

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 Budget Committee

BILL: CS/CS/CS/SB 768

INTRODUCER: Budget Committee, Transportation Committee, Commerce and Tourism Committee, and Senator Ring

SUBJECT: Seaports

DATE: April 15, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pugh</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Eichen</u>	<u>Spalla</u>	<u>TR</u>	<u>Fav/CS</u>
3.	<u>Carey</u>	<u>Meyer, C.</u>	<u>BC</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Florida has 14 public deepwater seaports that are considered significant economic drivers for the regions in which they are located and for the state. The individual seaports receive a combination of public funding and private revenues to finance their operations and capital improvements.

CS/CS/CS/SB 768 includes several permitting provisions to assist seaport infrastructure improvement projects that will make Florida's 14 seaports more globally competitive. The bill:

- Exempts from state stormwater permits all piers, docks and similar structures at any of the 14 ports that are not part of a stormwater system and meet other criteria, if the port has a Stormwater Pollution Prevention Plan pursuant to federal law;
- Requires the state Department of Environmental Protection (DEP) to issue a notice of intent for a port conceptual permit or a final permit within 30 days after receiving the application;
- Specifies that DEP's notice of intent to issue a port conceptual permit creates a "rebuttable presumption" that the project or projects covered in the conceptual permit meet water-quality standards and sovereign-submerged land authorization requirements;

- Requires DEP to issue any requested construction permits from a port (that has been issued a conceptual permit) within 30 days of the request;
- Clarifies conditions under which maintenance dredging activities conducted by the 14 seaports are exempt from permits under ch. 403, F.S.; and
- Includes Port Citrus in Citrus County in the various statutes identifying Florida's deepwater ports.

CS/CS/CS/SB 768 substantially amends ss. 310.002, 311.09, 373.406, 373.4133, 374.976, 403.021, 403.061, 403.813, and 403.816, F.S.

II. Present Situation:

Background on Florida's seaports

Florida has 14 public seaports:¹ Port of Fernandina, Port of Fort Pierce, Jacksonville (JaxPort), Port of Key West, Port of Miami, Port of Palm Beach, Port Panama City, Port of Pensacola, Port Canaveral, Port Everglades, Port Manatee, Port St. Joe, Port of St. Petersburg, and Port of Tampa.

These seaports are considered significant economic drivers. Recent economic analyses and planning documents² prepared for the Florida Ports Council indicated that:

- In 2009, the maritime cargo activities at Florida seaports were responsible for generating more than 550,000 direct and indirect jobs and \$66 billion in total economic value.
- In 2009, the maritime cargo activities at Florida seaports contributed \$1.7 billion in state and local tax revenues.
- In 2009, the value of international trade moving through the 14 seaports was \$56.9 billion, down more than one-third from 2008. Still, the \$56.9 billion figure represented 55 percent of Florida's total international trade value of \$103 billion in 2009.
- Imports and exports continue to be fairly even. Of the \$56.9 billion in total value, imports were valued at \$27.6 billion and exports at \$29.2 billion.
- Based on 2009 figures, the average annual wage of Florida seaport-related jobs is \$54,400, more than double the average annual state wage for all other non-advanced degree workers (\$26,933) and over \$15,000 more than the average annual state wage for all occupations (\$38,470).
- The return on investment (ROI) for seaport projects is an estimated \$6.90 to \$1.

Florida's public seaports handled more than 121 million tons of cargo in FY 2006-2007, the most recent information available.³ Of that, 19 million tons were exports, 50.3 million tons were imports, and 51.9 million tons were domestic shipments. Florida seaports handled 55 percent of the containerized waterborne imports ultimately consumed in Florida. In recent years, Asian

¹ Listed in s. 403.021(9)(b), F.S. Interactive locator map is available at: http://flaports.org/Sub_Content2.aspx?id=3. Last visited Feb. 28, 2011.

² Information for this section as gleaned from a 2010 Economic Action Plan for Florida Ports, available at http://flaports.org/Assets/33201131346PM_2010_Economic_Action_Plan_for_Florida._A_Blueprint_to_Leverage_Florida_s_Strategic_State_Seaport_Partnership_January_2010.pdf and from a 2011 economic analysis, available at http://flaports.org/Assets/312011100301AM_Martin_Associates_Analysis_of_Seaport_Priority_Projects_February_2011.pdf and other information provided by the Florida Ports Council. Last visited March 2, 2011.

