

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HM 1411 Shore Protection

**SPONSOR(S):** Agriculture, Conservation & Resiliency Subcommittee, Cross, Berfield and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee	17 Y, 0 N, As CS	Mamontoff	Moore
2) Infrastructure Strategies Committee	24 Y, 0 N	Mamontoff	Harrington

### SUMMARY ANALYSIS

The 825 miles of sandy coastline fronting the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida are one of Florida's most valuable natural resources. They are also a primary attraction for almost 19 million tourists each year, making them an integral part of the state's economy. Beaches also provide a barrier against storms by absorbing wave energy, thereby greatly reducing damage to upland structures. Unfortunately, erosion is a constant threat to this valuable resource, and beaches must be restored through the placement of additional sand on the beach.

The United States Army Corps of Engineers (USACE), through its Shore Protection Program, works directly with local governments to construct beach restoration projects for the primary purposes of controlling beach erosions, protecting shorelines, and protecting infrastructure. USACE's Jacksonville District is the entity responsible for constructing and maintaining 1,300 miles of Florida's 1,800 miles of coastline.

Securing easements for construction projects is a common practice for capital improvement projects. If a project crosses private property and public funds are used, an easement that allows for the construction, maintenance, and replacement is required. Due to recent shifts in USACE policy on the type of easements required to proceed with beach nourishment projects, several such projects in the state are on hold until perpetual public access, use, and construction easements from 100 percent of property owners within a project area are obtained.

Legislative memorials are not subject to the Governor's veto powers and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

The memorial urges the U.S. Congress to take immediate action to direct USACE to amend its current easement policy for shore protection projects to allow critical shore protection projects in Florida to proceed without delay.

The memorial does not have a fiscal impact on the state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida's Beaches

The 825 miles of sandy coastline fronting the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida are one of Florida's most valuable natural resources.<sup>1</sup> Wide beaches provide foraging and nesting habitat for shorebirds, and sea turtles use the beaches during summer months to come ashore to nest.<sup>2</sup> In all, there are more than 30 plants and animals considered rare within the state that inhabit beaches and the adjacent habitats.<sup>3</sup>

Florida's beaches are also a primary attraction for almost 19 million tourists each year. Tourists and residents alike flock to the beaches for relaxation, boating, fishing, diving, and other innumerable recreational activities. These factors make Florida's beaches an integral part of the state's economy.<sup>4</sup>

Beaches also provide a barrier against storms. The beach and dune system act as a buffer between storm waves and coastal development or infrastructure. During storms, waves reach the beach and dunes before they get to upland property. A beach and dune system absorb the wave energy, thereby greatly reducing damage to upland structures.<sup>5</sup>

Unfortunately, erosion is a constant threat to this valuable resource. Beach erosion is caused by coastal storms, imprudent constructions, sea level rise, and coastal inlets that interrupt sand movement. Only nourishment, the placement of additional sand on the beach seaward of the mean high tide line, makes it possible to reset the erosion clock and push back the tide.<sup>6</sup>

##### Federal Shore Protection Program

In the late 1960s, the passage of the Water Resources Development Act (WRDA) authorized the United States Army Corps of Engineers (USACE) to conduct studies, construct projects, and research activities that will improve the rivers and harbors of the U.S. As a result, USACE became the leading environmental preservation and restoration agency to carry out natural and cultural resource management programs through its water resources projects.<sup>7</sup>

The Shore Protection Program works directly with local governments to construct beach restoration projects for the primary purpose of protecting upland developed properties.<sup>8</sup> In Shore Protection Projects (SPPs), USACE performs nourishment to control beach erosion, protect the shoreline, and protect infrastructure. After detailed feasibility studies are conducted, projects are individually authorized by Congress for construction and long-term maintenance. Authorized projects usually have an authorization period of fifty years, during which time periodic beach nourishment is conducted to maintain the designed storm protection values. Under the program, the federal

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<sup>1</sup> Florida Department of Environmental Protection (DEP), *Beaches*, <https://floridadep.gov/rcp/beaches> (last visited Jan. 20, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Flournoy, Ankerson, Alvaregna, *Recreational Rights to the Dry Sand Beach in Florida: Property, Custom, and Controversy*, 25 *Ocean & Coastal Law Journal*, Jan. 2020.

