

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: SB 1482

INTRODUCER: Senator Garcia

SUBJECT: Biscayne Bay

DATE: March 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Pre-meeting
2.	_____	_____	AEG	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1482 creates the Biscayne Bay Commission to coordinate and advocate for new and existing plans and programs for improvement of Biscayne Bay and the surrounding areas. The commission is authorized to seek and receive funding. The bill does not affect or supersede the regulatory authority or responsibilities of any governmental entity, but the commission is authorized to accept any specifically defined coordinating authority or functions delegated to it.

The bill requires that the commission consist of a policy committee, a chief officer, and a working group. The policy committee must be comprised of members of state, local, and federal government entities and it must meet at least quarterly. The chief officer must represent the commission to different groups and implement its plans. The working group must consist of all government agencies with jurisdiction in the bay area, and representatives from business and civic groups.

The bill establishes powers and duties for the commission's policy committee, including:

- Hire the commission's chief officer and employ any necessary additional staff.
- Establish the working group.
- Accept any specifically defined coordinating authority or function delegated to it.
- Prepare a coordinated strategic plan and an integrated financial plan.
- Publish a semiannual report and distribute it to specified groups.
- Seek grant funding from public and private sources.
- Provide technical assistance and support, a clearinghouse for information, and a forum for conflict resolution.

The bill also prohibits sewage disposal facilities from disposing of any wastes into Biscayne Bay or its tributaries without providing advanced waste treatment.

II. Present Situation:

Biscayne Bay

Biscayne Bay is a 428-square mile estuary extending nearly the entire length of Miami-Dade County.¹ The Bay is home to over 500 species of fish and other marine organisms, and it is a source of sustenance, economic activity, and recreational opportunities for nearly 2.8 million residents and millions of visitors each year.² Historically, Biscayne Bay would receive freshwater from the Everglades through coastal water bodies and wetlands, as well as groundwater discharges.³ The shoreline originally consisted of mangroves and freshwater and saltwater marshes, and the estuary's benthic (bottom) habitat was dominated by seagrasses, corals, and sponges.⁴ The Bay is part of a watershed that covers most of Miami-Dade County, and today the land to the west of the Bay is generally characterized by three major regions: a highly urbanized northern region enclosed with islands, a central suburban region that is highly urbanized, and a southern region that is used largely for agriculture.⁵

Around the mid-1900's, environmental conditions in Biscayne Bay began to change in response to rapid population growth in southeast Florida and large-scale drainage and flood protection systems along the coast, including the Central and Southern Florida (C&SF) project.⁶ Natural sheet flow and groundwater discharges into the Bay were almost completely eliminated due to conversion of rivers and creeks into canals, construction of levies, and development of urban and agricultural areas.⁷ The coastal water table has been lowered, which increases saltwater encroachment.⁸ Destruction of coastal wetlands eliminated natural filtration of pollutants, and increased runoff from urbanized and agricultural areas have increased nutrient loading, decreasing water quality in the Bay.⁹ In recent years, the Bay has experienced widespread loss of seagrass and decreasing biodiversity.¹⁰ Since 2005, the Bay has experienced six major ecological events, including algal blooms, seagrass die-offs, and a fish kill in 2020.¹¹

¹ Biscayne Bay Task Force, *A Unified Approach to Recovery for a Healthy & Resilient Biscayne Bay*, Biscayne Bay Task Force Report and Recommendations (June 2020)[hereinafter *2020 Task Force Report*], available at [https://ecmrrer.miamidade.gov/OpenContent/rest/content/content/MANAGEMENT%20PLAN.pdf?id=0902a1348f07bc65&contentType\[\]=pdf,txt.*/*true](https://ecmrrer.miamidade.gov/OpenContent/rest/content/content/MANAGEMENT%20PLAN.pdf?id=0902a1348f07bc65&contentType[]=pdf,txt.*/*true) (last visited Mar. 8, 2021).

² *Id.* at 4; USACE, *Biscayne Bay Coastal Wetlands Project*, <https://www.saj.usace.army.mil/BBCW/> (last visited Mar. 9, 2021).

