

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 963 Seaports
SPONSOR(S): Economic Development Policy Committee; Ray and others
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Economic Development Policy Committee, 13 Y, 0 N, As CS, Johnson, Kruse.

SUMMARY ANALYSIS

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.

The bill includes several proposals related to seaports:

- Creates a framework for the Department of Environmental Protection (DEP) to issue port conceptual permits for various seaport projects.
Requires the FSTED Council to provide the Florida Department of Transportation (DOT) with a list of port projects that can be made production-ready within the next 5 years.
Requires certain projects and seaport funding to be included in DOT's tentative work program.
Provides a time frame for DOT to process certain work program amendments related to seaports.
Deletes references to memoranda of agreement between DEP and the Florida Ports Council for a supplemental permitting process for seaports.
Conforms statutes related to concurrent permit processing and agency duties with respect to state lands to incorporate port conceptual permits.
Authorizes ports to enter into public-private partnerships for infrastructure projects.

The bill has an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### IV. SUBSTANTIVE ANALYSIS

#### IV. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Florida has 14 public seaports:<sup>1</sup> 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 analysis<sup>2</sup> 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.<sup>3</sup> Of that, 19 million tons were exports, 50.3 million tons were imports, and 51.9 million tons were domestic shipments.<sup>4</sup> Florida's top five international trading partners, in terms of cargo value, are: Brazil, Japan, Germany, Venezuela, and China.<sup>5</sup> The cruise business also is a significant segment of Florida's seaport activity; in 2007, more than 14 million passengers embarked and disembarked from the nine ports with cruise operations, and an estimated 17.7 million passengers are predicted for FY 2010-2011.<sup>6</sup>

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<sup>1</sup> Listed in s. 311.09(1), F.S. Interactive locator map is available at: <http://www.flaports.org/index.htm>. Last visited March 10, 2010.

<sup>2</sup> 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 10, 2010.

<sup>3</sup> Available at <http://www.dot.state.fl.us/planning/trends/tc-report/Seaport032509.pdf>. Last visited March 10, 2010.

<sup>4</sup> Ibid, page 2.

<sup>5</sup> Florida Ports Council Statistics Report, available at <http://www.flaports.org/statistics.htm>. Page 6. Last visited March 11, 2010.

<sup>6</sup> Supra FN 3, page 5.

Florida seaports are eligible for a minimum of \$8 million a year<sup>7</sup> in grants from the State Transportation Trust Fund for projects to improve the “movement and intermodal transportation” of cargo and passengers.<sup>8</sup> The projects are recommended annually by the Florida Seaport Transportation and Economic Development (FSTED) Council and approved by the Florida Department of Transportation (DOT). Most years, the Legislature appropriates more than \$8 million to the seaports; for FY 2009-2010, for example, DOT 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 a 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 DOT 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.<sup>9</sup>

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.<sup>10</sup>

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.

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

<sup>8</sup> Section 311.07, F.S.

<sup>9</sup> The individual seaport master plans are available online at the ports’ websites.

<sup>10</sup> Chapter 161, F.S., relates to beach and shore preservation, chapter 253, F.S., relates to state lands, chapter 373, F.S., relates to water resources, and ch. 403, F.S., relates to environmental control.

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.<sup>11</sup>

### ***Panama Canal Project***<sup>12</sup>

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.

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.

### **Effect of Proposed Changes**

The bill creates s. 373.4133, F.S., to allow DEP to issue port conceptual permits to seaports. The bill would allow any of the 14 ports to apply to DEP for a port conceptual permit, including applicable authorization to use sovereign submerged lands<sup>13</sup> either under a joint coastal permit<sup>14</sup> or the environmental resource permit,<sup>15</sup> for all or a portion of the port. Private entities with a controlling interest in property used for industrial marine activity in the immediate vicinity of any of the ports are also permitted to apply for a port conceptual permit. The permit may be issued for a period of up to 20 years and may be extended once for an additional 10 years. The port conceptual permit is considered the state's conceptual water quality compliance certification,<sup>16</sup> and the state's conceptual determination that the activities in the port conceptual permit are consistent with the state's federally-approved coastal zone management program.

The application for a port conceptual permit shall contain sufficient information to provide reasonable assurance that the designs are based upon engineering and environmental concepts that are likely to

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<sup>11</sup> See s. 403.061(37) and (38), F.S.

<sup>12</sup> 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](http://en.wikipedia.org/wiki/Panama_Canal_expansion_project). (Last Visited March 23, 2010).

<sup>13</sup> This is pursuant to ch. 253, F.S.

<sup>14</sup> This is pursuant to s. 161.055, F.S.

<sup>15</sup> This is pursuant to part IV of ch. 373, F.S.