<sup>7</sup> U.S. Army Corp of Engineers, *The U.S. Army Corps of Engineers: A Brief History*, <https://www.usace.army.mil/About/History/Brief-History-of-the-Corps/Introduction/> (last visited Jan.19, 2024).

<sup>8</sup> DEP, Office of Resilience and Coastal Protection, *Hurricanes Ian and Nicole Recovery Plan for Florida's Beach and Dune System*, [https://floridadep.gov/sites/default/files/2022-Hurricanes-Ian-and-Nicole-Recovery-Plan\\_12-9-22%283%29.pdf](https://floridadep.gov/sites/default/files/2022-Hurricanes-Ian-and-Nicole-Recovery-Plan_12-9-22%283%29.pdf) (last visited Jan.19, 2024).

government funds the majority of the total project costs.<sup>9</sup> The remaining non-federal cost is the responsibility of the local sponsor and the state as cost-sharing partners.<sup>10</sup>

USACE's Jacksonville District is the entity responsible for constructing and maintaining 1,300 miles of Florida's 1,800 miles of coastline.<sup>11</sup>

### Florida's Beach and Inlet Management Program

Recognizing that beach erosion is a statewide problem, the Florida Legislature created a comprehensive statewide beach and inlet management program with a required long-term management plan and dedicated funding to partner with coastal communities for beach restoration.<sup>12</sup>

The Legislature adopted the Florida Beach and Restoration Act to protect, preserve, and manage the state's beaches and adjacent coastal systems.<sup>13</sup> The Department of Environmental Protection's (DEP) Beaches Programs, within the Office of Resilience and Coastal Protection, have the primary mission of protecting, restoring, and managing Florida's coastal systems.<sup>14</sup> The act established three interrelated programs that DEP administers to protect the state's beaches:

- The Coastal Construction Control Line Program;<sup>15</sup>
- Beach Management Funding Assistance;<sup>16</sup> and
- The Beaches, Inlets, and Ports Program.<sup>17</sup>

So far, the state's beaches programs have been successful in generating state and local benefits, and have partnered with communities in the restoration or maintenance of 227 miles of eroding shoreline.<sup>18</sup>

### Public Use

While some nourished beach miles are already in public ownership as parks and protected areas, most are not. This is because a key impetus for nourishment is the protection of upland structures which are not typically located in parks and other protected areas.<sup>19</sup> When a beach is nourished using federal or state dollars, the newly emergent dry sand beach that is created from the submerged lands seaward of the mean high tide line belongs to the state up to the former mean high tide line, which is re-designated as the erosion control line (ECL).<sup>20</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> Roughly 65 percent of the cost sharing is federally funded, and the remaining 35 percent is funded by the county and local governments.

<sup>11</sup> USACE, Jacksonville District, *Shore Protection*, <https://www.saj.usace.army.mil/Missions/Civil-Works/Shore-Protection/> (last visited Jan. 20, 2024).

<sup>12</sup> Florida Shore and Beach Preservation Association, *Beaches 2017 and Beyond: A Funding Initiative for Statewide Beach Management*, <https://www.fsbpa.com/Beaches2017.pdf> (last visited Jan. 20, 2024).

<sup>13</sup> Sections 161.011 through 161.45, F.S.

<sup>14</sup> DEP, *Beaches*, <https://floridadep.gov/rcp/beaches> (last visited Jan. 20, 2024).

<sup>15</sup> The Coastal Construction Control Line (CCCL) Program regulates structures and activities that can cause beach erosion, destabilize dunes, damage upland properties or interfere with public access. CCCL permits also protect sea turtles and dune plants. DEP, *Coastal Construction Control Line Program*, <https://floridadep.gov/CCCL> (last visited Jan. 20, 2024).

<sup>16</sup> The Beach Management Funding Assistance Program is responsible for managing funding for critically eroded beaches. The program provides and manages grants to local governments (up to 75 percent of project costs) for planning and implementing beach and inlet management projects. DEP, *Beaches Funding Program*, <https://floridadep.gov/rcp/beaches-funding-program> (last visited Jan. 20, 2024).

