

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1023 Canaveral Port District, Brevard County

SPONSOR(S): Economic Affairs Committee, Goodson

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 0 N	Miller	Rojas
2) Economic Affairs Committee	17 Y, 0 N	Creamer	Creamer

SUMMARY ANALYSIS

The Canaveral Port District is an independent special district created by special act of the Legislature in 1953 to administer and operate the deep water port at Port Canaveral in Brevard County. Special districts are used to create, fund, administer, and oversee provision and delivery of a variety of local services in Florida. Independent districts created by special act are not subsidiary to local general-purpose governments such as cities or counties. As an independent district the Canaveral Port District has its own governing structure, the members of the governing body, called the Port Authority, are elected by the voters within the district, and its budget is not subject to local government veto.

In 1997 the Legislature required each special district to propose a codification of their charter that would be adopted as a single document.¹ The special acts comprising the charter and authority for the Canaveral Port District were consolidated, integrated, and codified as a single document in Ch. 2003-335, LOF. Since then the charter has been amended four times by special act. In 2012 the Port Authority formed a Charter Review Commission to review the acts now forming the charter and recommend another single, integrated document. The Commission's work was adopted unanimously by the Port Authority and submitted to the Brevard County legislative delegation.

The bill codifies the acts creating and empowering the Canaveral Port District into a single integrated document. Some charter sections are restructured and relocated and obsolete text is updated or removed. Certain limitations on the exercise of power by the Port Authority are removed, providing greater discretion to the Port Authority in areas such as approving leases and encumbrances on certain Port property.

The bill provides the proposed charter will go into effect upon the act becoming law.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) may apply to this bill.

¹ Ch. 97-255, s. 24, LOF, now codified as s. 189.429, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Canaveral Port District

The Canaveral Port District (Port District) is an independent special district² created in 1953.³ The Canaveral Port (Port Authority) is the five member board comprised of Port Commissioners elected by the voters in the Port District. The Port Authority operates the deep water Port of Canaveral, supporting recreational cruise lines, cargo shipping and a customs port of entry, as well as service to regional military bases and NASA.⁴

Port Canaveral is accessible both from the Atlantic Ocean and the Indian River portion of the Intracoastal Waterway.⁵ For 2013 the Port Authority reported the Port served over 3.7 million cruise passengers and handled over 3.8 million short tons of cargo.⁶ A 2012 economic analysis commissioned by the Port Authority found total employment at the Port was 16,983 for its cruise, cargo, real estate, and marina operations. Total Port business revenue exceeded \$1.9 billion, generating state and local taxes exceeding \$7.4 million.⁷

Although authorized to impose and collect ad valorem taxes within the Port District, since 1986 the Port Authority has chosen to forego collecting such taxes and depends on Port-generated income for the District.⁸

Pursuant to an earlier statutory requirement for each district to structure all its relevant special laws into a single charter for recodification, the charter for the Port District was recodified in 2003.⁹ Subsequent acts increased the amounts for which the Port Authority could encumber Port assets,¹⁰ authorized the Port Authority to convey or dispose of lands,¹¹ authorized the Port Authority to create a direct-support organization,¹² and increased the value of small contracts which the Port Manager could enter into without referring the matter to the Port Commissioners.¹³

In 2012 the Port Authority created a ten member Charter Review Committee to conduct a comprehensive review of the entire charter for the Port District and prepare any revisions. The Committee's final recommendation, a document integrating and updating the charter, was accepted by unanimous vote of the Port Authority and submitted to the local legislative delegation.¹⁴

Independent Special Districts

² Ch. 2003-335, s. 3 (Charter Art. I, s. 1), LOF.

³ Ch. 28922, LOF (1953).

⁴ Information summaries received from representatives of the Port Authority on file with staff of the Local & Federal Affairs Committee.

⁵ Canaveral Port Authority, "Tariff No. 12," Rule No. 34-A02 (10/1/2011), at <http://portcanaveral.com/general/tariffs.php> (accessed 3/29/2014).

⁶ "2014 Annual Report/Directory," 29, at <http://www.portcanaveral.com/general/annualreport.php>

⁷ "The 2012 Economic Impact of Port Canaveral," 1, at <http://www.portcanaveral.com/general/economics.php> (accessed 3/29/2014).

⁸ At <http://www.portcanaveral.com/general/authority.php> (accessed 3/29/2014).

⁹ Ch. 2003-335, LOF.

¹⁰ Ch. 2004-472, s. 1, LOF.

