templates, proposed incorporation of best management practices and adaptive management strategies to protect resources, and innovative technologies designed to benefit critical habitat preservation;<sup>47</sup> and
- The overall readiness of the beach management project to proceed.<sup>48</sup> The bill requires DEP to consider the readiness of beach management projects, including readiness for the construction phase of development, the status of required permits, the status of any needed easement acquisition, the availability of local funding sources, and the establishment of an erosion control line.<sup>49</sup>

If DEP identifies specific reasonable and documented concerns that the project will not proceed in a timely manner, DEP may choose not to include the project in the annual funding priorities submitted to the Legislature.<sup>50</sup>

The bill removes s. 161.101(14)(c), F.S., to eliminate the requirement that DEP assign points for the financial and administrative commitment to the project by the local sponsor, including a long-term financial plan with a designated funding source or sources for initial construction and periodic maintenance. Currently, local sponsors may receive up to 10 points for this criterion.<sup>51</sup>

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<sup>43</sup> This is similar to existing criteria in s. 161.101(14)(d), F.S., and r. 62B-36.006(1)(f), F.A.C.

<sup>44</sup> This is similar to existing criteria in s. 161.101(14)(a), F.S., and r. 62B-36.006(1)(c), F.A.C.

<sup>45</sup> This is similar to existing criteria in s. 161.101(14)(f), F.S., and r. 62B-36.006(1)(h), F.A.C.

<sup>46</sup> This is similar to existing criteria in s. 161.101(14)(j), F.S., and r. 62B-36.006(1)(l)6., F.A.C.

<sup>47</sup> These criteria are similar to existing criteria in s. 161.101(14)(h), F.S., and r. 62B-36.006(1)(j), F.A.C.; however, it will likely apply to more beach management projects.

<sup>48</sup> This is similar to the existing tie breaking criteria in s. 161.101(14), F.S., and r. 62B-36.006(1)(m), F.A.C.

<sup>49</sup> An “erosion control line” is the line determined in accordance with the procedures in ch. 161, F.S., that represents the landward extent of the claims of the state in its capacity as sovereign titleholder of the submerged bottoms and shores of the Atlantic Ocean, the Gulf of Mexico, and the bays, lagoons and other tidal reaches thereof on the date of the recording of the survey; s. 161.151(3), F.S.

<sup>50</sup> This is similar to the procedures in s. 161.143(5)(c), F.S.; however, this new procedure prevents projects from receiving funds in the first place, rather than requiring the local sponsor to return the funds if a project is not ready to proceed.

<sup>51</sup> Rule 62B-36.006(1)(e), F.A.C.

The bill amends s. 161.101(14), F.S., to change the tiebreaking criteria if two beach management projects receive the same score by requiring DEP to assign the highest priority to the beach management projects shown most ready to proceed, rather than the projects that are ready to proceed.

The bill amends s. 161.101(20), F.S., to require DEP to quarterly update the active beach management project list on its website.

The bill amends s. 161.101(20)(a), F.S., to change the definition of “significant change” to include a project-specific change or cumulative changes that exceed the project's original allocation by \$500,000. When a funding level for a project significantly changes from the amount the local sponsor requested and was approved in the funding allocation, DEP must notify the Governor and the Legislature how the surplus funds will be used.

The bill creates s. 161.101(20)(a)1., F.S., to change how DEP utilizes surplus funds. If there is available surplus funding from a significant change, DEP must provide supporting justification to the Governor and the Legislature to indicate how the surplus dollars will be used. The bill allows surplus dollars to be used on beach restoration and beach nourishment projects. Currently, DEP may only use surplus funds for inlet management projects approved by the Legislature, offered for reversion as part of the next appropriations process, or used for other specified priority projects on active project lists.

The bill creates s. 161.101(20)(a)2., F.S., to authorize DEP to use surplus funds from projects that do not have a significant change for inlet management projects, beach restoration and beach nourishment projects, reversion as part of the next appropriations process, or other specified priority projects on active project lists. The bill requires DEP to post the use of surplus funds from a project that did not significantly change on the website. However, the bill does not require DEP to provide notice and supporting justification to the Governor and Legislature before using the surplus funds, as was previously required.