³ Available at <http://www.dot.state.fl.us/planning/trends/tc-report/Seaport032509.pdf>. Last visited March 1, 2010.

nations have become key trading partners; in 2009, for example, 38 percent of water-borne imports from Asia bound for Florida markets, entered the U.S. through Florida, 36 percent through Los Angeles-Long Beach, 13 percent through Savannah, and 4 percent through New York-New Jersey.⁴ Central and South America continue to be Florida's most important export partners, with Western Europe a distant second.⁵

The cruise business also is a significant segment of Florida's seaport activity; in 2009, an estimated 12.7 million passengers embarked and disembarked from the nine ports with cruise operations. This equates to more than 54 percent of all U.S. cruise ship bookings.⁶

Port planning and regulatory requirements

Section 163.3178, F.S., requires each applicable county and municipal comprehensive plan to include a chapter (or "element") on coastal zone management, and if applicable, the comprehensive master plan for the public seaport located within its geographic jurisdiction. These seaport master plans generally comprise a 25-year planning horizon for expansion, dredging, and other improvements at the particular ports.⁷

Dredging and other port projects that have the potential to impact water quality, sovereign submerged lands, sea grass and wildlife habitats, and upland disposal sites typically require permits from the U.S Army Corps of Engineers (corps), or the Florida Department of Environmental Protection (DEP) and the water management districts under regulations in chs. 161, 253, 373, and 403, F.S.

These agencies and the seaports try to work together early in the project planning process to identify environmental impacts and possible mitigation solutions. To that end, s. 311.105, F.S., created the Florida Seaport Environmental Management Committee to serve as a forum for seaport-related environmental permitting issues. The committee is comprised of five seaport directors as voting members and representatives of DEP, the state Department of Community Affairs, the corps, and the Florida Inland Navigation District as non-voting, ex officio members.

Section 311.105, F.S., also specifies the documentation required for applications submitted by seaports for joint coastal permits, which have a duration of 5 years, and for 15-year conceptual joint coastal permits. These permits are designed to address in a comprehensive manner the variety of environmental impacts large-scale port projects might create.⁸

In 2010, the Legislature created s. 373.4133, F.S., which specifies the process by which any of the 14 seaports may seek a port conceptual plan from DEP. The port conceptual plan is intended to serve as a multi-year blueprint for seaport infrastructure projects; it anticipates the regulatory approvals that will be needed and streamlines their review and approval processes. Both seaports

⁴ Florida Trade and Logistics Study, page 17. Available at: https://www.communicationmgr.com/projects/1378/docs/FloridaTradeandLogisticsStudy_December2010.pdf. Last visited March 6, 2011.

⁵ Chart available at <http://flaports.org/UserFiles/File/Statistics/Table%204.jpg>. Last visited March 1, 2010.

⁶ Information provided by the Florida Ports Council and on file with the Senate Commerce and Tourism Committee.

⁷ The individual seaport master plans are available online at the ports' websites.

⁸ See s. 403.061(37) and (38), F.S.

and private entities with controlling interests in property near the seaports may use the conceptual plan process.

A port conceptual permit constitutes the state's conceptual certification of a port's compliance with federal Clean Water Act regulations and the state's conceptual determination that the project is consistent with Florida's coastal zone management program. The conceptual permits may be issued for a period of up to 20 years and provide for one additional extension of 10 years.

Not all seaport activities require permits; s. 403.813(3), F.S., lists a number of exemptions from state environmental permits generally issued at DEP district offices for maintenance dredging activities that meet certain criteria.

III. Effect of Proposed Changes:

Section 1 amends s. 373.406, F.S., to include in the general exemptions to ch. 373, F.S., stormwater permitting requirements for overwater piers, docks, and similar structures located in any of the 14 public seaports that have a Stormwater Pollution Prevention Plan under the National Pollutant Discharge Elimination System Program. Many of the 14 ports do have an adopted plan.

This provision is intended to clarify port permitting provisions adopted in 2010.