<sup>16</sup> S. 401 of the Clean Water Act.

meet applicable rules for issuing construction permits for subsequent phases of the project. The port conceptual application, at a minimum must include:

- Identifying proposed construction areas and areas where construction will not occur;
- Estimated or maximum anticipated impacts to wetlands and other surface waters and any proposed mitigation for those impacts;
- Estimated or maximum amount of anticipated impervious surface and the nature of the stormwater treatment system for those areas; and
- The general location and types of activities on sovereignty submerged lands.

Except when the seaport requests construction approval as part of a port conceptual permit application, the application is not expected to include final design specifications and drawings. DEP is required to include in its port conceptual permit conditions specifying the information the port needs to submit as part of a request for a subsequent construction permit or authorization.

In determining whether to approve or deny the port conceptual permit application, DEP shall reasonably balance the potential benefits of the facility and the impacts on water quality, fish and wildlife, water resources and the state's other natural resources.

The port conceptual permit gives the permit holder assurance, during the duration of the permit, that the engineering and environmental concepts that its designs are based upon are likely to meet applicable rules for issuing construction permits for subsequent phases of the project, provided:

- The rules governing the conditions for issuing permits for future phases of the project do not change and the conceptual approval permit is not inconsistent with Total Maximum Daily Load or Basin Management Action Plan adopted for the waterbody into which the system discharges or is located pursuant to s. 403.067(7), F.S. and ch. 62-304, F.A.C.
- Applications for proposed future phase activities under the port conceptual approval permit are consistent with the design and conditions of the issued port conceptual approval permit. The primary areas for consistency comparison include:
  - The size, location, and extent of the system;
  - Type of activity;
  - Percent imperviousness;
  - Allowable discharge and points of discharge;
  - Location and extent of wetland and other surface water impacts and proposed mitigation plan (if required);
  - Control elevations;
  - Extent of stormwater reuse; and
  - Detention/retention volumes.

If an application for a subsequent phase activity is not consistent with the terms and conditions of the port conceptual approval permit, the applicant may request a modification of the port conceptual permit to resolve the inconsistency or may request that the application be processed independently of the port conceptual permit.

Notwithstanding any other provision of law, a port conceptual permit or associated construction permit, including any applicable sovereignty submerged lands authorization, may authorize advance mitigation for impacts expected as a result of the activities described in the port conceptual permit. Any advance mitigation shall be credited to offset the impacts of such activities, to the extent that the advance mitigation is successful.

DEP's final agency action of a port conceptual sovereignty submerged land authorization, associated with a port conceptual permit, may not be delegated by the Board of Trustees of the Internal Improvement Trust Fund (Board).<sup>17</sup> However, the Board's approval of an authorization constitutes a

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<sup>17</sup> This board consists of the Governor and Cabinet.

delegation to DEP of authority to take final action on behalf of the Board on any sovereignty submerged lands authorizations needed to construct facilities included in the port conceptual sovereignty submerged lands authorization, unless a member of the Board specifically requests that the final agency action be brought before the Board. Any delegation to DEP concerning a private project does not exempt the project from the Board's applicable rules including lease and easement fees.

The following procedures apply to the approval or denial of an application for a port conceptual permit or a final permit or authorization:

- Applications for a port conceptual permit, including any request for the conceptual approval of the use of sovereign submerged lands, are to be processed in accordance with provisions in ss. 373.427 and 120.60, F.S.<sup>18</sup> However, if the applicant believes that any request for additional information is not authorized by law or agency rule, the applicant may request an informal hearing pursuant to s. 120.57(2), F.S., before the secretary of DEP to determine if the application is complete.<sup>19</sup>
- Upon issuance of DEP's notice of intent to issue or deny a port conceptual permit, the applicant is required to publish a one time notice of such intent, prepared by DEP, in the newspaper with the largest circulation in the county or counties where the port is located.
- Final agency action on a port conceptual permit is subject to challenge pursuant to ss. 120.569 and 120.57, F.S. However, final agency action to authorize subsequent construction of facilities contained in a port conceptual permit may only be challenged by a third party for its consistency with a port conceptual permit.
- Anyone who will be substantially affected by a final agency action must initiate administrative proceedings pursuant to ss. 120.569<sup>20</sup> and 120.57, F.S., within 21 days after the publication of the notice of the proposed action. If administrative proceedings are requested, the proceedings are subject to the summary hearing provisions of s. 120.574, F.S. However, an administrative law judge's decision will be a recommended order, rather than a final order. A summary proceeding must be conducted within 90 days after a party files for a motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

Notwithstanding any other provision of law, DEP and the Board are authorized to issue permits and authorizations provided for in the Federal Endangered Species Act and its implementing regulations. The bill provides that the permits and authorizations include a condition that the authorized activities shall not commence until such take authorization is issued and shall be consistent with that authorization. DEP is required to unilaterally modify any permit or authorization consistent with any subsequently issued incidental take authorization. Such a unilateral modification does not create a point of entry for any substantially affected person to request administrative proceedings under ss. 120.567 and 120.57, F.S.

