

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

The Jacksonville Port Authority (JPA) owns and operates four marine terminals on the St. Johns River: the Blount Island Marine Terminal, the Talleyrand Marine Terminal, the Dames Point Marine Terminal, and the JAXPORT Cruise Terminal.¹ The three marine terminals handled 7.3 million tons of cargo in fiscal year 2003, including more than 540,000 vehicles, which makes the JPA one of the largest vehicle handling ports in the country.²

The JPA was created by chapter 63-1447, Laws of Florida. In 1968, the aviation assets of the City of Jacksonville were transferred to the JPA.³ Separate port authority and airport authorities were created by chapter 2001-319, Laws of Florida. The separate authorities were created, however, with the same governing charter. This bill creates a separate charter for the JPA which codifies, or reenacts, the provisions of chapter 2001-319 and all subsequent special acts.

The bill deletes unnecessary language related to the Jacksonville Airport Authority and also makes minor, stylistic changes to some of the language of the charter.

Changes to the Charter

There are, however, provisions of this bill which do not appear to simply codify existing law, but amend the charter of the JPA:

- Members of the JPA currently serve until their respective successor is appointed. The bill modifies this language to provide that “members shall continue to serve on the authority *until their death, resignation, removal*, or until their respective successors are appointed and *confirmed*.”⁴ The bill also provides that appointments to fill a vacancy may exceed the balance of the unexpired term if “otherwise specified in the appointment and confirmation.”⁵
- In defining “projects,” the bill permits the promotion and development of “waterborne and maritime activities and commerce” rather than just “waterborne commerce.”⁶ The bill also adds “intermodal” to the types of terminals permitted for passengers.⁷

¹ Jacksonville Port Auth., *Seaports*, at <http://www.jaxport.com/sea/sea.cfm> (last visited Mar. 19, 2004).

² Jacksonville Port Auth., *About JAXPORT, Statistics*, at <http://www.jaxport.com/about/stat.cfm> (last visited Mar. 19, 2004).

³ Jacksonville Port Auth., *About JAXPORT, History*, at <http://www.jaxport.com/about/history.cfm> (last visited Mar. 19, 2004).

⁴ See HB 1649 § 1, § 1(2) of the charter (2004).

⁵ *Id.*

⁶ See HB 1649 § 1, § 2(6) of the charter (2004).

- The bill includes any “legal entity” and “person” in the list of those with whom the JPA may contract.⁸
- The bill permits the JPA to enter into arrangements with intermodal carriers in addition to steamship lines, railroads, and common carriers.⁹
- A limiting cross reference in the charter is removed as it relates to making and executing certain lease agreements.¹⁰
- The bill changes the application of provisions related to disposing of any real property that was acquired from either the city or county to provide that such was received “other than by purchase or swap” rather than “under the provisions of the act.”¹¹
- The bill allows the JPA to solicit “intermodal or common carriers” in addition to “shipping lines and other businesses.”¹²
- The ability of the JPA to do all acts or things necessary or proper as “an Industrial Development Authority under part III, chapter 159, Florida Statutes” is removed.¹³ The bill makes a corresponding change in the declaration of purposes.¹⁴
- The bill permits the JPA to appoint officers for the administration of criminal justice, although this power was initially limited to designated airports and had a provision under which the airport authority assumed all civil responsibility for the actions of such officers and which required a necessary bond.¹⁵
- The bill eliminates the provision which declares all bonds issued under the provisions of the act to have “all the qualities of negotiable instruments under the negotiable instruments law of the state.”¹⁶
- The bill changes the timeframe for providing a copy of the advertisement for a bond sale to the Florida Division of Bond Finance and to at least three recognized bond dealers from not less than 10 days to “in the time established by applicable law.”¹⁷
- The bill makes it permissive rather than mandatory that bonds and refunding bonds be sold at public sale.¹⁸
- The bill deletes unnecessary language related to the Jacksonville Airport Authority firefighters.¹⁹
- In the declaration of purposes the bill qualifies the provision that “nothing in this act is intended to creates an entity which is exempt from ad valorem taxation” to add “except as set forth by applicable law.”²⁰

⁷ *Id.*

⁸ See HB 1649 § 1, §§ 3(1) and 3(14) (2004) of the charter. See also §1, § 8 of the charter where “legal entity” replaces “corporation” and “persons” replaces “individual.”

⁹ See HB 1649 § 1, § 3(7) of the charter (2004).

¹⁰ See HB 1649 § 1, § 3(8) of the charter (2004).

¹¹ *Id.*

¹² See HB 1649 § 1, § 3(11) of the charter (2004).

¹³ See HB 1649 § 1, § 3(20) of the charter (2004).

¹⁴ See HB 1649 § 1, § 14 of the charter (2004).