<sup>17</sup> The Beaches, Inlets, and Ports Program processes Joint Coastal Permit applications as well as Environmental Resource Permit applications for navigational dredging of deepwater ports and inlets. These projects are reviewed to make sure that any potential adverse impacts have been avoided or minimized, and that the projects meet the criteria for issuance that are specified in statutes and rules. DEP, *Beaches, Inlets and Ports Program*, <https://floridadep.gov/rcp/beaches-inlets-ports>; DEP, *Beaches*, <https://floridadep.gov/rcp/beaches> (last visited Jan. 20, 2024).

<sup>18</sup> Florida Shore and Beach Preservation Association, *Beaches 2017 and Beyond: A Funding Initiative for Statewide Beach Management*, <https://www.fsbpa.com/Beaches2017.pdf> (last visited Jan. 20, 2024).

<sup>19</sup> *Id.*

<sup>20</sup> Sections 161.141 and 161.151(3), F.S.

The beach that is landward of the ECL remains privately owned, while the new beach created by nourishment, remains in public ownership.<sup>21</sup> While the private property owner retains riparian rights<sup>22</sup> over the newly created public beach, the public owns and has the right to use the newly emergent dry sand beach. This bifurcation of dry sand beach ownership remains until the nourished public beach erodes back to the established ECL. Once this occurs, there is no longer a publicly owned dry sand beach, and the common law boundary is reinstated.<sup>23</sup>

To date, new publicly owned dry sand beach has been created along more than 229 miles of Florida's coastline, under DEP's beach management program. Federal cost-share represents a significant percentage of the funding for beach nourishment.<sup>24</sup> Once a beach has been nourished, it is eligible to be renourished at regular intervals.<sup>25</sup>

#### Perpetual Property Easements

Securing easements for construction projects is a common practice for capital improvement projects. If a beach nourishment project crosses private property and public funds are used, an easement that allows for the construction, maintenance, and replacement is required.<sup>26</sup> These perpetual easements will allow USACE to place sand on private property while guaranteeing public access to the easement area.<sup>27</sup> USACE will not nourish beaches without these easements in place.<sup>28</sup>

USACE requires the public to have access to nourished beach areas, but that access is not unrestricted. The area within the easement is still owned by the property owner and public access does not apply to the upland. For example, the public cannot sit on the seawall, access the beach through upland property, park in private parking lots, or use a homeowner's private property.<sup>29</sup>

Due to recent shifts in USACE policy on the type of easements required to proceed with beach nourishment projects, several such projects in the state are on hold until perpetual public access, use, and construction easements from 100 percent of property owners within a project area are obtained.<sup>30</sup>

#### Pinellas County Shore Protection Projects

There are three segments of Pinellas County that work with USACE to receive beach nourishment through SPPs. These projects are in Sand Key, Treasure Island, and Long Key. Nourishment funding in Pinellas County is typically split in three ways:

- 60 percent funding from USACE;

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<sup>21</sup> Being open to public use does not necessarily mean that it is easily accessible. For example, many areas lack facilities for parking or easy public transit access, thus, as a practical matter, limiting the use to those who live or are staying in the immediate vicinity.

<sup>22</sup> "Riparian rights" are those incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him or her. They are appurtenant to and are inseparable from the riparian land. The land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland. Section 253.141, F.S.

<sup>23</sup> Flournoy, Ankerson, Alvaregna, *Recreational Rights to the Dry Sand Beach in Florida: Property, Custom, and Controversy*, 25 *Ocean & Coastal Law Journal*, Jan. 2020.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Pinellas County, *Beach Easements: Frequently Asked Questions*, <https://pinellas.gov/coastal-management-easements-for-future-sand-key-nourishment-projects/> (last visited Jan. 19, 2024)

<sup>27</sup> Pinellas County, *Sand Key Beach Nourishment*, <https://pinellas.gov/coastal-management-easements> (last visited Jan. 20, 2024).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See Jack Evans, *In Pinellas beach erosion battle, Army Corps shows up but won't budge*, Tampa Bay Times, available at <http://www.tampabay.com/news/pinellas/2023/09/08/beach-erosion-renourishment-army-corps-easements/> (last visited Jan. 21, 2024); USACE, *Frequently Asked Questions: Material Placement on Beaches*, available at [https://www.saj.usace.army.mil/Portals/44/docs/Civil%20Works/Shore%20Protection/FAQ\\_Easements\\_FINAL\\_May\\_%202017.pdf](https://www.saj.usace.army.mil/Portals/44/docs/Civil%20Works/Shore%20Protection/FAQ_Easements_FINAL_May_%202017.pdf) (last visited Jan. 21, 2024).