The bill amends s. 161.101(20)(c), F.S., to require funding for specific projects on annual project lists approved by the Legislature to remain available for such projects for 18 months. This provision was moved from s. 161.143(5)(c), F.S.

The changes to s. 161.101(14), F.S., related to the beach ranking criteria have an effective date of July 1, 2020. The changes to s. 161.101(20), F.S., related to surplus funds have an effective date of July 1, 2019.

## **Inlet Management Projects**

### Present Situation

Inlets interrupt or alter the natural littoral drift of sand resources. This often results in sand resources depositing 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 declared it is in the public interest to replicate the natural drift of sand interrupted or altered by inlets. Such projects should 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 by the local sponsor less frequently.<sup>52</sup>

“Inlet Management” is comprised of actions taken to minimize, eliminate, or mitigate the effects of the inlet on the adjacent shorelines, including feasibility, engineering, design, environmental studies, construction, and post-construction monitoring to support such activities.<sup>53</sup> Inlet management projects

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<sup>52</sup> Section 161.142, F.S.

<sup>53</sup> Rule 62B-36.002(8), F.A.C.

include, but are not limited to, inlet sand bypassing,<sup>54</sup> modifications to channel dredging, jetty redesign, jetty repair, disposal of spoil material, and the development, revision, adoption, or implementation of an inlet management plan.<sup>55</sup>

Funding for these projects comes from federal, state, and local government sources. DEP may use legislative appropriations to pay for 75 percent of the non-federal cost-share of inlet management projects, and local sponsors must pay the balance of such costs.<sup>56</sup> Further, DEP may employ university-based or other contractual sources and pay 100 percent of the costs of studies that are consistent with the state's inlet policies and determine, calculate, refine, and achieve general consensus regarding net annual sediment transport volumes to be used for the purpose of planning and prioritizing inlet management projects; and appropriate, assign, and apportion responsibilities between inlet beneficiaries for the erosion caused by a particular inlet on adjacent beaches.

Local sponsors submit annual funding requests for inlet management projects to DEP<sup>57</sup> for evaluation and ranking based on the information received before DEP submits a funding recommendation to the Legislature.<sup>58</sup> DEP prioritizes the projects based on the following criteria:

- Estimate of the annual quantity of beach-quality sand reaching the updrift boundary of the improved jetty or inlet channel;
- Severity of the erosion to the adjacent beaches caused by the inlet and the extent that the proposed project mitigates the erosive effects of the inlet;
- Overall significance and anticipated success of the proposed project in balancing the sediment budget of the inlet and adjacent beaches and addressing the sand deficit along the inlet-affected shorelines;
- Extent to which existing bypassing activities at an inlet would benefit from modest, cost-effective improvements when considering the volumetric increases from the proposed project, the availability of beach-quality sand currently not bypassed to adjacent eroding beaches, and the ease with which such beach-quality sand may be obtained;
- Interest and commitment of local governments as demonstrated by their willingness to coordinate the planning, design, construction, and maintenance of an inlet management project and their financial plan for funding the local cost-share for initial construction, ongoing sand bypassing, channel dredging, and maintenance;
- Previous completion or approval of a state-sponsored inlet management plan or local-government-sponsored inlet study concerning the inlet addressed by the proposed project, the ease of updating and revising any such plan or study, and the adequacy and specificity of the recommendations of the plan or study concerning the mitigation of an inlet's erosive effects on adjacent beaches;
- Degree to which the proposed project will enhance the performance and longevity of proximate beach nourishment projects, thereby reducing the frequency of such periodic nourishment projects; and
- Beach management project-ranking criteria, described above, to the extent such criteria are applicable to inlet management studies, projects, and activities.<sup>59</sup>

DEP adopted by rule a point system for scoring projects based on criteria in statute. Each criterion can have more than one component. The table below illustrates how points are assigned.

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<sup>54</sup> “Sand bypassing” is the artificial transport of littoral drift across tidal entrances to help prevent accretion, on the updrift side, control downdrift erosion, and maintain navigation channels; Coastal Wiki, *Sand by-pass system*, available at [http://www.coastalwiki.org/wiki/Sand\\_by-pass\\_system](http://www.coastalwiki.org/wiki/Sand_by-pass_system) (last visited Feb. 5, 2019).