¹⁵ See HB 1649 § 1, § 3(21) of the charter (2004).

¹⁶ See HB 1649 § 1, § 4(2) of the charter (2004).

¹⁷ See HB 1649 § 1, § 4(3) of the charter (2004).

¹⁸ See HB 1649 § 1, § 4(4) of the charter (2004).

¹⁹ See ch. 2001-319, § 1, § 7(b) of the charter.

Charter of Authority

In recreating and reenacting the charter for the JPA, the bill provides:

Section 1: Subsection (1) repeals the current charter provisions for the JPA and provides for them to be recreated as provided in the bill; provides the geographic area as defined by the boundary lines of Duval County; requires the JPA to operate, manage, and control the publicly owned seaport and ancillary facilities; mandates a review of the separation of the two authorities in 2005.

Subsection (2) provides for the governing body of the JPA: seven members who serve terms of four years; four appointed by the Mayor of the City of Jacksonville subject to confirmation; three appointed by the Governor subject to confirmation; appointments at the pleasure of the officer making the appointment; provides for service and staggered terms.

Subsection (3) permits the JPA to elect officers; requires four members for a quorum and four members for action to be taken; provides each member one vote and requires the vote to be entered; mandates regular meetings but permits special meetings; prohibits compensation of members but allows reasonable expenses to members and employees.

Subsection (4) authorizes the JPA to employ a managing director and other employees and professionals; permits the JPA to use the services of the City of Jacksonville, which it must use for its legal services unless otherwise authorized; requires payment for the use of the services of the city; allows the JPA to delegate to carry out the purposes of the charter.

Subsection (5) provides that section 286.012, Florida Statutes, and sections 112.311 to 112.3175, Florida Statutes apply to the members of the JPA.

Section 2: Defines “bonds,” county,” “city,” “City of Jacksonville,” “federal agency,” “project,” “cost” as applied to improvements, “cost” as applied to certain projects, and provides for singulars and plurals.

Section 3: Provides the powers of the JPA:

- to adopt, use, and alter at will a corporate seal; to sue and be sued, implead and be impleaded, complain, and defend in all courts; to exercise the power of eminent domain to acquire property for any authorized purposes; to accept grants, gifts, and donations; and to enter into contracts, leases, or other transactions;
- to adopt rules and regulations with reference to all projects and matters under the control of the authority;
- to construct, acquire, establish, improve, extend, enlarge, reconstruct, re-equip, maintain, repair, and operate any project as herein defined;
- to construct, establish, and improve harbors within the county, to improve navigable waters within the county, and to construct and maintain canals, slips, turning basins, and channels, subject to the jurisdiction of and upon such terms and conditions as may be required by the United States and the State of Florida;

²⁰ See HB 1649 § 1, § 14 of the charter (2004).

- to acquire for any project authorized by this act by grant, purchase, gift, devise, condemnation by eminent domain proceedings, exchange, or in any other manner, all property, real or personal, or any estate or interest therein;
- to issue revenue bonds, payable solely from revenues, to pay all or a part of the cost of acquisition, construction, extension, enlargement, improvement, or modernization of any project and to pledge the revenues to secure the payment of bonds;
- to enter into arrangements with steamship lines, railroads, any intermodal or common carrier, or any other commercial enterprise, related to the authority's basic mission, if the authority shall deem it advantageous so to do;
- to make and enter into all contracts and agreements and to do and perform all acts and deeds necessary and incidental to the performance of the duties of the authority and the exercise of its powers;
- to make and execute leases or agreements for the use and occupation of the property and/or projects under the control of the authority;
- to sell and dispose of such property and/or projects as shall no longer be needed for the uses and purposes of the JPA subject to certain restrictions;
- to fix, regulate, and collect rates and charges for the services and facilities furnished by any project under the control of the JPA to the extent permitted by law;
- to establish, limit, and control the use of any project to ensure the proper operation of the project;
- to impose sanctions to promote and enforce compliance with any rule or regulation which the authority may adopt in the regulation of the ports, harbors, wharves, docks, and other projects under its control;
- to fix the rates for wharfage, dockage, warehousing, storage, and port and terminal charges for the use of the facilities owned or operated by the JPA;
- to solicit shipping lines, intermodal or common carriers, and other businesses;
- to promote commerce and increase passenger traffic and freight tonnage through the seaport operated by the authority;
- to publicize, advertise, and promote the activities and projects of the JPA;
- to cooperate with other agencies, both public and private, in accomplishing the purposes of the act and to authorize expenditures for any all purposes subject to certain restrictions;
- to receive and accept from any federal or state agency grants for or in aid of the construction, improvement, or operation of any project and to receive and accept contributions from any source of money, property, labor, or other things of value;
- to make any and all applications required for the establishment of a free port, foreign trade zone, or area;