³ Anna Wachnicka, SFWMD, Governing Board Workshop, *Ecological Characteristics of Biscayne Bay*, slide 3 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26871> (last visited Mar. 9, 2021).

⁴ Anna Wachnicka, SFWMD, Governing Board Workshop, video around 0:11:00 (Dec. 9, 2020), available at <http://sfwmd.igmm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2043&Format=Agenda> (last visited Mar. 9, 2021).

⁵ Lawrence Glenn, SFWMD, Governing Board Workshop, *Biscayne Bay Workshop*, slides 2-4 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26870> (last visited Mar. 9, 2021).

⁶ *Id.*; see Matahal Ansar, SFWMD, Governing Board Workshop, *Operations of C&SF Water Control Structures Discharging to Biscayne Bay*, slide 3 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26872> (last visited Mar. 9, 2021).

⁷ Anna Wachnicka, SFWMD, *Governing Board Workshop*, video around 0:14:00 (Dec. 9, 2020).

⁸ *Id.*

⁹ *Id.*

¹⁰ Anna Wachnicka, SFWMD, Governing Board Workshop, *Ecological Characteristics of Biscayne Bay*, slides 3, 8-10, 21 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26871> (last visited Mar. 9, 2021).

¹¹ Christian Avila, SFWMD, Governing Board Workshop, *Water Quality of the Biscayne Bay Watershed*, 4-5 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26873> (last visited Mar. 9, 2021).

Today, the Bay receives pulsed, point source discharges from canals, in addition to rainfall and groundwater discharges.¹² The Bay currently faces numerous sources of pollution including pet waste, fertilizer, yard clippings, leaking sewer infrastructure, and septic tank effluent.¹³ Challenges presented by storms and sea level rise compound and complicate these issues.¹⁴

The Bay is managed mainly by the Department of Environmental Protection (DEP) or the National Park Service within the U.S. Department of the Interior. Biscayne Bay contains or abuts numerous areas designated as having special ecological significance and legal protections at the national, state, and local levels. These areas include the following:

- Miami-Dade County Aquatic Park and Conservation Area.¹⁵
- Biscayne Bay Aquatic Preserve.¹⁶
- Biscayne Bay-Cape Florida to Monroe County Line Aquatic Preserve.¹⁷
- Bill Sadowski Critical Wildlife Area.¹⁸
- Bill Baggs Cape Florida State Park.¹⁹
- Biscayne National Park.²⁰
- Florida Keys National Marine Sanctuary.²¹

Biscayne Bay is subject to estuary-specific numeric nutrient criteria that are established by DEP.²² Under DEP's rules, the waters in Biscayne Bay's state aquatic preserves and Biscayne National Park are designated as Outstanding Florida Waters.²³

The Comprehensive Everglades Restoration Plan (CERP) is a regional program, implemented through a partnership between the South Florida Water Management District (SFWMD) and the U.S. Army Corps of Engineers (USACE), largely based on modifications to the C&SF project.²⁴ Recently, in partnership with USACE, the SFWMD began the Biscayne Bay and Southeastern Everglades Restoration initiative, a planning feasibility study involving six CERP component projects.²⁵ The objectives of the study include improving distribution of freshwater to Biscayne

¹² 2020 Task Force Report, at 4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Miami-Dade County Code of Ordinances, s. 24-48.22.

¹⁶ Section 258.397, F.S. The law prohibits the discharge into the preserve of wastes or effluents which substantially inhibit the purposes of the section.

¹⁷ See s. 258.39(11), F.S.

¹⁸ FWC, *Bill Sadowski CWA*, <https://myfwc.com/conservation/terrestrial/cwa/bill-sadowski/> (last visited Mar. 9, 2021).

¹⁹ DEP, *Bill Baggs Cape Florida State Park*, <https://www.floridastateparks.org/parks-and-trails/bill-baggs-cape-florida-state-park> (last visited Mar. 9, 2021).