¹¹ Ch. 2005-320, s. 1, LOF. This authority was limited to land to which the Port Authority acquired title after January 1, 1987.

¹² Ch. 2008-288, s. 1, LOF.

¹³ Ch. 2011-258, s. 1, LOF.

¹⁴ Letter from Thomas W. Weinberg, Chairman, Canaveral Port Authority, to the Brevard Delegation (Nov. 1, 2013); Legal Memorandum from Harold T. Bistline, Esq., to the Brevard County Legislative Delegation (Oct. 7, 2013) (herein the Charter Revision MM), in the possession of staff of the Local & Federal Affairs Committee.

A “special district” is “a local unit of special purpose...government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.”¹⁵ Special districts are created to provide a variety of services, such as mosquito control, beach facilities, children’s services,¹⁶ fire control and rescue,¹⁷ or drainage control.¹⁸ An “independent special district” is characterized by having a governing board the members of which are not identical in membership to, nor all appointed by, nor any removable at will by, the governing body of a single county or municipality, and the district budget cannot be affirmed or vetoed by the governing body of a single county or municipality.¹⁹

Requirements of Section 189.404(2), F.S.

Section 189.404(2), F.S., prohibits²⁰ special laws or general laws of local application which exempt a special district certain from certain statutory requirements.²¹ These include provisions on district elections,²² bond referenda,²³ the issuance of bonds without a referendum,²⁴ reporting to affected local general-purpose governments about district public facilities,²⁵ requirements for public notice and conducting public meetings,²⁶ and budget and financial reporting requirements.²⁷

Effect of Proposed Change

Charter Recodification

The bill integrates the special laws currently comprising the Port District charter²⁸ into a single document, revises, restructures, and reorganizes certain existing charter articles and sections, revises or deletes obsolete language, and provides certain new authority and responsibilities to the Port Authority. The bill does not exempt the Port District from the requirements of ss. 189.408, 189.4085, 189.415, 189.417, or 189.418, F.S., thus complying with s. 189.404(2), F.S.

This section of the analysis discusses substantive changes in the Port District charter proposed in section 3 of the bill, listed by specific charter article. Unless noted below, the changes to a particular article or section appear to be minor, non-substantive edits updating, conforming, or correcting the text. Except where noted, the effect of bill sections 1, 2, 4, 5, and 6 is discussed in the Section Directory.

Changes to Authority and Powers

Bill section 1 includes as one purpose within the statement of legislative intent the approval “of any additional authority granted by this act.” All references in this discussion will be to Bill section 3 which recreates and reenacts the Port District Charter; charter sections will be referenced by “Art. __, s. __.”

Charter Article I

¹⁵ Section 189.403(1), F.S.

¹⁶ Section 125.901, F.S.

¹⁷ Section 191.002, F.S.

¹⁸ Section 298.01, F.S.

¹⁹ Section 189.403(3), F.S.

²⁰ Ch. 189, F.S., including s. 189.404(2), F.S., was passed by a 3/5 majority in each chamber. Under the Florida Constitution, a law passed with a 3/5 majority vote may be amended or repealed only by another 3/5 majority vote. Art. III, s. 11(a)(21), Fla. Const.; *School Board of Escambia Co. v. State*, 353 So. 2d 834, 839 (Fla. 1977).

²¹ The entire subsection applies to the creation of a new special district. Only paragraphs 189.404(2)(b), (2)(c), and (2)(d), F.S., appear to apply to the recodification of an existing district’s charter.

²² Section 189.405, F.S.

²³ Section 189.408, F.S.

²⁴ Section 189.4085, F.S.

²⁵ Section 189.415, F.S.

²⁶ Section 189.417, F.S. This section expressly references Ch. 286, F.S. Section 189.417(2), F.S.

²⁷ Section 189.418, F.S.

²⁸ Chs. 2003-335, 2004-472, 2005-320, 2008-288, 2011-258, LOF.

Section 2 deletes the description of five separate commissioner districts for the members of the Port Authority. Apparently the provision is now moot as art. I, s. 3 provides for the Port Authority to reconfigure the commissioner districts every ten years.

Charter Article II

Section 1 revises the definitions of the Port District and Port Authority to delete apparently archaic references to “Harbor District” and “Harbor Commissioners” and includes submerged lands deeded to the Port District as part of the lands owned by the Port Authority. Section 2, creates a single comprehensive definition of “Public Notice” for use throughout the charter; the definition includes the publication by newspaper requirement existing in specific sections of the present charter and adds requirements for publication on the Port Authority website and as provided by law.

