

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1177 Biscayne Bay  
**SPONSOR(S):** Avila and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	18 Y, 0 N	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 0 N	White	Pigott
3) State Affairs Committee			

### SUMMARY ANALYSIS

Biscayne Bay is a unique waterbody because it serves as the only large, subtropical, protected bay within the continental U.S. and is the largest estuary in Florida. Biscayne Bay is currently at a “precarious balance” due to sewage contamination, the presence of excess nutrients, and pollution and littering.

Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment as deemed necessary by the Department of Environmental Protection (DEP). The standard for advanced waste treatment requires high-level disinfection and is defined using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain.

The bill creates the Biscayne Bay Commission (commission) and authorizes the commission to seek and receive funding to further its coordinating authority or functions regarding bay improvement projects. The bill specifies that the establishment of the commission does not affect or supersede the regulatory authority of any governmental agency or any local government, and any responsibilities of any governmental entity relating to Biscayne Bay will remain with the respective governmental entity. However, the commission may accept any specifically defined coordinating authority or functions delegated to the commission by any governmental entity through a memorandum of understanding or other legal instrument.

The bill requires the commission to consist of a policy committee, a chief officer, and a working group. The policy committee must meet at least quarterly, but may elect to meet monthly. The chief officer is authorized to represent the commission; to implement all policies, plans, and programs of the commission; to advise the Miami-Dade County Mayor; and act as a liaison with various stakeholders and local, state, and federal governmental entities. The working group must consist of all governmental agencies that have jurisdiction in the Biscayne Bay area as well as representatives from business and civic associations.

The bill prohibits facilities for sanitary sewage disposal from disposing of waste into Biscayne Bay without providing advanced waste treatment.

The bill may have an insignificant negative fiscal impact on the state that can be absorbed within existing resources and an indeterminate negative fiscal impact on local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Biscayne Bay

Florida has one of the longest coastlines in the United States, with more than 75 percent of residents living in coastal areas. Miami-Dade County, Florida's most populous county with an estimated 2,662,900 residents, extends the length of Biscayne Bay.<sup>1</sup> Biscayne Bay is a unique waterbody because it serves as the only large, subtropical, protected bay within the continental U.S. and is the largest estuary in Florida.<sup>2</sup> Additionally, Biscayne Bay provides habitat for a variety of juvenile and adult marine species, as well as several of Florida's imperiled species, including the Florida manatee, the smalltooth sawfish, the American crocodile, and Johnson's seagrass.<sup>3</sup> Biscayne Bay is also home to two state aquatic preserves, which are collectively known as the Biscayne Bay Aquatic Preserves, and the Biscayne National Park.<sup>4</sup>

In August of 2019, a grand jury convened by the Miami-Dade State Attorney's Office issued a report that indicated that Biscayne Bay was at a "precarious balance" due to:

- Sewage contamination, which results in excessive amounts of harmful bacteria;
- The presence of excess nutrients, which results in destructive algal blooms; and
- Pollution and littering, which result in massive amounts of trash being discharged into the bay via the storm drainage system.<sup>5</sup>

The report further stated that without corrective action, Biscayne Bay would suffer irreversible damage.<sup>6</sup>

To address these concerns with the water quality in the bay, the Miami-Dade Board of County Commissioners established the Biscayne Bay Task Force in February 2019 and directed it to prepare and submit a report on the bay to the mayor and the board of county commissioners.<sup>7</sup> The report was required to identify problem areas, prioritize projects, and provide recommendations regarding state and federal legislation, activities, and appropriations for Biscayne Bay. The report was submitted in June 2020 and the task force was sunset in August 2020.<sup>8</sup>

The report recommended that the Miami-Dade Board of County Commissioners create a new intergovernmental body called the Biscayne Bay Watershed Management Board (WMB).<sup>9</sup> The report further recommended that the WMB be supported by county staff, appropriate technical experts, and community input to improve water quality in the Biscayne Bay watershed by developing and, upon approval by the board of county commissioners, implementing a Biscayne Bay Watershed Restoration Plan.<sup>10</sup> The Miami-Dade Board of County Commissioners has not created the WMB.

---

<sup>1</sup> DEP, *Biscayne Bay Aquatic Preserves*, available at <https://floridadep.gov/rcp/aquatic-preserve/locations/biscayne-bay-aquatic-preserves> (last visited Mar. 2, 2021).