²⁰ NPS, *Biscayne National Park*, <https://www.nps.gov/bisc/index.htm> (last visited Mar. 9, 2021).

²¹ NOAA, *Florida Keys National Marine Sanctuary*, <https://floridakeys.noaa.gov/> (last visited Mar. 9, 2021).

²² Fla. Admin. Code R. 62-302.532(1)(h).

²³ Fla. Admin. Code R. 62-302.700(9).

²⁴ USACE and DOI, *2015-2020 Momentum, Report to Congress, Comprehensive Everglades Restoration Plan, Central and Southern Florida Project*, 6 (Dec. 2020), available at https://issuu.com/usace_saj/docs/final_2020_report_to_congress_on_cerp_progress_hig (last visited Jan. 18, 2021).

²⁵ Mindy Parrott, SFWMD, *Governing Board Workshop, Biscayne Bay and Southeastern Everglades Restoration (BBSEER), Comprehensive Everglades Restoration Plan*, 2 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26877> (last visited Mar. 9, 2021).

Bay, improving ecological and hydrological connectivity between coastal wetlands, and increasing resiliency of costal habitats to sea level rise.²⁶

In August of 2019, a grand jury convened by the Miami-Dade State Attorney's Office issued a report finding that Biscayne Bay is now in a "precarious balance," with three major problems negatively impacting the water quality of the Bay:

- 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.²⁷

The report stated that, without corrective action, the declining water quality of Biscayne Bay may become irreversible.²⁸

Biscayne Bay Task Force

In 2019, the Miami-Dade Board of County Commissioners established by resolution the Biscayne Bay Task Force (Task Force).²⁹ The Task Force was established to advise the Board of County Commissioners and Mayor of Miami-Dade County on issues related to Biscayne Bay.³⁰ It was required to review existing information, hear comments from County staff and stakeholders, and prepare a report including: an action plan identifying problem areas and projects, and recommendations regarding proposed state and federal legislation, activities or appropriations.³¹ Membership consisted of nine County residents including the Director of the County Division of Environmental Resources Management, the County's Chief Resilience Officer, experts in a range of issues, and other community members engaged on the issues.³² Ultimately, the Task Force met 18 times and received approximately 35 presentations regarding Biscayne Bay from a broad array of stakeholders.³³ The Task Force submitted its report in June of 2020 and dissolved in August of 2020.

In the report, the Task Force recommends a unified and collaborative approach to restoring Biscayne Bay. The report recommends establishment of an overarching administrative structure to implement the report's recommendations.³⁴ This recommended structure involves Miami-Dade County creating: an intergovernmental Biscayne Bay Watershed Management Board supported by necessary experts and community input, a Chief Bay Officer in the Office of the

²⁶ *Id.* at 3.

²⁷ Miami-Dade County Grand Jury, *Final Report of the Miami-Dade County Grand Jury: Fall Term A.D. 2018*, 2 (Aug. 8, 2019), available at <https://www.documentcloud.org/documents/6248684-Grand-Jury-Report-Biscayne-Bay.html> (last visited Mar. 9, 2021). In general, the report discusses many topics including direct discharge of sewage into the ocean, leaking sewer pipes, single use plastics, sediment, stormwater runoff, agricultural activities, and contamination of the Biscayne Aquifer through septic tanks and hypersaline water in cooling canals associated with a power plant.

²⁸ *Id.*

²⁹ Miami-Dade County, *Biscayne Bay Task Force*, <https://www.miamidade.gov/global/government/taskforce/biscayne-bay-task-force.page> (last visited Mar. 8, 2021).

³⁰ Miami-Dade County Board of County Commissioners, *Resolution No. 165-19*, 2-4 (Feb. 5, 2019), available at <https://www.miamidade.gov/global/government/taskforce/biscayne-bay-task-force.page> (last visited Mar. 8, 2021).

³¹ *Id.* at 5.

³² *Id.* at 6.

³³ See *2020 Task Force Report*, at 2.

³⁴ *Id.* at 7.

