

FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 399

FINAL HOUSE FLOOR ACTION:

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SPONSOR: Rep. Ray

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/CS/CS/SB 768

SUMMARY ANALYSIS

CS/CS/CS/HB 399 passed the House on April 20, 2011, and subsequently passed the Senate on May 2, 2011. The bill was approved by the Governor on June 17, 2011, chapter 2011-164, Laws of Florida, and becomes effective July 1, 2011. The bill includes several provisions related to seaports.

Specifically, the bill:

- Requires the Secretary of the Department of Transportation to designate an assistant secretary duties related to enhancing economic prosperity;
- Requires the Florida Seaport Transportation and Economic Development (FSTED) Council to annually develop a project priority list;
- Requires each port to develop a strategic plan;
- Creates a new prevailing principle for the Florida Transportation Plan;
- Creates a new component of the Strategic Intermodal System;
- Exempts overwater piers, docks and similar structure in deepwater ports from the ports stormwater management system if the port has a Stormwater Pollution Prevention Plan for industrial activities, and the Plan also provides similar pollution prevention measures for other activities that occur on overwater piers, docks, and similar structures;
- Provides that the Department of Environmental Protection (DEP) must approve or deny a port conceptual permit application within 60 days;
- Provides that DEP may only request additional information on a port conceptual permit application twice, unless the applicant waives this limitation in writing;
- Provides that if a non-applicant petitions as a third party to challenge DEP's issuance of a port conceptual permit, the petitioner initiating the action has the burden of ultimate persuasion and has the burden of going forward with the evidence;
- Provides that permits for maintenance dredging are not required under certain circumstances;
- Provides that certain conveyances may not be considered receiving waters for the purposes of maintenance dredging;
- Grants consent to use any sovereignty submerged lands for maintenance dredging; and
- Provides that the spoil material from the maintenance dredging is authorized to be deposited in a self-contained, upland disposal site, and the site, if existing as of January 1, 2011, does not require a permit if a Professional Engineer certifies the site, the site has adequate capacity to receive and retain the dredged material, and there are operating and maintenance procedures established that allow for discharge of return flow of water and to prevent the escape of the spoil material into the waters of the state.

The expedited permitting provisions in the bill may result in an increase in state government expenditures incurred by the DEP. The bill may reduce certain costs for ports and port-related businesses, but the ports may incur some costs in developing their master plans.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

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 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. In recent years, Asian nations have become key trading partners; in 2009, for example, 38 percent of water-borne imports from Asia 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

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.

⁴ Florida Trade and Logistics Study, page 17. Available at: https://www.communicationsmgr.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.

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

Panama Canal Project⁷

Built by the United States and opened in 1914, the Panama Canal is a 48-mile-long ship canal in the narrow Central American isthmus that joins the Atlantic and Pacific oceans. On December 31, 1999, ownership and control of the canal transferred from the United States to Panama. Today, the Panama Canal Authority (ACP) manages the canal.

The ACP has undertaken a \$5.2 billion modernization and expansion of the canal, which includes a third lock to move the new larger ships through the isthmus. Private investors and bank loans will finance some of the cost, and ACP is hoping that increased toll revenues from increased usage will generate enough money to pay for the rest of the project, which is expected to be completed by 2014.

For decades the Panama Canal has been a significant shipping lane for international maritime trade. Annual traffic has risen from about 1,000 ships in the canal's early days to 14,702 vessels in 2008. While the canal was built to handle the largest ships of its era, modern tankers and container vessels are bigger. As a result, these larger ships either take a different route or their owners do not use them in the Western Hemisphere, or, more commonly, goods are dropped off at seaports on the U.S. west and east coasts – depending on the final destination of the goods – and then hauled by truck or rail across the continent, where they may be loaded onto outbound ships. Some cargo stays in the United States, and some is further transported on land to points north or south. Once the expansion of the Panama Canal is completed larger cargo ships will be able to pass through the canal, thus increasing the number of these larger vessels that could be available to enter Florida's ports, increasing potential trade opportunities. However, some of Florida's ports may also need to be expanded to accommodate the larger cargo vessels.

Current Situation

Department of Transportation

Section 20.23, F.S., creates the Department of Transportation (DOT) as a decentralized state agency and authorizes DOT's secretary to appoint up to three assistant secretaries who are directly responsible to the secretary to perform duties assigned by the secretary.