<sup>55</sup> Section 161.143(2), F.S.

<sup>56</sup> Section 161.143(3), F.S.

<sup>57</sup> Rule 62B-36.005(1), F.A.C.

<sup>58</sup> Rules 62B-36.005(3) and 62B-36.005(4), F.A.C.

<sup>59</sup> Section 161.143(2), F.S.

Inlet Management Ranking Points <sup>60</sup>		
Statutory Criteria	Number of Component Criteria	Available Points
Balancing the Sand Budget	1	20
Inlet Management Plan	3	15
Estimated annual quantity of beach-quality sand reaching the updrift boundary of the improved jetty or inlet channel	1	10
Cost Effective Alternatives	1	10
Local Sponsor Financial and Administrative Commitment	6	10
Previous State Commitment	4	10
Availability of Federal Funds	3	10
Enhanced Project Performance	1	5

Once DEP creates a ranking list, the local sponsors have 21 days to review the rankings and provide clarification to support additional points.<sup>61</sup> Then, DEP considers the requests, finalizes the ranking, and submits a recommendation to the Legislature for consideration of funding in priority order. The funding recommendation list must include studies, projects, or other activities that address the management of at least 10 separate inlets.<sup>62</sup>

DEP must make available at least 10 percent of the total amount of the statewide beach management appropriation each fiscal year for the three highest-ranked projects on the current year's inlet management project list.<sup>63</sup> DEP must also make available 50 percent of the funds appropriated for the feasibility and design category in DEP's fixed capital outlay funding request for projects which involve the study for, or design or development of, an inlet management project that appear on the current year inlet management project list.<sup>64</sup>

DEP must make available all statewide beach management funds that are unencumbered or 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. If a project will not be ready to proceed during this 18-month period, based on an assessment and a determination by DEP, then the department must use the funds for inlet management projects on the legislatively approved lists.<sup>65</sup>

When approving the beach management project funding list, the Legislature must designate one of the three highest projects on the inlet management project list provided by DEP each year as the Inlet of the Year. DEP must annually report to the Legislature the extent to which each Inlet of the Year project 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.<sup>66</sup>

### Effect of the Proposed Changes

The bill changes the procedure and criteria for funding inlet management projects. The bill amends 161.143(2), F.S., to require that inlet management projects funded by DEP constitute the intended scope of the state's public policy relating to improved navigation inlets found in s. 161.142, F.S., and the planning, prioritizing, funding, approving, and implementation of inlet management projects found in

<sup>60</sup> Rule 62B-36.006(2), F.A.C.

<sup>61</sup> Rule 62B-36.005(4), F.A.C.

<sup>62</sup> Section 161.143(5), F.S.

<sup>63</sup> Section 161.143(5)(a), F.S.

<sup>64</sup> Section 161.143(5)(b), F.S.

<sup>65</sup> Section 161.143(5)(c), F.S.

<sup>66</sup> Section 161.143(5)(d), F.S.

s. 161.143, F.S. The bill also expands the inlet management projects DEP may fund by including improvement of infrastructure to facilitate sand bypassing. DEP must consider inlet management projects separate and apart from beach management projects when creating the annual funding priorities.

The bill amends s. 161.143(2), F.S., to revise and update the criteria DEP must consider when ranking inlet management projects for funding consideration and require DEP to weigh each criterion equally. Specifically, the bill:

- Moves the requirement that DEP consider the extent that the proposed project mitigates the erosion effects of the inlet from the severity of erosion criteria in s. 161.143(2)(b), F.S., to the significance of the project in s. 161.143(2)(c), F.S.;
- Removes “existing” from consideration of the extent that bypassing activities at the inlet would benefit from modest, cost-effective improvements when considering the volumetric increases from the proposed project, the availability of beach-quality sand currently not bypassed to adjacent eroding beaches, and the ease to obtain such beach-quality sand. This change will allow local sponsors who currently do not perform sand bypassing at their inlet, but wish to start, to receive points;
- Adds cost-effectiveness of sand made available by a proposed inlet management project or activity relative to other sand source opportunities that would be used to address inlet-caused beach erosion to the criteria DEP must consider;
- Eliminates the requirement that DEP assign points for the local sponsor’s interest and commitment as demonstrated by their willingness to coordinate the planning, design, construction, and maintenance of an inlet management project and their financial plan for funding the local cost-share for initial construction, ongoing sand bypassing, channel dredging, and maintenance;
- Adds the existence of proposed or recently updated inlet management plan or local government sponsored inlet study addressing the mitigation of an inlet’s erosive effects on adjacent beaches to the criteria DEP must consider;
- Eliminates the requirement that DEP assign points for the previous completion or approval of a state-sponsored inlet management plan or study, the ease of updating and revising the inlet management plan or study, and the adequacy and specificity of the recommendations in the plan or study concerning the mitigation of an inlet’s erosive effects on adjacent beaches; and
- Clarifies that DEP may use the same criteria used for ranking beach management projects for inlet management projects if the criteria are distinct from and not duplicative of inlet management project ranking criteria.