Mayor, and a Biscayne Bay Watershed Restoration Plan, developed and implemented by the watershed management board, which implements the recommendations of the Task Force.³⁵ The report contains over 60 Task Force recommendations under the following seven policy themes:

- Water Quality.
- Governance.
- Infrastructure.
- Watershed Habitat Restoration and Natural Infrastructure.
- Marine Debris.
- Education and Outreach.
- Funding.³⁶

Advanced Waste Treatment

Chapter 403, F.S., requires that any facility or activity which discharges wastes into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from DEP.³⁷ Generally, persons who intend to collect, transmit, treat, dispose, or reuse wastewater are required to obtain a wastewater permit. A wastewater permit issued by DEP is required for both operation and certain construction activities associated with domestic or industrial wastewater facilities or activities. A DEP permit must also be obtained prior to construction of a domestic wastewater collection and transmission system.³⁸

Florida law prohibits sewage disposal facilities from disposing of any wastes into certain specified water bodies,³⁹ or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment that is approved by the DEP.⁴⁰ The applicable standard for advanced waste treatment is defined in statute using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain.⁴¹ The reclaimed water product may contain no more, on a permitted annual average basis, than the concentrations listed in the table below.⁴² The standard also requires high-level disinfection, as defined in rule by DEP.⁴³

These requirements do not prohibit or regulate septic tanks or other means of individual waste disposal which are otherwise subject to state regulation.⁴⁴

³⁵ *Id.* at 7.

³⁶ *Id.* at 9-29, 39-40.

³⁷ Section 403.087, F.S.

³⁸ DEP, *Wastewater Permitting*, <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Mar. 9, 2021).

³⁹ Section 403.086, (1)(c), F.S. These specified water bodies are: Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor Bay, and, beginning July 1, 2025, Indian River Lagoon; ch. 86-173, s. 2, Laws of Fla. This prohibition was originally passed in 1987; ch. 2020-150, s. 17, Laws of Fla. The prohibition was amended in 2020.

⁴⁰ Section 403.086, (1)(c), F.S.

⁴¹ Section 403.086(4), F.S.

⁴² *Id.*

⁴³ Section 403.086(4)(b), F.S.; Fla. Admin. Code R. 62-600.440(6).

⁴⁴ Section 403.086(3), F.S.

Nutrient or Contaminant	Maximum Concentration Annually
Biochemical Oxygen Demand	5 mg/L
Suspended Solids	5 mg/L
Total Nitrogen	3 mg/L
Total Phosphorus ⁴⁵	1 mg/L

When a reclaimed water product has been established to be in compliance with these standards, that water is presumed to be allowable, and its discharge is permitted in the specified waters at a reasonably accessible point where such discharge results in minimal negative impact.⁴⁶ This presumption may only be overcome by a demonstration that one or more of the following would occur:

- Discharging the reclaimed water meeting the advanced waste treatment standard will be, by itself, a cause of considerable degradation to an Outstanding Florida Water or to other waters, and is not clearly in the public interest.
- The reclaimed water discharge will have a substantial negative impact on an approved shellfish harvesting area or a water used as a public domestic water supply.
- The increased volume of fresh water contributed by the reclaimed water product will seriously alter the natural fresh-salt water balance of the receiving water after reasonable opportunity for mixing.⁴⁷

If one of these three conditions has been demonstrated, remedies may include, but are not limited to: requiring more stringent effluent limitations, ordering the point or method of discharge changed, limiting the duration or volume of the discharge, or prohibiting the discharge only if no other alternative is in the public interest.⁴⁸

III. Effect of Proposed Changes:

Section 1 creates s. 163.11, F.S., entitled “Biscayne Bay Commission.”

The bill establishes the Biscayne Bay Commission (Commission) as the official coordinating clearinghouse for all public policy and projects related to Biscayne Bay. The purposes of the Commission are to unite all governmental agencies, businesses, and residents in the areas to speak with one voice on bay issues; 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 bill requires the Commission, except as otherwise provided in the bill, to comply with s. 20.052, F.S., which contains requirements for establishing, evaluating, or maintaining commissions that are created by specific statutory enactment.

