

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 Commerce Committee

BILL: CS/SB 2000

INTRODUCER: Commerce Committee and Senator Ring

SUBJECT: Seaports

DATE: March 10, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Fav/CS
2.			EP	
3.			CA	
4.			TA	
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

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

As work to widen and modernize the Panama Canal begins, ports on the entire U.S. coastline are considering their options on how to best position themselves to participate in what is expected to be an economic boon in maritime transit of oil, foodstuffs, consumer goods, and other cargo. States such as California, Maryland, South Carolina, and Texas are exploring options to finance major port improvements to attract the increased international shipping activities and to handle the larger tankers and cargo ships that will be traversing the Panama Canal.

CS/SB 2000 includes several proposals related to seaports:

- Streamlines and expedites certain port-related permitting processes related to dredging and other infrastructure improvements;

- Effectively removes changes to the list of seaport projects funded through the Florida Seaport Transportation and Economic Development (FSTED) program from the Legislative Budget Commission budget amendment process;
- Requires the FSTED Council to provide the Florida Department of Transportation (FDOT) with a list of port projects that can be made production-ready within the next 5 years;
- Directs the FSTED Council to allocate funds appropriated by the Legislature to port projects that promote intermodal movement of cargo and passengers; and
- As clarification, deletes references to memoranda of agreement between the Department of Environmental Protection (DEP) and the Florida Ports Council for a supplemental permitting process for seaports. Instead, DEP is empowered to directly provide a supplemental permitting process.

This bill amends ss. 311.09 and 403.061, F.S., and creates s. 311.106, 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. A recent economic analysis² prepared for the Florida Ports Council indicated that:

- In 2008, 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 2008, the maritime cargo activities at Florida seaports contributed \$1.7 billion in state and local tax revenues.
- The average annual wage of 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.⁴ Florida's top five international trading partners, in terms of cargo value, are: Brazil, Japan, Germany, Venezuela, and China.⁵ The cruise business also is a significant segment of Florida's seaport activity; in 2007, more than 14 million

¹ Listed in s. 403.021(9)(b), F.S. Interactive locator map is available at: <http://www.flaports.org/index.htm>. Last visited March 1, 2010.

² Available at [http://www.flaports.org/docs/2010%20economic%20action%20plan%20for%20florida%20-%20january%202010\(2\).pdf](http://www.flaports.org/docs/2010%20economic%20action%20plan%20for%20florida%20-%20january%202010(2).pdf). Last visited March 1, 2010.

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

⁴ Ibid, page 2.

⁵ Florida Ports Council Statistics Report, available at <http://www.flaports.org/statistics.htm>. Page 6. Last visited March 1, 2010.

passengers embarked and disembarked from the nine ports with cruise operations, and an estimated 17.7 million passengers are predicted for FY 2010-2011.⁶

Florida seaports are eligible, per s. 311.07, F.S., for a minimum of \$8 million a year⁷ in grants from the State Transportation Trust Fund for projects to improve the “movement and intermodal transportation” of cargo and passengers. The projects are recommended annually by the Florida Seaport Transportation and Economic Development (FSTED) Council⁸ and approved by the Florida Department of Transportation. Most years, the Legislature appropriates more than \$8 million to the seaports; for FY 2009-2010, for example, FDOT was directed to spend \$21.9 million on seaport grants.

The ports also benefit from an additional \$25 million in debt service paid with motor vehicle license fees from the State Transportation Trust Fund for 1996 and 1999 bond issues, per ch. 315, F.S., which financed major port projects.

Pursuant to s. 311.07, F.S., the state grant funds cannot exceed 50 percent of the total cost of an FSTED project. In order to be approved, a project must be consistent with the seaport’s comprehensive master plan and the applicable local government’s comprehensive plan, and comply with water-quality standards and requirements specified in ch. 403, F.S.

Eligible projects per the statute include:

- Dredging or otherwise deepening channels, harbors, and turning basins;
- Construction or rehabilitation of wharves, docks, piers, and related structures;
- Transportation facilities, such as roads or rail lines, located within a port; and
- Acquisition of land for port purposes.

Projects on the current FSTED 5-year work program include berth and terminal construction at Port Canaveral; purchases of cranes for Port Everglades; construction of cold storage warehouses at Port Manatee; and dredging at Port of Miami.

The FSTED port projects also are part of FDOT’s 5-Year Work Program, which is submitted to the Legislature for approval. If FDOT and FSTED decide to shift funding among approved seaport projects within a given fiscal year, it must seek approval from the Legislative Budget Commission, pursuant to s. 216.181, F.S., with a budget amendment.