The bill amends s. 161.143(3), F.S., to authorize DEP to pay from legislative appropriations up to 75 percent of the construction costs of an initial major inlet management project component for the purpose of mitigating the erosive effects of the inlet to the shoreline and balancing the sediment budget. The local sponsor must pay the remaining balance of the costs for the initial major inlet management project components. DEP and the local sponsor must share equally all other costs associated with an inlet management project.

The bill removes s. 161.143(4), F.S., to eliminate the authority to use an appropriation from the fixed capital outlay funding request to pay 100 percent of the costs for studies that are consistent with the state’s inlet management policy.

The bill amends s. 161.143(4), F.S., to remove the requirement that DEP include in the funding priorities studies, projects, or other activities that address the management of at least 10 separate inlets. The bill also removes the requirement that DEP make available at least 10 percent of the funding appropriated by the Legislature for beach management for the three highest ranked inlet management projects on the current year project list. Instead, the bill requires DEP to designate for inlet management projects on the current year project list, in priority order, an amount that is at least equal to the greater of 10 percent of the funding appropriated by the Legislature for the fiscal year for statewide beach management or the percentage of inlet management funding requests from local

sponsors as a proportion of the total amount of statewide beach management dollars requested in a given year.

The bill amends s. 161.143(5), F.S., to require DEP to rank inlet monitoring activities for inlet management projects as one overall subcategory request for funding separate from the beach management project funding requests. The bill removes the requirement for DEP to make 50 percent of funds appropriated available from the feasibility and design category for DEP's fixed capital outlay for projects on current year inlet management projects list for, or design or development of, an inlet management project.

The bill removes s. 161.143(5)(c), F.S., to eliminate the requirement that DEP make all statewide beach management funds remaining unencumbered or allocated to non-project-specific activities for projects on legislatively approved inlet management project lists. The bill also moves the requirement that funds for local sponsors' specific projects on annual projects lists approved by the Legislature to remain available for 18 months from s. 161.143(5)(c), F.S., to s. 161.101(20)(c), F.S. The bill eliminates DEP's ability to use funds on inlet management projects from other projects that received appropriations that were determined not ready to proceed. The bill replaces this power by granting DEP the ability to not include projects on the priority list that DEP determines are not ready to proceed by amending s. 161.101(14), F.S.

The bill removes s. 161.143(5)(d), F.S., to eliminate the requirement for the Legislature to designate one of the three highest ranked inlet management projects on the priority list as the Inlet of the Year. DEP will no longer be required to provide reports to the Legislature on the Inlets of the Year. The bill amends s. 161.143(5), F.S., to require DEP to update and maintain an annual report on the website on each inlet project and how the project has succeeded in balancing the sediment budget and mitigated erosive effects of the inlet. The report must provide an estimate of the quantity of sediment bypassed, transferred, or otherwise placed on adjacent eroding beaches, or in such nearshore areas of beaches, for offsetting the erosive effects of inlets on the beaches of this state. This change allows DEP to report on sand bypassed, transferred, or otherwise placed in the nearshore, not just on the adjacent beach.

These changes will require DEP to amend chapter 62B-36, F.A.C.

The changes to s. 161.143, F.S., related to inlet management projects have an effective date of July 1, 2020.

