

Council Substitute for House Bill No. 1427

An act relating to beach management; amending s. 161.142, F.S.; providing legislative intent and findings; providing requirements concerning the quality and quantity of dredged sand placed on certain beaches adjacent to inlets; requiring an estimation of the requisite quantity of beach-quality sand by the Department of Environmental Protection and its consultants; revising exemptions from certain permitting requirements and prohibitions for certain construction activities; requiring compliance with the applicable Florida Building Code; requiring the protection of nesting shorebirds and marine turtles; specifying requirements of certain ports concerning the placement of dredged sand on adjacent eroding beaches; authorizing such ports to sponsor or cosponsor inlet management projects that are fully eligible for state cost-sharing; providing requirements and findings concerning the placement of dredged sand from federal navigation projects; providing for assignment of responsibility for the erosion caused by inlets; specifying actions to be taken by the department in disputes between local governments and property owners concerning how much sand should bypass an inlet; creating s. 161.143, F.S.; requiring that inlet management studies, projects, and activities be supported by certain plans; providing criteria governing the department's ranking of inlet management projects and activities; specifying conditions that must be met; requiring that the department establish funding priorities for projects and activities concerning inlet management; providing for input from interested governmental and private entities; providing criteria for establishing priorities; authorizing funding levels for inlet management projects under specified conditions; requiring that the department annually provide an inlet management project list to the Legislature; providing requirements for the list; requiring that the department make available certain moneys for projects on the list; requiring that the department make available certain moneys for projects on other legislatively approved inlet management project lists; requiring that the Legislature designate a certain inlet project as "Inlet of the Year"; requiring the department to provide an annual report to the Legislature concerning the success of projects so designated; requiring rulemaking by the department; providing an effective date.

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

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

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

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

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

(2) On an average annual basis, a quantity of beach-quality sand is should be placed on the adjacent eroding downdrift beaches which is equal to the natural net annual longshore sediment transport. The department shall, with the assistance of university-based or other contractual resources that it may employ or call upon, maintain a current estimate of such quantities of sand for purposes of prioritizing, planning, and permitting.

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

(4) The provisions of subsections (1) and (2) shall not be a requirement imposed upon ports listed in s. 403.021(9)(b); however, such ports must demonstrate reasonable effort to place beach-quality sand from construction and maintenance dredging and port-development projects on adjacent eroding beaches in accordance with port master plans approved by the Department of Community Affairs, and permits approved and issued by the department, to ensure compliance with this section. Ports may sponsor or cosponsor inlet management projects that are fully eligible for state cost-sharing.

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

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

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

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

161.143 Inlet management; planning, prioritizing, funding, approving, and implementing projects.—

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

(2) The department shall establish annual funding priorities for studies, activities, or other projects concerning inlet management. Such inlet management projects include, but are not limited to, inlet sand bypassing, modifications to channel dredging, jetty redesign, jetty repair, disposal of spoil material, and the development, revision, adoption, or implementation of an inlet management plan. The funding priorities established by the department must be consistent with the requirements and legislative declaration

in ss. 161.101(14), 161.142, and 161.161(1)(b). In establishing funding priorities under this subsection and before transmitting the annual inlet project list to the Legislature under subsection (5), the department shall seek formal input from local coastal governments, beach and general government associations and other coastal interest groups, and university experts concerning annual funding priorities for inlet management projects. In order to maximize the benefits of efforts to address the inlet-caused beach erosion problems of this state, the ranking criteria used by the department to establish funding priorities for studies, activities, or other projects concerning inlet management must include consideration of:

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

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

(c) The 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.

(d) The 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 being bypassed to adjacent eroding beaches, and the ease with which such beach-quality sand may be obtained.

(e) The 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.

(f) The 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 plan's or study's recommendations concerning the mitigation of an inlet's erosive effects on adjacent beaches.

(g) The 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.

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

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

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

(a) 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

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

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

(a) The department shall make available at least 10 percent of the total amount that the Legislature appropriates in each fiscal year for statewide beach management for the three highest-ranked projects on the current year's inlet management project list.

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

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

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

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

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

Approved by the Governor June 30, 2008.

Filed in Office Secretary of State June 30, 2008.