DEP and the Board may adopt rules to implement this section under the joint coastal permit provisions of ch. 161, F.S., the sovereign lands provisions of ch. 253, F.S., and the environmental resource provisions of part IV of ch. 373, F.S. The adoption of these rules is not subject to any rule-making requirements related to small business. Notwithstanding this grant of rulemaking authority, the port conceptual permit statute is intended to be available for use upon becoming law, and its implementation is not to be delayed by any rulemaking.

The bill provides that in lieu of meeting generally applicable stormwater design standards that create a presumption that stormwater discharged from the system will meet applicable state water quality standards in the receiving waters, any of the 14 ports may propose alternative stormwater treatment and design criteria for constructing, operating, and maintaining stormwater management systems serving overwater piers. This proposal is to include structural components and best management practices to address stormwater discharge, including consideration of activities conducted on the pier,

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<sup>18</sup> Section 373.427, F.S., relates to concurrent permit review and section 120.60 relates to licensing.

<sup>19</sup> This informal hearing is pursuant to s. 120.57(2), F.S., which relates to additional procedures applicable to hearings not involving disputed issues of material fact.

<sup>20</sup> Section 120.569, F.S., relates to decisions which affect substantial interests.

in order to provide reasonable assurance that the stormwater discharge will meet the applicable state water quality standards into receiving waters.

The bill amends s. 311.109, F.S., to require DOT to include specific approved seaport projects to be funded during the ensuing fiscal year in its tentative work program.<sup>21</sup> The total amount of funding to be allocated to seaport projects in the next successive four fiscal years is also to be included in the work program; however, no specific projects will be tied to those funds.

The bill also requires DOT, upon the written request of FSTED, to submit work program amendments to the Governor within 10 days after:

- The date the request is received by DOT; or
- The effective date of the amendment, termination, or closure of the applicable funding agreement between DOT and the affected seaport, as required to release the funds from the existing commitment.

The bill 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.

The bill amends s. 403.813(3), F.S. relating to maintenance dredging at the 14 seaports or by inland navigation districts. It increases the mixing zone for turbidity from a 100 to a 150 foot radius from the point of dredging, except that it may not go into areas supporting wetland communities, submerged aquatic vegetation and hardbottom communities.

The bill removes provisions related to discharge return in manmade waters and provides that the mixing zone may not extend into areas supporting wetland communities, submerged aquatic vegetation, or hardbottom communities.

The bill also increases the time period allowed for maintenance dredging after a storm event from two to three years.

The bill also amends s. 161.055, F.S., related to concurrent processing of permits, and s. 253.002, F.S., related to various state agency duties with respect to state lands to incorporate the port conceptual permit process into those sections.

Finally, the bill authorizes seaports to receive or solicit proposals from and enter into public-private infrastructure project agreements with private entities to build, operate, maintain, or finance port-related public infrastructure projects.

The bill has an effective date of July 1, 2010.

## B. SECTION DIRECTORY:

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| Section 1 | Creates s. 373.4133, F.S., relating to port conceptual permits.   |
| Section 2 | Amends s. 311.09, F.S., relating to the Florida Seaport Transportation and Economic Development Council.  |
| Section 3 | Amends s. 403.061, F.S., relating to the powers and duties of the Department of Environmental Protection. |
| Section 4 | Amends s. 403.183, F.S., relating to permits issued at district centers.                                  |

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<sup>21</sup> DOT's work program is developed pursuant to s. 339.135, F.S.

- Section 5 Amends s. 161.055, F.S., relating to concurrent processing of permits.
- Section 6 Amends s. 253.002, F.S. relating to Department of Environmental Protection, water management districts, Fish and Wildlife Conservation Commission, and Department of Agriculture and Consumer Services and duties with respect to state lands.
- Section 7 Authorizes seaports to enter into public private partnerships for certain projects.
- Section 8 Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. DEP and DOT expect to incur some additional costs associated with provisions of the bill.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. Streamlined permitting for seaport projects may generate an increase in the number of these projects. There may be an increase in revenues to local government associated with this activity.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage additional seaport development.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### IV. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

#### IV. Other:

None.



**B. RULE-MAKING AUTHORITY:**

The bill authorizes DEP and the Board of Trustees of the Internal Improvement Trust Fund to adopt rules to implement provisions of the newly created port conceptual permits under statutory provisions related to joint coastal permits, sovereign lands, and environmental resource permits.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 25, 2010, the Economic Development Policy Committee amended, adopted, and passed a Proposed Committee Substitute. The Proposed Committee Substitute did the following:

- Removed a provision to include seaport projects in a definition of “transportation projects” as it relates to projects administered by the Office of Tourism, Trade, and Economic Development.
- Removed legislative findings and policy relating to seaport commerce.
- Revised and provided additional details regarding port conceptual permits.
- Revised and expanded on provisions related to DOT’s work program.
- Addressed issues related to maintenance dredging.
- Authorized seaports to enter into public-private partnerships.