

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

| REFERENCE   | ACTION           | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|---|------------------|---------|--|
| 1) Environment, Agriculture & Flooding<br>Subcommittee            | 18 Y, 0 N        | Melkun  | Moore                                    |
| 2) Agriculture & Natural Resources Appropriations<br>Subcommittee | 11 Y, 0 N        | White   | Pigott                                   |
| 3) State Affairs Committee  | 22 Y, 0 N, As CS | Melkun  | Williamson                               |

### 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) as an advisory council within DEP to serve as the official coordinating clearinghouse for all public policy and projects related to Biscayne Bay. 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.

The bill requires the commission to consist of nine members and to meet at least quarterly. The commission must complete a semiannual report describing the accomplishments of the commission and each member agency, as well as the status of each pending task. The first report must be submitted by January 15, 2022.

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 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.

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<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 to 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>

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<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> Section 403.086(4), 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) as an advisory council within DEP and requires it to serve 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, and projects 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 requires DEP to provide administrative support and service to the commission as requested by the commission and within the available resources of DEP.

The bill requires the commission to be comprised of the following members:

- Three members of the Miami-Dade Board of County Commissioners, appointed by the board.
- Two members of the Miami-Dade County League of Cities, nominated by the league and appointed by the Secretary of DEP.
- One member of the South Florida Water Management District Governing Board who resides in Miami-Dade County, appointed by the board.
- One representative of DEP, appointed by the Secretary of DEP.
- One representative of the Fish and Wildlife Conservation Commission (FWC), appointed by FWC.
- One representative of the Florida Inland Navigation District, appointed by the district.

The bill requires all members to serve for a term of four years; however, for the purpose of providing staggered terms, the initial appointments of representatives of the South Florida Water Management District Governing Board, DEP, FWC, and the Florida Inland Navigation District must be for a term of two years. The bill specifies that a vacancy must be filled for the remainder of the unexpired term in the same manner as the initial appointment. In addition, private citizen members of the commission are not required to be confirmed by the Senate. All members must be voting members that serve without compensation and are not entitled to reimbursement for per diem and travel expenses.

The bill requires the commission to meet at least quarterly, but authorizes it to meet monthly, and requires it to:

- 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 commission must monitor the progress on each element of the strategic plan and must revise the plan regularly.
- Prepare a consolidated financial plan using the projected financial resources available from the different jurisdictional agencies. The commission must monitor the progress on each element of the financial plan and revise the plan regularly.
- Provide technical assistance and support as needed to help implement each element of the strategic and financial plans.
- Work in consultation with the United States Department of the Interior.
- Provide a forum for exchange of information.
- Act as a clearinghouse for public information.

The bill authorizes the commission to establish subcommittees as necessary to carry out its responsibilities.

The bill requires the commission to submit a semiannual report describing the accomplishments of the commission and each member agency, as well as the status of each pending task, to the Miami City Commission, the Miami-Dade Board of County Commissioners, the Mayor of Miami, the Mayor of Miami-Dade County, the Governor, and the chair of the Miami-Dade County Legislative Delegation. The

first report must be submitted by January 15, 2022. The report must also be made available on DEP's website and Miami-Dade County's website.

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 remain with the respective governmental entity.

Finally, 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, DEP, and FWC 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.

### 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

On March 29, 2021, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Clarified that the commission is an advisory body and revised some of its duties.
- Established the commission within DEP.
- Removed the member of the U.S. Department of the Interior from the commission.
- Specified how members of the commission must be appointed.
- Specified that the commission members must serve without compensation and are not entitled to reimbursement for per diem and travel expenses.
- Required the commission to submit its first report by January 15, 2022.

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