Section 2 amends s. 373.4133, F.S., to clarify and expedite several permitting provisions in the conceptual permitting process for seaports. This section:

- Requires DEP to approve or deny an application for a port conceptual permit within 60 days after receipt of a completed application.
- Specifies that DEP may request additional information twice and provides for the application to be considered withdrawn if the applicant fails to respond within 90 days.
- Third-party petitioners challenging the issuance of a permit are burdened with ultimate persuasion and going forward with the evidence.

Section 3 amends s. 403.813, F.S., to clarify the conditions by which maintenance dredging activities at seaports remains exempt from permits under this chapter. The changes:

- Add specific statutory and chapter law cites related to permits which the maintenance projects are not required to get. This provision tracks the exemption language elsewhere in the statute related to non-port dredging projects.
- Clarify that maintenance dredging does not require DEP permits if the dredging is no deeper or wider than the channel's original configuration, does not significantly impact previously undisturbed natural areas, and the dredging does not violate the requirements of s. 379.2431(2)(d), F.S., related to manatee protections.
- Clarify that the allowable mixing zone for the turbid discharge from the dredge disposal site encompasses a 150-meter radius from the point of discharge into the receiving waters.

- Clarify that ditches, outfall pipes, and other types of linear conveyances for the turbid discharge are not considered “receiving waters” for the purpose of determining the extent of the 150-meter radius.
- Specify that the port is not required to seek permission from the state again to use sovereign submerged lands, since it received such permission for the earlier dredging.
- Allow the port to deposit the dredged material on an unpermitted, self-contained upland spoil site where the spoil cannot re-enter state waters.

Section 4 through 10 of the bill amend various sections of statute which collectively identify the state’s deepwater ports to include Port Citrus in those sections’ provisions.

Specifically, the bill amends:

- Section 310.002, F.S., to add Port Citrus to the definition of the term “port.”
- Section 311.09, F.S., to include a representative of Port Citrus as a member of the Florida Seaport Transportation and Economic Development Council.
- Section 374.976, F.S., to conform provisions relating to include Port Citrus in provisions relating to the authority of inland navigation districts.
- Section 403.021, F.S., to conform provisions to include Port Citrus in legislative declarations relating to environmental control.
- Section 403.061, F.S., to conform provisions to include Port Citrus in provisions relating to powers of the Department of Environmental Protection.
- Section 403.813, F.S., to conform provisions to include Port Citrus in provisions relating to permits issued at Department of Environmental Protection district centers.
- Section 403.816, F.S., to conform provisions to include Port Citrus in provisions relating to certain maintenance projects at deepwater ports and beach restoration projects.

Section 11 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate, but likely positive.

C. Government Sector Impact:

DEP may incur some additional costs associated with Sections 1 and 2 of the bill, related to expedited review of applications for port conceptual permits; however, the department has indicated the costs can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Commerce and Tourism Committee on March 16, 2011:

The committee adopted two amendments at its meeting and incorporated them into the original bill as a committee substitute. The first amendment removed two sections of the original bill that would have raised from \$8 million to \$20 million the minimum amount of state transportation funds allocated for FSTED projects, on July 1, 2012, and eventually to \$50 minimum annually. The second amendment added clarifying changes to s. 403.813(3), F.S., related to state environmental permit exemptions for ports' maintenance dredging.

CS by Transportation Committee on March 29, 2011:

The committee adopted five amendments at its meeting and incorporated them into CS/SB 768 as a committee substitute. The amendments:

- make available no less than an additional \$100 million each year for five years from the STTF to be used to fund the Florida Deepwater Seaport Program;
- include Port Citrus in Citrus County in the various statutes identifying Florida's deepwater ports;
- clarify conditions under which a pier may be exempted from stormwater management requirements;
- clarify conditions under which certain dredging projects may be exempted from permitting requirements; and
- provide additional detail related to the allowable deposition of spoil material on upland disposal sites.

CS by Budget Committee on April 14, 2011:

The committee adopted one amendment at its meeting which removed the following provisions from the bill that would:

- provide no less than an additional \$100 million each year for five fiscal years be made available from the STTF to be used to fund the Florida Deepwater Seaport Program;
- create the Florida Seaport Transportation and Economic Development Program Infrastructure Bank for providing loans and credit enhancements that improve port transportation and facility projects;
- allow the Florida Ports Financing Commission, rather than the State Division of Bond Finance , to issue port facility bonds, and to refinance the 1996 and 1999 bond issues extending them for an additional 10 years.

B. Amendments:

None.