- 20 percent from DEP; and
- 20 percent from local funds.<sup>31</sup>

USACE has stated it will not nourish Pinellas County beaches without the required easements.<sup>32</sup> USACE has declared that if the easements are not in place within the dunes area, it will not pay to place sand seaward of that area.<sup>33</sup> As a result, the Sand Key portion of the SPP that was scheduled for 2024 is indefinitely on hold. The Treasure Island portion of the SPP is two years past due; and Long Key, which had projects slated to begin in the fall of 2023, is also on hold.<sup>34</sup> Because all of Pinellas County's nourishment projects are connected, without 100 percent of the easements from property owners, none of the projects can move forward.

Pinellas County's agreement with USACE puts the burden on the county to obtain all federally required easements within the project area.<sup>35</sup> The easements will be held by the county and not by USACE. However, private property owners have been unwilling to agree to the required easements due to concerns about the extent of the public use and access that would be granted on their property.<sup>36</sup> Since easement acquisition began in 2016, Pinellas County has been working to request changes to the easement language and USACE policy. However, USACE is unwilling to change its position on this requirement.<sup>37</sup>

In previous nourishments, USACE did not require private property owners to sign perpetual property easements. Now, with the easements, USACE would have perpetual access to a private property up to the sea wall.<sup>38</sup> USACE has made it clear that it will not nourish any of the Pinellas County beaches until they come into compliance.

### Legislative Memorials

Legislative memorials are not subject to the Governor's veto powers and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

### **Effect of the Bill**

The memorial urges the U.S. Congress to take immediate action to direct USACE to amend its current easement policy for SPPs to allow critical SPPs in Florida to proceed without delay.

The memorial calls for copies of the memorial to be dispatched to the President of the U.S., the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the Florida delegation to the U.S. Congress.

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<sup>31</sup> Pinellas County, *Sand Key Beach Nourishment*, <https://pinellas.gov/coastal-management-easements> (last visited Jan. 20, 2024).

<sup>32</sup> See Jack Evans, *In Pinellas beach erosion battle, Army Corps shows up but won't budge*, Tampa Bay Times, available at <http://www.tampabay.com/news/pinellas/2023/09/08/beach-erosion-renourishment-army-corps-easements/> (last visited Jan. 21, 2024).

<sup>33</sup> Pinellas County, *Sand Key Beach Nourishment*, <https://pinellas.gov/coastal-management-easements> (last visited Jan. 20, 2024).

<sup>34</sup> WSTP, *'We're in an impasse': All Pinellas County beach renourishment projects on pause*, <https://www.wstp.com/article/news/local/pinellascounty/pinellas-county-beach-renourishment-projects/67-86edc2b1-28aa-4ca1-bb0b-c60289941ec3> (last visited Jan. 19, 2024).

<sup>35</sup> Pinellas County, *Sand Key Beach Nourishment*, <https://pinellas.gov/coastal-management-easements> (last visited Jan. 20, 2024).

<sup>36</sup> WSTP, *'We're in an impasse': All Pinellas County beach renourishment projects on pause*, <https://www.wstp.com/article/news/local/pinellascounty/pinellas-county-beach-renourishment-projects/67-86edc2b1-28aa-4ca1-bb0b-c60289941ec3> (last visited Jan. 19, 2024).

<sup>37</sup> Pinellas County, *Sand Key Beach Nourishment*, <https://pinellas.gov/coastal-management-easements> (last visited Jan. 20, 2024).

<sup>38</sup> WSTP, *'We're in an impasse': All Pinellas County beach renourishment projects on pause*, <https://www.wstp.com/article/news/local/pinellascounty/pinellas-county-beach-renourishment-projects/67-86edc2b1-28aa-4ca1-bb0b-c60289941ec3> (last visited Jan. 19, 2024).

B. SECTION DIRECTORY:

Not applicable.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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. The memorial does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The memorial neither authorizes nor requires executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 24, 2024, the Agriculture, Conservation & Resiliency Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment corrected drafting errors.

This analysis is drafted to the committee substitute as approved by the Agriculture, Conservation & Resiliency Subcommittee.