## **Strategic Beach Management Plan**

### Present Situation

The Strategic Beach Management Plan (SBMP) provides an inventory of Florida's strategic beach management areas fronting on the Atlantic Ocean, Gulf of Mexico, Straits of Florida and an inventory of Florida's 66 coastal barrier tidal inlets.<sup>67</sup> Beach management and inlet management projects proposed by local sponsors must be consistent with the SBMP to receive funding.<sup>68</sup> The SBMP must:

- Address long-term solutions to the problem of critically eroded beaches in this state;
- Evaluate each improved, modified, or altered inlet and determine whether the inlet is a significant cause of beach erosion;
- Design criteria for beach restoration and beach nourishment projects;
- Evaluate the establishment of feeder beaches as an alternative to direct beach restoration and recommend the location of such feeder beaches and the source of beach-compatible sand;
- Identify causes of shoreline erosion and change, calculate erosion rates, and project long-term erosion for all major beach and dune systems by surveys and profiles;

<sup>67</sup> DEP, *Strategic Beach Management Plan* (May 2018), available at [https://floridadep.gov/sites/default/files/SBMP-Introduction\\_0.pdf](https://floridadep.gov/sites/default/files/SBMP-Introduction_0.pdf) (last visited Feb. 5, 2019).

<sup>68</sup> *Id.*; r. 62B-36.005(3), F.A.C.

- Identify shoreline development and degree of density and assess impacts of development and shoreline protective structures on shoreline change and erosion;
- Identify short-term and long-term economic costs and benefits of beaches;
- Study dune and vegetation conditions;
- Identify beach areas used by marine turtles and develop strategies for protection of the turtles and their nests and nesting locations;
- Identify alternative management responses;
- Establish criteria for alternative management techniques;
- Select and recommend appropriate management measures for all of the state's sandy beaches in a beach management program; and
- Establish a list of beach restoration and beach nourishment projects, arranged in order of priority, and the funding levels needed for such projects.<sup>69</sup>

DEP may prepare the SBMP at the regional level based upon areas of greatest need and probable federal funding. The regional plans must be components of the SBMP and must serve as the basis for state funding decisions once approved by the secretary of DEP and the Board of Trustees of the Internal Improvement Trust Fund. DEP staff must submit any completed regional plan to the secretary of DEP for approval no later than March 1 of each year. These regional plans must include, but are not limited to, recommendations of appropriate funding mechanisms for implementing projects in the SBMP. DEP must hold public meetings in the areas affected by the proposed regional plans prior to presenting the plan to the secretary of DEP for approval.

#### Effect of the Proposed Changes

The bill amends s. 161.161(1), F.S., to update how DEP must develop a comprehensive beach management planning program and maintain the Comprehensive Long-Term Beach Management Plan. Specifically, the bill:

- Requires DEP to include improvement of infrastructure to facilitate sand bypassing in the recommendations on how to mitigate each inlet's erosive impacts;
- Eliminates the requirement for DEP to include cost estimates necessary to take inlet corrective measures and recommendations for cost-share among the beneficiaries of such inlets;
- Requires DEP to evaluate, rather than design, criteria for beach restoration and beach nourishment;
- Adds that DEP must consider the establishment of regional sediment management alternatives for one or more individual beach and inlet sand bypassing projects as an alternative to beach restoration and requires DEP to recommend locations of such regional sediment management alternatives;
- Eliminates the requirement for DEP to consider the establishment of feeder beaches;
- Requires DEP to maintain an updated list of critically eroded sandy beaches based on data, analyses, and investigations of shoreline conditions,<sup>70</sup>
- Removes the requirement for DEP to project long-term erosion for all major beach and dune systems by surveys and profiles and identify shoreline development and degree of density;
- Adds that DEP must assess the impact of coastal protection structures on shoreline change and erosion;
- Requires DEP to identify short-term and long-term economic costs and benefits of beaches to the state and individual beach communities;
- Eliminates the requirement to include recreational value to user groups, tax base, revenues generated, and beach acquisition and maintenance costs in the evaluation by DEP;

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<sup>69</sup> Section 161.161(1), F.S.

<sup>70</sup> DEP. *Critical Erosion Report*, available at <https://floridadep.gov/water/engineering-hydrology-geology/documents/critically-eroded-beaches-florida> (last visited Feb. 14, 2019).