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

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

<sup>4</sup> *Id.*; National Park Service, *Biscayne*, available at <https://www.nps.gov/bisc/index.htm> (last visited Mar. 2, 2021).

<sup>5</sup> Miami-Dade County Grand Jury, *Final Report of the Miami-Dade County Grand Jury: Fall Term A.D. 2018*, 2, available at <https://www.documentcloud.org/documents/6248684-Grand-Jury-Report-Biscayne-Bay.html> (last visited Mar. 2, 2021).

<sup>6</sup> *Id.*

<sup>7</sup> Miami-Dade County, *Biscayne Bay Task Force*, available at <https://www.miamidade.gov/global/government/taskforce/biscayne-bay-task-force.page> (last visited Mar. 2, 2021).

<sup>8</sup> *Id.*

<sup>9</sup> Biscayne Bay Task Force, *A Unified Approach to Recovery for a Healthy & Resilient Biscayne Bay* (June 2020), available at [https://environment.fiu.edu/research/biscayne-bay-health/\\_assets/bague-et-al.-biscayne-bay-task-force-report-and-recommendations.pdf](https://environment.fiu.edu/research/biscayne-bay-health/_assets/bague-et-al.-biscayne-bay-task-force-report-and-recommendations.pdf) (last visited Mar. 2, 2021).

<sup>10</sup> *Id.*

### Advisory Bodies

Section 20.052, F.S., requires each advisory body, commission, board of trustees, or any other collegial body created by specific statutory enactment as an adjunct to an executive agency to be established, evaluated, or maintained in accordance with the following requirements:

- It may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose.<sup>11</sup>
- It must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of a public purpose.<sup>12</sup>
- The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of the advisory body, commission, boards of trustees, or other collegial body.<sup>13</sup>
- It may not be created or reestablished unless it meets a statutorily defined purpose, its powers and responsibilities conform with the definitions for governmental units, its members are appointed for four-year staggered terms, and its members serve without additional compensation.<sup>14</sup>
- Unless an exemption is otherwise specifically provided by law, all meetings are public meetings in which minutes, including a record of all votes cast, must be maintained.<sup>15</sup>

### Advanced Waste Treatment

Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment as deemed necessary by the Department of Environmental Protection (DEP).<sup>16</sup> The standard for advanced waste treatment requires high-level disinfection and is defined using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain, which are outlined in the following table:<sup>17</sup>

<b>Nutrient or Contaminant</b>	<b>Maximum Concentration Annually</b>
Biochemical Oxygen Demand	5 mg/L
Suspended Solids	5 mg/L
Total Nitrogen	3 mg/L
Total Phosphorus	1 mg/L

Facilities for sanitary sewage disposal are prohibited from disposing of waste into certain waters without providing advanced waste treatment approved by DEP.<sup>18</sup>

---

<sup>11</sup> Section 20.052(1), F.S.

<sup>12</sup> Section 20.052(2), F.S.

<sup>13</sup> Section 20.052(3), F.S.

<sup>14</sup> Section 20.052(4), F.S.

<sup>15</sup> Section 20.052(5)(c), F.S.

<sup>16</sup> Section 403.086(2), F.S.

<sup>17</sup> Sections 403.086(4) and (4)(b), F.S.; r. 62-600.440(6), F.A.C.

<sup>18</sup> Section 403.086(1)(c), F.S. Facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, or, beginning July 1, 2025, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment approved by DEP. This prohibition does not apply to facilities permitted before February 1, 1987, that discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

## Effect of the Bill

The bill creates the Biscayne Bay Commission (commission) and establishes it as the official coordinating clearinghouse for all public policy and projects related to Biscayne Bay to unite all governmental agencies, businesses, and residents in the area on bay issues. Specifically, the bill directs the commission to develop coordinated plans, priorities, programs, projects, and budgets that might substantially improve the bay area and to act as the principal advocate and watchdog to ensure that bay projects are funded and implemented in a proper and timely manner. The commission must comply with the requirements outlined in s. 20.052, F.S., that apply to entities created by statute that are adjunct to an executive agency, except as otherwise specified in the bill.