Charter Article IV

Sections 2 and 6 delete references to the Port Authority’s ability to designate certain “areas for abandoned” or derelict ships, a conscious drafting decision by the Port District Charter Review Committee.²⁹ More substantively, these two sections replace archaic references to the Port Authority power over “telegraph and telephone lines” within the district with a broader authority over “cellular and telephone systems and lines.”

Section 13 replaces the requirement for the Port Authority to transfer to the U.S. government title to land for use as a Coast Guard station, with a right of reversion back to the Port Authority if the land ceases to be used for that purpose, to a more general authority to transfer or receive title to or possession of land from the U.S. government. Currently, there is an active U.S. Coast Guard station at the Port.³⁰

Section 16 substantially revises the Port Authority’s power to lease Port District real and personal property assets. The section retains with minor, non-substantive editing the power of the Port Authority to execute contracts, notes, and other financial and contract instruments. Section 16(b) appears to be a substantial relocation and reorganization of former charter Article XVIII on leases and encumbrances. The bill expands the power of the Port Authority to lease property by:

- Increasing from 10 to 30 years the length of lease the Port Authority may approve at a duly-noticed public meeting.
- Authorizes the Port Authority to approve leases with terms between 30 and 50 years if notice of the intended lease is published at least 30 days before the final vote at a public meeting.
- Authorizes the Port Authority to approve leases with terms between 50 and 99 years only after a “supermajority” of the Commissioners (presumably 4; the term is undefined) votes to approve the lease at two consecutive Authority meetings, with notice of the proposed lease published at least 60 days before the first meeting.
- The bill removes the existing cap of \$1,000,000, for encumbrances lasting more than five years, presently limiting the Port Authority’s ability to encumber Port District personal property.
- The bill deletes the present requirement in art. IV, s. 16(c), and art. XVIII, for a referendum of district electors to approve leases of longer than five years or encumbrances of personal property exceeding \$1,000,000 for more than five years.

Section 18 deletes the three member Pilot Commission.

Section 19 adds to the Port Authority’s use of borrowed funds the ability to apply such funds to off-port projects related to the construction, maintenance, and repair of roads providing access to the Port. Authorizes conduit financing and financing through third parties or not-for-profit 501(c)(3) organizations within the scope of funds available to pay revenue certificates or revenue bonds issued by the Port Authority. This section appears to increase the powers of the Port District by empowering the Port

²⁹ Charter Revision MM, 2.

³⁰ At <https://www.facebook.com/USCoastGuardStationPortCanaveral> (accessed 3/19/2014).

Authority to exercise all powers of a local agency under Ch. 159, Part II, F.S., the “Florida Industrial Development Financing Act.”

Sections 21(e) and 23(a) appear to create exceptions to general law. Section 21(e) states ss. 193.321 – 193.327, F.S. (1967) are void with respect to the Port District, a provision first enacted for the District in 1969³¹ and included in the District’s charter without change since that time. The present charter states these provisions “shall not apply, and are hereby specifically repealed...” Section 23(a) renders void present s. 253.126, F.S., as to the Port Authority.³² A law incorporating a specific statute by reference, without expressly incorporating future changes to the statute, continues to reference the substance of the incorporated statute as of the date the incorporating law went into effect.³³ Whether recodification of section 21(e) will incorporate the subsequent development of these 1967 statutes³⁴ or will preserve the status of the law at the time the provision was originally adopted in 1969 is unclear.

Article V

Section 1(a) amends the timing of when a commissioner takes office. Beginning with the general election in 2016, a Port Commissioner’s term begins on the first Port Authority meeting after the Commissioner’s election. Section 1(b) is a new provision limiting Port Commissioner terms. Beginning with those Commissioners whose terms begin in January 2015, Commissioners will be limited to three consecutive four-year terms. There is no apparent prohibition to leaving office and then beginning another period of three consecutive terms after that break in service.

Section 5 deletes a current provision that being a Port Commissioner does not disqualify someone from also holding a separate municipal, county, or state office.

Article VI

Section 1 retains the present 0.5 percent cap on the Port Authority’s power to impose a franchise or excise tax on businesses and occupations under a franchise granted by the Authority.

Section 4 is a new provision adding a requirement for the Port Authority to review the Port District Land Use Plan at least once every three years, beginning in 2015.