The Florida Seaport Transportation and Economic Development Council

Section 311.09, F.S., establishes the Florida Seaport Transportation and Economic Development (FSTED) Council within DOT. The FSTED Council is required to develop a 5-Year Florida Seaport Mission Plan defining the goals and objectives concerning the development of port facilities and an intermodal transportation system. The Council also must annually submit a list of projects approved by the Council to be funded by FSTED for review by the Department of Community Affairs (DCA), DOT, and the Office of Tourism, Trade, and Economic Development (OTTED) for consistency with local comprehensive plans and certain statewide plans. Approved, consistent projects are included in DOT's Work Program.

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

⁷ Numerous sources are available for information about the Panama Canal expansion project, but two basic sources are the Autoridad Panama de Canal (Panama Canal Authority) website, at <http://www.pancanal.com/eng/acp/index.html> and http://en.wikipedia.org/wiki/Panama_Canal_expansion_project.

Florida Transportation Plan

Section 339.155, F.S., requires DOT to develop and annually update a statewide transportation plan, known as the Florida Transportation Plan (FTP). The FTP is to consider the entire state transportation system and examine the use of all modes of transportation to effectively and efficiently meet such needs. The purpose of the FTP is to establish and define the state's long-range transportation goals and objectives to be accomplished over a period of at least 20 years within the context of the State Comprehensive Plan, and any other statutory mandates and authorizations, and based upon the prevailing principles of:

- Preserving the existing transportation infrastructure;
- Enhancing Florida's economic competitiveness; and
- Improving travel choices to ensure mobility.

Strategic Intermodal System (SIS)

The Strategic Intermodal System Plan (SIS) was established by the Florida Legislature in 2003 to enhance Florida's economic prosperity and competitiveness. The DOT works with its partners to determine investment needs based on the performance of the transportation system relative to the goals and objectives of the SIS. Chapter 339, F.S., includes provisions for developing and updating the SIS. The system encompasses transportation facilities of statewide and interregional significance and is focused on the efficient movement of passengers and freight. The SIS and Emerging SIS currently include three different types of facilities that form one component of an interconnected transportation system. These types of facilities include:

- Existing or planned hubs that are ports and terminals serving to move goods or people between Florida regions or between Florida and other markets in the United States and the rest of the world.
- Existing or planned corridors connecting major markets within Florida or between Florida and other states or nations.
- Existing or planned intermodal connectors serving as connectors between the components listed above.

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.⁸

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 DEP and the water management districts under regulations found in chs. 161, 253, 373, and 403, F.S.

These agencies and the seaports work together early in the project planning process to identify environmental impacts and possible mitigation solutions. To that end, s. 311.105, F.S., creates 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

⁸ The individual seaport master plans are available online at the ports' websites.

voting members and representatives of DEP, DCA, 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 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.⁹

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 permit from DEP. The purpose of the port conceptual permit is to serve as a multi-year blueprint for seaport infrastructure projects, and to streamline the regulatory review and approval process. Both seaports and private entities with controlling interests in property near the seaports may use the conceptual permit 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.

Effect of the Bill:

The bill amends s. 20.23, F.S., directing DOT's secretary to designate, to an assistant secretary, duties related to enhancing economic prosperity, including the responsibility to liaison with the Governor's head of economic development. The assistant secretary so designated will be responsible for providing the Office of the Governor with investment opportunities and transportation projects that:

- Expand the state's role as a global hub for trade and investment, and
- Enhance the state's supply chain used in processing, assembling, and shipping goods to western hemisphere markets.

The bill amends s. 311.09(3), F.S., relating to the FSTED Council's 5-year seaport mission plan to require the council to develop a list of priority projects and submit the list to DOT.

The bill creates s. 311.14(3), F.S., requiring each port to create a port strategic plan with a 10-year horizon. Each plan must include:

- An economic development component that identifies targeted business opportunities for increasing business and attracting new business for which a particular facility has a strategic advantage over its competitors, identifies financial resources and other inducements to encourage growth of existing business and acquisition of new business, and provides a projected schedule for attainment of the plan's goals.
- An infrastructure development and improvement component identifying all projected infrastructure improvements within the plan area which require improvement, expansion, or development in order for a port to attain a strategic advantage for competition with national and international competitors.

⁹ See s. 403.061(37) and (38), F.S.

- A component that identifies all intermodal transportation facilities, including sea, air, rail, or road facilities, which are available or have potential, with improvements, to be available for necessary national and international commercial linkages and provides a plan for the integration of port, airport, and railroad activities with existing and planned transportation infrastructure.
- A component that identifies physical, environmental, and regulatory barriers to achievement of the plan goals and provides recommendations for overcoming those barriers.
- An intergovernmental coordination component that specifies modes and methods to coordinate plan goals and missions with the missions of DOT, other state agencies, and affected local general-purpose governments.