The bill authorizes the commission to seek and receive funding to further its coordinating authority or functions regarding bay improvement projects. The bill specifies that the establishment of the commission does not affect or supersede the regulatory authority of any governmental agency or any local government, and any responsibilities of any governmental entity relating to Biscayne Bay will remain with the respective governmental entity. However, the commission may accept any specifically defined coordinating authority or functions delegated to the commission by any governmental entity through a memorandum of understanding or other legal instrument. The bill specifies that the commission must use powers of persuasion to achieve its objectives through the process of building a consensus work plan and through widespread publication of regular progress reports.

The bill requires the commission to consist of a policy committee, a chief officer, and a working group. The policy committee must be comprised of the following members:

- Three members of the Miami-Dade Board of County Commissioners.
- Three members of the Miami-Dade County League of Cities.
- One member of the South Florida Water Management District Governing Board who resides in Miami-Dade County.
- One representative of DEP.
- One representative of the Fish and Wildlife Conservation Commission.
- One representative of the Florida Inland Navigation District.
- One representative of the U.S. Department of the Interior.

The bill requires all members to be voting members and requires the policy committee to meet at least quarterly, but authorizes them to meet monthly. The bill grants the policy committee the following powers and duties:

- Consolidate existing plans, programs, and proposals, including the recommendations outlined in the June 2020 Biscayne Bay Task Force report, into a coordinated strategic plan for improvement of Biscayne Bay and the surrounding areas, addressing environmental, economic, social, recreational, and aesthetic issues. The committee must monitor the progress on each element of the strategic plan and must revise the plan regularly.
- Prepare an integrated financial plan using the different jurisdictional agencies available for projected financial resources. The committee must monitor the progress on each element of the financial plan and revise the plan regularly.
- Provide technical assistance and political support as needed to help implement each element of the strategic and financial plans.
- Accept any specifically defined coordinating authority or function delegated to the committee by any level of government through a memorandum of understanding or other legal instrument.
- Publicize a semiannual report describing accomplishments of the commission and each member agency, as well as the status of each pending task. The committee must distribute the report to the Miami City Commission, the Miami-Dade Board of County Commissioners, the Mayor of Miami, the Mayor of Miami-Dade County, the Governor, the chair of the Miami-Dade County Legislative Delegation, stakeholders, and the local media.
- Seek grants from public and private sources and receive grant funds to provide for the enhancement of its coordinating authority and functions and activities and administer contracts that achieve these goals.
- Provide a forum for exchange of information and facilitate the resolution of conflicts.

- Act as a clearinghouse for public information and conduct public education programs.
- Establish the Biscayne Bay working group, appoint members to the group, and organize subcommittees, delegate tasks, and seek counsel from members of the working group as necessary to carry out its powers and duties.
- Elect officers and adopt rules of procedure as necessary to carry out its powers and duties and solicit appointing authorities to name replacements for policy committee members who do not participate on a regular basis.
- Hire the commission's chief officer and employ any additional staff necessary to assist the chief officer.

The bill authorizes the chief officer to represent the commission and to implement all policies, plans, and programs of the commission. The chief officer must advise the Miami-Dade County Mayor and act as a liaison with county departments, county boards, external agencies, stakeholder groups, and local, state, and federal governments.

The bill further requires the commission to have a working group consisting of all governmental agencies that have jurisdiction in the Biscayne Bay area, as well as representatives from business and civic associations.

The bill prohibits facilities for sanitary sewage disposal from disposing of waste into Biscayne Bay without providing advanced waste treatment.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 163.11, F.S., to create the commission.

Section 2. Amends s. 403.086, F.S., to prohibit sewage disposal into Biscayne Bay under certain conditions.

Section 3. Provides an effective date of upon becoming a law.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill may have an insignificant negative fiscal impact that can be absorbed within existing resources on the South Florida Water Management District, Department of Environmental Protection, and Fish and Wildlife Conservation Commission to participate in the commission.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

See Fiscal Comments.

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

See Fiscal Comments.

**D. FISCAL COMMENTS:**

The bill may have an indeterminate negative fiscal impact on the non-state entities required to participate in the commission. The bill gives the commission the authority to seek and receive funding, which could be used for the chief officer and any additional needed staff.

**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 expenditure 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:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.