- to enter into any contract with a legal entity, person, the State of Florida, the federal government, or any agency of said governments, which may be necessary for development of any necessary project;
- to make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings, and estimates of cost and revenues as the authority may deem necessary and may prepare and adopt a comprehensive plan or plans, for the location, construction, improvement, and development of any project;
- to grant exclusive or non-exclusive franchises on and in connection with any property or project owned and operated by the JPA;
- to enter into contracts with utility companies or others for the supplying by said utility companies or others of water, electricity, or telephone service to or in connection with any project;
- to pledge by resolution or contract the revenues arising from the operation of any project or projects owned and operated by the JPA, or under its control;
- to do all other acts and things necessary or proper in the exercise of the powers herein granted;
- to do all acts or things necessary or proper to be and serve as a local governmental body; and
- to appoint officers for the administration of criminal justice as set forth by general law.

Section 4: Authorizes general obligation bonds or revenue bonds for the purpose of paying for projects; sets forth the requirements for such bonds; provides for notice of the sale of bonds; makes provision and requirements for public and private sale; creates requirements for bidders; prohibits issuance unless approved; provides for approval by election; permits the JPA to borrow money and issue notes; allows the JPA to issue refunding bonds and provides the purposes for such.

Section 5: Establishes the fiscal year; requires the JPA to prepare and submit its budget to the council of the City of Jacksonville on or before July 1 for the ensuing fiscal year; allows the council to increase or decrease the appropriation requested; prohibits certain appropriations from being reduced below \$800,000 for each year that the bonds to which the \$800,000 is pledged remain outstanding.

Section 6: Provides that all bonds issued by the City of Jacksonville or the former Jacksonville Port Authority related to properties transferred to the authority and bonds issued under authority of chapter 63-1447, Laws of Florida, remain the liability, responsibility, and obligation of the issuer and the rights of the holders of existing outstanding bonds shall be unimpaired.

Section 7: Preserves all employment rights and employee benefits authorized under section 11, chapter 63-1447, Laws of Florida, as amended; makes the JPA a county agency and requires employees the JPA to participate in the Florida Retirement System; protects employees of the former Jacksonville Port Authority; and provides for the JPA to perform all functions with regard to its own employees

Section 8: Grants express authority to make and enter into contracts, leases, conveyances, or other agreements for purposes of the act.

- Section 9: Requires the JPA to issue quarterly and annually financial reports of its operations and to annually audit its operations and affairs by an independent certified public accountant; allows the records of the JPA to be audited at any time by the Council Auditor of the City of Jacksonville; provides for and requires members and others so designed to give a good and sufficient surety bond in the sum of \$50,000,
- Section 10: Provides, subject to certain exemptions and requirements, for contracts with the lowest responsible bidder if the total cost, value, or amount of construction, reconstruction, repairs, or work of any nature, including the labor and materials, exceeds \$50,000; requires "due advertisement" for all supplies, equipment, machinery, and materials exceeding \$25,000 in cost purchased by the JPA; permits the JPA to enter into and carry out contracts or establish or comply with certain rules and regulations concerning labor and materials and other related matters in connection with any project.
- Section 11: Requires all instruments in writing necessary to be signed by the JPA shall be executed by its chair and secretary; permits designation of such when required; prohibits expenditure of funds of the JPA except by approved and signed voucher; provides authority for the vice chair and assistant secretary to act; requires the JPA to provide for the examination of all payrolls, bills, and other claims and demands against the authority to determine before payment.
- Section 12: Transfers right, title, interest, contracts, leases, accounts receivable, accounts payable, cash on hand, operating expenses, and conveyances from the former Jacksonville Port Authority.
- Section 13: Makes the provisions of chapter 315, Florida Statutes, relating to port facilities financing, applicable to the JPA.
- Section 14: Declares the JPA and its purposes to be for a county and public purpose; asserts that the JPA is a political subdivision of the State of Florida, local governmental body within the meaning of Article VII, Section 10(c)(2) of the State Constitution; provides that nothing in the act is intended to create an entity which is exempt from ad valorem taxation except as otherwise set forth by applicable law.

C. SECTION DIRECTORY:

- Section 1: Creates a separate charter for the Jacksonville Port Authority.
- Section 2: Provides for liberal construction, explains the listing of powers, sets forth the intent as it relates to the power of the JPA
- Section 3: Makes provisions of the act severable and explains the intent related to the powers of the JPA.
- Section 4: Provides that chapters 2001-319, 2002-349, and 2003-341, Laws of Florida, are repealed when the bill takes effect.
- Section 5: Provides that this bill will take effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? WHERE?

An Affidavit of Proof of Publication states that a Notice of Intention to Apply for Local Legislation was published in the Financial News and Daily Record on November 7, 2003.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

There do not appear to be any constitutional issues with the bill.