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.⁹

⁶ Supra FN 3, page 5.

⁷ Since FY 2005-2006, FDOT by agreement with FSTED has earmarked at least \$15 million for FSTED projects.

⁸ Created in s. 311.09, F.S., the FSTED Council is comprised of the port directors, or their designees, of the 14 public seaports; the FDOT secretary or designee; the director of the Governor’s Office of Tourism, Trade, and Economic Development, or designee; and the secretary of the Florida Department of Community Affairs or designee.

⁹ The individual seaport master plans are available online at the ports’ websites.

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.¹⁰

Panama Canal Project¹¹

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 don't 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.

Supporters of the Panama Canal expansion contend the improved shipping will significantly reduce shipping costs, and even transit time.

¹⁰ See s. 403.061(37) and (38), F.S.

¹¹ Numerous sources are available for information about the Panama Canal expansion project, but a basic primer is found here: http://en.wikipedia.org/wiki/Panama_Canal_expansion_project.

The economic implications of the expansion have led several states, such as California, Maryland, South Carolina, and Texas, to reevaluate their long-term port planning and financing strategies, in order to take advantage of the anticipated greater volume of cargo. Also under re-evaluation nationwide are intermodal transportation plans, related to financing and location of rail and highway infrastructure improvements.

III. Effect of Proposed Changes:

Section 1 creates s. 311.106, F.S., to create an expedited permitting process related to port projects that could be described as “prequalifying” eligible projects for eventual state environmental permits. The new language would allow any of the 14 port authorities that manage Florida’s public seaports, or an entity that owns or controls property used or proposed to be used for activities at one of the 14 ports, to request from DEP a “port master plan authorization.”

This section describes a detailed process for submittal, review and either approval or denial by DEP, and specifies the type of information that must be included in the application to DEP. It also provides for access to the ch. 120, F.S., administrative appeals process by persons substantially affected by a port master plan authorization.

The authorization application must include projections of cost, revenue, and jobs created. It also must include all available information, with the exception of final design specifications and drawings, required by law for DEP to issue the port master plan authorization or permit, and to determine if the project is consistent with Florida’s federally approved coastal zone management program. Specifically, the application must include:

- The overall size of the project area or future facilities, and the size of proposed impervious surfaces;
- Acreage and size of wetlands that may be impacted by the proposed projects;
- The uniform mitigation assessment scores for the impacted wetlands, and a qualitative mitigation approach to offset any wetland loss associated with the project;
- A description of the design for the storm water treatment facilities;
- An explanation of how the proposed project will be built and operated, in order that it not contribute to any violations of applicable water quality standards;
- An explanation of how the project balances the existing statutory public interest test, in s. 373.414(1)(a), F.S.;
- A qualitative evaluation of how the applicant plans to address wastewater discharge issues associated with the project;
- The size, location, and description of waters to be filled and areas to be dredged;
- How the applicant plans to manage disposal of solid wastes expected to be generated at the proposed facilities;
- The potential adverse effect, if any, the project or proposed facilities will have on federally listed endangered or threatened animal and plant species, and a description of how the applicant plans to manage, mitigate, or eliminate any adverse impacts;
- A description of why and how the proposed project or facilities will not create unacceptable secondary or cumulative environmental impacts;

- An explanation of how the proposed activity will comply with the standards in s. 161,053, F.S., related to coastal construction control lines, to the extent applicable;
- An explanation of whether the project will require an authorization from the Board of Trustees of the Internal Improvement Trust Fund to use sovereign submerged lands, pursuant to ch. 253, F.S., and how they would be used; and
- Any information demonstrating the proposed project's compliance with DEP's regulatory requirements.

DEP must review the application in the context of how it complies with the standards of multiple permits or authorizations necessary for the port project:

- A joint coastal permit as described in s. 161.055, F.S.;
- An environmental resource permit pursuant to Part IV of ch. 373., F.S.;
- An authorization to use sovereign submerged lands, pursuant to ch. 253, F.S; and
- Any combination of the above.

DEP may approve the authorization application in its entirety, approved with modifications or conditions, or may deny it. When evaluating the application, DEP is directed to strike a "reasonable balance" between the need for the port project and its potential benefits, and the project's impacts on air and water quality, fish and wildlife, and the state's other natural resources. The bill mentions several factors DEP must consider in its evaluation.