Article XVII

Section 1 strengthens the requirement for competitive bidding for contracts exceeding \$100,000. Greater frequency and form of public notice is required than under the general provision applicable to the charter. The bill adds a requirement for bidders to provide a bid bond expressly protecting the Port Authority in the event the successful bidder subsequently fails to enter a contract and post the required performance or payment bonds.

Section 2(a) requires the Chief Executive Officer to obtain three written, instead of telephonic, offers when considering letting a contract between \$10,000 and \$100,000.

³¹ Ch. 69-857, s. 2, LOF. The original text read “The provisions of sections 193.321 – 193.327, inclusive, of the Florida Statutes, 1967, shall not apply, and hereby are specifically repealed, as to the power and authority of Canaveral Port Authority to levy, assess, collect and enforce ad valorem taxes as set forth in Chapter 28922, Laws of Florida of 1953, as amended.” This chapter law also consolidated the Port Authority’s maximum ad valorem millage rate at 3 mills.

³² Section 253.126, F.S., states “The limitations and restrictions imposed by this chapter as amended by chapter 67-393, Laws of Florida, upon the construction of islands or the extension or addition to existing lands or islands bordering on or being in the navigable waters, as defined in s. 253.12, shall apply to the state, its agencies and all political subdivisions and governmental units. No other general or special act shall operate to grant exceptions to this section unless this section is specifically repealed thereby.” For the Port Authority to be exempted from these limitations this section must be specifically repealed.

³³ *Reino v. State*, 352 So. 2d 853, 858-859 (Fla. 1977); *Van Pelt v. Hilliard*, 78 So. 693, 698, 75 Fla. 792, 808-809 (1918).

³⁴ Sections 193.321, 193.322, 193.323, 193.324, 193.325, 193.326, and 193.327 were renumbered as ss. 200.071, 200.091, 200.111, 200.121, 200.141, 195.051, and 200.161, F.S., respectively, by Ch. 69-55, LOF. Section 195.051 subsequently was renumbered s. 195.101(1), F.S., by Ch. 70-243, s. 45, LOF. Sections 195.101(1), 200.071, 200.091, 200.141, F.S., are currently in effect. Section 200.121 was repealed by Ch. 73-333, LOF, and ss. 200.111 and 200.161, F.S., were repealed by Ch. 82-154, s. 21, LOF.

Article XVII

As stated above, the bill moves the present Article XVIII on Leases and Encumbrances to art. IV, s. 16, and makes significant changes to the allowed terms and requirements for referendum approval. The new art. XVIII provides for a mandatory review of the Port District charter every ten years and specifies the form, membership, and process for the Charter Review Committee.

Article XIX

This new article provides definitions and requirements for periodic Port Authority review of the commercial fish dealing industry at the Port in a duly-noticed public meeting. Also requires a supermajority vote before the Port Authority decides not to renew a commercial fish dealers' lease or to move a lessee involuntarily.

Article XX

This new article defines "recreational interests" and requires the Port Authority use best efforts to facilitate recreational usage, in its discretion.

B. SECTION DIRECTORY:

Section 1. States legislative intent to codify the charter for the Canaveral Port District as a single, comprehensive special act charter for the district.

Section 2. Codifies, reenacts, amends, and repeals Chs. 2003-335, 2004-472, 2005-320, 2008-288, 2011-258, Laws of Florida.

Section 3. Re-creates, reenacts, and states in full the charter for the Canaveral Port District.

Section 4. Requires liberal construction of the act.

Section 5. Repeals Chs. 2003-335, 2004-472, 2005-320, 2008-288, 2011-258, Laws of Florida.

Section 6. Provides the act is effective upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 20, 2014

WHERE? Brevard County, FL

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:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Substantive: At lines 166 and 235, the bill deletes a current reference to Canaveral Port District.
- Technical: At lines 671 and 989-990, the bill uses “authority” to describe the Port Authority, which is defined as “Port Authority” or “Authority” in art. II, s. 1.
- Substantive: At line 1247 the bill requires the Port Authority to discuss the commercial fish dealing industry at a regular meeting “not less than once every 2 years...” At lines 1249 and 1253, the bill refers to “the annual public hearing” to discuss the fish dealing industry. These descriptions appear to create an internal inconsistency about the frequency of this required discussion.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 11, 2014, the Economic Affairs Committee adopted one amendment to retain the 0.5 percent cap on the Port Authority’s power to impose a franchise or excise tax on businesses and occupations under a franchise granted by the Authority that was deleted in the original filed bill.