B. RULE-MAKING AUTHORITY:

The bill reenacts the authority of the JPA to adopt rules and regulations with reference to all projects and matters under the control of the authority.²¹ All such rules and regulations must be just and reasonable and consistent with public interest.²² The application of rules and regulations is expressly subject to review by certiorari in any court of proper and competent jurisdiction.²³ All rules and regulations shall be a matter of public record, except as otherwise provided by applicable law, and copies thereof shall be dispensed at cost to all applicants therefor.²⁴

The bill reenacts the authority of the JPA to establish rules and regulations concerning labor and materials and other related matters in connection with any project as the authority may deem desirable or as may be requested by the federal or state government assisting in the financing of its projects, seaport facilities, and facilities.²⁵

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

- The bill codifies existing language in the charter related to the initial terms of members of the JPA from chapter 2001-319, Laws of Florida.²⁶ It is not clear that this language is still necessary.
- At line 374²⁷ and line 609²⁸, it appears the reference to “such authority” and “each such authority,” respectively, should be “the authority.”

Other Comments – Proponents of the Bill

Proponents have provided the following comments in support of the bill:

²¹ See HB 1649 § 3(2) (2004).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ See HB 1649 § 10(4) (2004).

²⁶ See HB 1649 § 1(2) (2004).

²⁷ See HB 1649 § 3(16) (2004).

²⁸ See HB 1649 § 7 (2004).

- The bill will create a separate charter for each of the operating entities. The difficulty in having two growing, successful entities operate from one charter has become unmanageable. With their own charters, each entity will be able to more successfully manage their futures.²⁹
- The newly created charter will allow the JPA to (1) create a federally-mandated police force (similar to the Airport Authority) and (2) clarify real estate development clauses of the charter.³⁰

The need for the changes in the bill was further explained by Karen Chastain with the Office of General Counsel for the City of Jacksonville³¹:

- Appointments - the rationale is to clear up the existing text to provide that the mere expiration of the term does not result in a vacancy in the board - so the member continues to serve until the successor is appointed. This language is typical in the corporate world.
- Maritime and intermodal - the first "change" is somewhat of a redundancy as arguably "maritime" and "waterborne" could include the same activities. As to adding "intermodal," the port presently has intermodal activities, such as rail service, etc., and certainly could use other passenger forms of transportation, such as buses, etc., for the cruise ship passengers. The addition of the language does not mean that presently we cannot do this, because it is necessary to conduct port business and such power is therefore implied.
- "Legal entity" - obviously, the port must be able to, and does in fact, contract with any legal entity, whether governmental, corporate, or an individual. The language presented is more clear in that regard than the present text.
- "Intermodal" - a port, to function and be competitive with other ports, must be able to move the commodities (whether goods or passengers) by a number of means, such as rail and mass transit. The port may have this power in its current charter anyway.
- City acquired real estate - if the real estate was acquired by purchase or by swap, then the parties do not want to encumber the port property by the city continuing to have a right of first refusal. This provision applies to city donations of real estate (which is not a purchase, where consideration was paid). This clause would benefit the city, and city council approved this change in its resolution supporting the revisions to the charter.
- Chapter 159 bonds - this is deleted because only one entity may be the issuer of these types of bonds. The City has designated another City agency - the JEDC - to be the issuer for these types of bonds, and as such, this power must be removed from the seaport and the airport because it is duplicative and therefore not permitted under tax law.
- Administration of criminal justice - this allows the seaport at a future time to have such a "police" force - but does not require it to do so. Presently, the airport has this right and has elected to do so.
- Bonds - bond counsel recommended this change because federal (tax) law and state constitutional law already govern this matter, and text in the charter is not necessary to make this the case.

²⁹ See *J-Bill 2 and J-Bill 3*, provided by Edward W. Blakely, Jr., lobbyist for the Jacksonville Seaport Authority on Mar. 15, 2004 (on file with the H.R. Comm. on Local Gov't & Veterans' Affairs).

³⁰ *Id.*

³¹ See e-mail from Edward W. Blakely, Jr. (Mar. 23, 2004, 08:26 EST) (on file with the Comm. on Local Gov't and Veterans' Affairs).

- Ad valorem taxes - this language is to reflect the current status of state law as to ad valorem taxes, and to ensure that this charter does not change the same (there is state statute as well as case law, neither of which we desire to change by virtue of this proposed charter revision).

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

On March 31, 2004, the Committee on Local Government & Veterans' Affairs adopted an amendment by Representative D. Davis, at lines 462-464, which removed a continuing provision that provided that "the issuance of bonds shall not be subject to any limitations or conditions contained in any other law."³² The bill, as amended, was reported favorably with committee substitute.

³² See HB 1647 § 4(2) (2004).