After DEP issues the authorization, the applicant can then request permits and the permission to use sovereign submerged lands, if necessary; at this time, the applicant must provide DEP with the final, detailed construction plans.

Pursuant to s. 120.60, F.S., DEP will have 30 days to issue or deny the original authorization request or the requested final permits. However, DEP may make two requests for additional information (RAI), if it determines the application is incomplete. Before making a third request for documentation from the applicant, DEP must persuade an administrative law judge by clear and convincing evidence that the applicant has failed to fully respond to its second RAI. The administrative law judge must issue a final order on the application's completeness within 45 days of DEP's request, unless waived by the applicant.

When DEP issues its notice of intent to authorize the port project, the applicant must publish a notification of DEP's intent, one time only, in the largest general-circulation newspaper in the county or counties where the port project will be located. At this time, any person who is substantially affected by the proposed port project has 14 days from the publication date to initiate administrative proceedings pursuant to ss.120.569 and 120.57, F.S. This administrative hearing will be conducted using the expedited time-frames in s. 120.574, F.S., which means the administrative law judge must issue a decision within 30 days of the conclusion of the final hearing in the case or when that hearing's transcript is filed, whichever is later. The bill also addresses circumstances where the administrative law judge plans to issue a recommended order, and not a final order.

As this section of the bill is worded, it appears that the only opportunity for administrative challenge is when DEP issues its notice of intent to authorize the port project. DEP may issue a

final permit solely to monitor the project's compliance with the conditions of the port master plan authorization. Thus, the final permit is not considered an agency action subject to administrative challenges or other hearings pursuant to ss. 120.569 and 120.57, F.S.

However, if the project's activities or facilities as described in the request for a final permit or authorization are inconsistent with how they were described in the approved port master plan authorization, then the permit application may be processed as provided elsewhere in law, unless the differences are deemed by DEP to be minimal.

Section 2 amends s. 311.109, F.S., to direct the FSTED Council to submit to DOT a list of port projects that could be production-ready in 5 years, rather than the current 2 years, following the current fiscal year. DOT is directed to submit the list as part of its annual legislative budget request, but the specific projects and the estimated cost of each may not be delineated.

Further, the FSTED Council is directed to allocate annual legislative appropriations to approved port projects that improve the movement and intermodal transportation of cargo or passengers, and which support the interests, purposes, and requirements of the Florida ports. This provision is intended to give the FSTED Council flexibility from year to year on how to spend legislative appropriations.

Section 3 amends s. 403.061, F.S., to remove references to DEP entering into memoranda of agreements with the Florida Ports Council, a trade organization representing Florida's seaports, to provide a supplemental permitting process for the 5-year or conceptual 15-year joint coastal permits and environmental resource permits necessary for certain port projects.

Section 4 provides an effective date of July 1, 2010.

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:
Indeterminate.

VI. Technical Deficiencies:

As drafted, CS/SB 2000 includes several technical deficiencies that may need clarifying. For example:

- The provisions in Section 1, related to the environmental permits and authorizations needed before seaport projects can proceed, describe in detail the information that applicants must provide DEP and the process by which projects will be evaluated and approved or denied. However, the section can be interpreted to mean that a seaport project, by virtue of being part of an approved application for a port master plan authorization, basically complies with environmental criteria. The section also appears to create exceptions to the standard administrative hearing processes for DEP, the applicant, and persons or entities that may be substantially affected by the project.
- Section 2 can be interpreted to mean that FDOT cannot list specific seaport projects in its 5-Year Work Program – a departure from current law and agency rules. Even though the seaport projects, when added to the work program annually, would not be subject to an LBC approval of a budget amendment, they would become subject to LBC approval of the FDOT work program amendment, so delays could still occur.

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 Committee – March 10, 2010:

The CS differs from the bill as filed in the following ways:

- Removed the two sections of the original bill that expressed legislative intent about the economic significance of seaports and gave them preference for all available economic incentives, and which amended the Economic Development Road Fund, in s. 288.063, F.S., to make seaport projects approved by the FSTED Council eligible for the fund.
- Removed language in the original bill that briefly described the process and information DEP would use to evaluate a proposed port master plan authorization and either approve or deny it.
- Added detailed provisions on:
 - What information must be included in the port project applicant's request to DEP;

- The balancing criteria DEP must use when evaluating the application;
- The expedited administrative review process and time-frames for decisions by DEP and the administrative law judge; and
- Access to the administrative hearing process for persons or entities substantially affected by the proposed port project.
- Corrected scrivener's errors.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