- Requires DEP to identify existing beach projects without dune features or with dunes without adequate elevations, and encourage dune restoration and revegetation to be incorporated as part of storm damage recovery projects or future dune maintenance events;
- Removes the requirement for DEP to identify alternative management responses to prevent inappropriate development and redevelopment on migrating beaches;
- Eliminates the requirement for DEP to consider abandonment of development as an alternative management response, but continues to require DEP to consider relocation of development;
- Requires DEP to include document procedures and policies for preparing post-storm damage assessments and corresponding recovery plans, including repair cost estimates in the Comprehensive Long-Term Beach Management Plan;
- Removes the requirement for DEP to include costs and specific implementation actions for alternative management techniques;
- Eliminates the requirement for DEP to select and assess appropriate management measures for all of the state's sandy beaches in the beach management program and requires DEP to identify and assess appropriate management measures for all of the critically eroded beaches; and
- Removes the requirement for DEP to establish a list of beach restoration and beach nourishment projects in priority order for funding because the requirement already exists in s. 161.101(14), F.S.

The bill creates s. 161.161(2), F.S., to require DEP's Comprehensive Long-Term Beach Management Plan to include, at a minimum, a SBMP, critically eroded beaches report, and statewide long-range budget plan.

The SBMP must identify and recommend appropriate measures for all of the state's critically eroded sandy beaches and may incorporate plans prepared at the regional level taking into account areas of greatest need and probable federal and local funding. The bill adds local funding to the evaluation by DEP. The bill removes what must be included in the regional plans. This criterion is similar to what DEP considers in the statewide plan. The bill removes the requirement for DEP to present the plan to the secretary of DEP by March 1 of each year. DEP must still hold public meetings before finalizing such regional plans. The bill also authorizes DEP to host publically noticed webinars in lieu of holding public meetings. The state may use the SBMP, along with the three-year work plan, as a basis for funding decisions once DEP finalizes the SBMP.

DEP must base the critically eroded beaches report on data, analyses, and investigations of shoreline conditions.

The statewide long-range budget plan must include at least five years of planned beach restoration, beach nourishment, and inlet management projects funding needs as identified, and subsequently refined, by local sponsors. The statewide long-range budget plan must include:

- A three-year work plan that identifies beach restoration, beach nourishment, and inlet management projects viable for implementation during the next ensuing fiscal years, as determined by available cost-share, local sponsor support, regulatory considerations, and the ability of the project to proceed as scheduled. For each fiscal year, DEP must identify proposed projects and their development status, listing them in priority order based on the applicable criteria for beach and inlet management projects for inclusion in the three-year work plan. DEP may modify specific funding requests and criteria ranking as warranted in each successive fiscal year. DEP must document and submit such modifications to the Legislature with each three-year work plan. Year one projects must consist of those projects identified for funding consideration in the ensuing fiscal year; and
- A long-range plan that identifies projects for inclusion in the fourth and fifth ensuing fiscal years. DEP may present these projects by region. DEP does not need to present these projects in priority order. However, DEP must identify issues that may prevent successful completion of such projects and recommend solutions that would allow the projects to progress into the three-year work plan.

Lastly, the bill adds s. 161.161(3), F.S., to require the secretary of DEP to annually present the three-year work plan to the Legislature that includes a three-year financial forecast for the availability of funding for projects.

The changes to s. 161.161, F.S., related to the Comprehensive Long-Term Beach Management Plan have an effective date of July 1, 2020.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 161.101, F.S., relating to state and local participation in authorized projects and studies for beach management and erosion control.

**Section 2.** Amends s. 161.143, F.S., relating to inlet management, planning, prioritization, funding, approval, and implementation of projects.

**Section 3.** Amends s. 161.161, F.S., relating to the procedure for approval of projects.

**Section 4.** Provides an effective date of July 1, 2019, except as otherwise provided in the act.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The bill will have an insignificant negative fiscal impact on DEP because the department will need to revise rules to comply with the statutory changes in the bill. Further, DEP must comply with additional reporting requirements and the creation of a five-year work plan. The rulemaking and workload requirements of the bill can be handled within existing resources since those sections of the bill are not effective until July 1, 2020.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

Current law authorizes DEP to adopt rules to implement s. 161.101, F.S. As such, no additional rulemaking authority is necessary.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 14, 2019, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed unnecessary language directing DEP to adopt rules.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.