To the extent feasible, port strategic plans must be consistent with local government comprehensive plans of the units of local government in which the port is located. Upon approval of a plan by the port's board, the plan is to be submitted to the FSTED Council.

The FSTED Council is required to review the strategic plans and prioritize strategic needs for inclusion in the Florida Seaport Mission Plan.

The bill amends s. 339.155, F.S., relating to the Florida Transportation Plan to provide that the plan must consider the needs of the entire state transportation system and examine the use of all modes of transportation to effectively and efficiently meet these needs. The bill also adds, "expanding the state's role as a hub for trade" to the list of the prevailing principles of the plan.

The bill amends s. 339.63, F.S., relating to SIS facilities, to add existing or planned facilities that significantly improve the state's competitive position to compete for the movement of additional goods into and through the state to the different types of facilities that form a component of an interconnected transportation system.

The bill amends s. 373.406, F.S., to add a general exemption to part IV, ch. 373, F.S., relating to the management and storage of surface waters. The bill provides that overwater piers, docks, and similar structures located in a deepwater port are not considered part of a stormwater management system for which stormwater treatment is required under chs. 373 or 403, F.S.,¹⁰ if the port has a Stormwater Pollution Prevention Plan (Plan) pursuant to the National Pollutant Discharge Elimination System Program which addresses the industrial activities conducted on all impervious overwater piers, docks, and similar structures located in the port, and if the Plan also provides similar pollution prevention measures for other activities that occur on overwater piers, docks, and similar structures.

The bill amends s. 373.4133, F.S., relating to port conceptual permits to clarify and expedite several permitting provisions. The bill:

- Provides that DEP must approve or deny a port conceptual permit application within 60 days;
- Provides that DEP may only request additional information on a port conceptual permit application twice, unless the applicant waives this limitation in writing; and

¹⁰ Chapter 373, F.S., relates to water resources. Chapter 403, F.S., relates to environmental control.

- Provides that if a non-applicant petitions as a third party to challenge DEP's issuance of a port conceptual permit, the petitioner initiating the action has the burden of ultimate persuasion and has the burden of going forward with the evidence.

The bill amends s. 403.813(3), F.S., to provide that a permit is not required under chs. 403 or 373, F.S., ch. 61-691, L.O.F.,¹¹ or chs. 25214 or 25270, 1949, L.O.F.,¹² for maintenance dredging conducted by the seaports or by inland navigation districts, provided that no more dredging is to be performed than is necessary to restore previously dredged areas to original design specifications or configurations, previously undisturbed natural areas are not significantly impacted, and the work conducted does not violate the protections for manatees under s. 379.2431(2)(d), F.S.

The bill amends provisions relating to the discharge of return waters to provide that the point of discharge is into receiving waters. It also provides that ditches, pipes, and similar types of linear conveyances may not be considered receiving waters.

Current law provides that the state may not charge for material that s. 403.813(3), F.S., allows the public port or inland navigation district to remove. The bill grants consent to use any sovereignty submerged lands pursuant to s. 403.813, F.S.

The bill provides that the spoil material from the maintenance dredging done by the port is authorized to be deposited in a self-contained, upland disposal site, and the site, if existing as of January 1, 2011, does not require a permit if:

- A Professional Engineer certifies that the site has been designed in accordance with generally accepted engineering standards;
- The site has adequate capacity to receive and retain the dredged material; and
- The site has operating and maintenance procedures established that allow for discharge of return flow of water and to prevent the escape of the spoil material into the waters of the state.

Notice of intent to use this exemption must be provided to the DEP at least 30 days prior to commencement of maintenance dredging.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DEP may incur additional costs associated with the expedited review of applications for port conceptual permits.

¹¹ Chapter 61-691, L.O.F., creates the Southwest Florida Water Management District.

¹² Chapters 25214 and 25270, 1948, L.O.F., create the Central and Southern Florida Flood Control District.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Requiring DEP to issue a notice of intent for a port conceptual permit within 60 days may provide more certainty to the ports thereby reducing their costs. Ports may incur some additional costs associated with preparing port master plans.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring DEP to issue a notice of intent for a port conceptual permit within 30 days may provide more certainty to port related businesses thereby reducing their costs.

D. FISCAL COMMENTS:

None.