The bill authorizes the Commission to seek and receive funding to further its coordinating authority or functions regarding bay improvement projects of the Commission. The bill states

⁴⁵ Section 403.086(4), F.S. In waters where phosphorus has been shown not to be a limiting nutrient or contaminant, DEP is authorized to waive or alter the compliance levels for phosphorus until there is a demonstration that phosphorus is a limiting nutrient or a contaminant.

⁴⁶ Section 403.086(5), F.S.

⁴⁷ Section 403.086(5)(a), F.S.

⁴⁸ Section 403.086(5)(b), F.S.

that it does not affect or supersede the regulatory authority of any governmental agency or any local government, and that any responsibilities of any governmental entity relating to Biscayne Bay remain with the respective governmental entity. However, the bill authorizes the Commission to 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 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 Commission must consist of the following:

- Policy Committee. The policy committee must meet quarterly and may meet monthly. The membership of the policy committee is comprised of the following, and all members are voting 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 the Department of Environmental Protection (DEP);
 - One representative of the Fish and Wildlife Conservation Commission;
 - One representative of the Florida Inland Navigation District;⁴⁹ and
 - One representative of the United States Department of the Interior.
- Chief Officer. The bill authorizes the chief officer to represent the Commission and 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.
- Working Group. 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 establishes for the Commission's 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. The plan must address environmental, economic, social, recreational, and aesthetic issues. The committee must monitor the progress on each element of the coordinated strategic plan and revise it 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 integrated financial plan and revise it 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.

⁴⁹ See Florida Inland Navigation District, <http://www.aicw.org/> (last visited March 9, 2021). The Florida Inland Navigation District is a special State taxing district for the continued management and maintenance of the Atlantic Intracoastal Waterway, commonly referred to as M-95 marine highway.

- Publicize a semiannual report describing the 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 County 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, functions, and activities, and administer contracts that achieve these goals.
- Provide a forum for the 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 the powers and duties of the policy committee listed in the bill.
- Elect officers and adopt rules of procedure as necessary to carry out the powers and duties of the policy committee 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.

Section 2 amends s. 403.086, F.S., which establishes waste treatment requirements for sewage disposal facilities.

The bill prohibits sewage disposal facilities from disposing of any wastes into Biscayne Bay, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment, as defined in s. 403.086(4), F.S., approved by DEP. This requirement does not apply to facilities which were permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of Biscayne Bay.

Section 3 states that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill prohibits sewage disposal facilities from disposing of wastes into Biscayne Bay or its tributaries without providing advanced waste treatment. This may result in indeterminate increased costs to private sewage disposal facilities in the areas surrounding Biscayne Bay.

C. Government Sector Impact:

The bill creates a commission that must meet at least quarterly, and part of it must consist of members from specified local, state, and federal government entities. This may result in indeterminate increased costs to the government entities required to provide one or more members. The commission is authorized to seek and receive funding, including grant funding, to further or enhance its purposes. Pursuant to s. 20.052(4)(d), F.S., members may be authorized to receive per diem and reimbursement for travel expenses.

The bill prohibits sewage disposal facilities from disposing of wastes into Biscayne Bay or its tributaries without providing advanced waste treatment. This may result in indeterminate increased costs to public sewage disposal facilities in the areas surrounding Biscayne Bay.

VI. Technical Deficiencies:

The bill requires the commission, except as otherwise provided therein, to comply with s. 20.052, F.S., which applies to a commission created by statute as an adjunct to an executive agency. The bill does not specify an executive agency to which the commission is made an adjunct. Section 20.052, F.S., requires any commission to conform with definitions in s. 20.03, F.S., which defines “commission” as a body within a department or other specified executive offices. Also, the bill does not specify the process by which members of the policy committee are appointed. An amendment is recommended that creates the commission adjunct to the

Department of Environmental Protection, and expressly describes the process for appointing members to the commission.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 163.11 of the Florida Statutes.

This bill substantially amends section 403.086 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.