

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 1089 Ocean Highway and Port Authority, Nassau County  
**SPONSOR(S):** Byrd  
**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N	Darden	Miller
2) Transportation & Infrastructure Subcommittee	14 Y, 0 N	Johnson	Vickers
3) Government Accountability Committee			

### SUMMARY ANALYSIS

The Ocean Highway and Port Authority (Authority) is an independent special district in Nassau County responsible for managing operations at the Port of Fernandina. The Authority has a long-term contract with Nassau Terminals, LLC, a subsidiary of Kinder Morgan, to handle day-to-day operations of the port such as marketing, terminal handling, and stevedoring.

The bill revises the charter for the Authority to allow for the construction and operation of intermodal transport facilities, educational and research facilities, power generation facilities, and equipment for provided telecommunication services. The bill limits the ability of the Authority to construct and operate an oil refinery to the refining of organic oils such as fish oil. The bill clarifies the ability of the Authority to construct toll roads and authorizes the sale of bonds for the construction of intermodal facilities.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Ocean Highway and Port Authority

The Ocean Highway and Port Authority (Authority) is an independent special district<sup>1</sup> created by special act of the Florida Legislature in 1941.<sup>2</sup> The Authority operates the Port of Fernandina in Nassau County.<sup>3</sup> The Authority's charter, including the initial 1941 charter and all subsequent special laws concerning the district, were codified in 2005.<sup>4</sup> The Authority has a long-term contract with Nassau Terminals, LLC, a subsidiary of Kinder Morgan, to handle certain day-to-day operations of the port such as marketing, terminal handling, and stevedoring.<sup>5</sup>

The Authority is governed by a five member Board of Port Commissioners.<sup>6</sup> Commissioners are elected in partisan elections to four-year terms serving districts corresponding to the district boundaries for the Nassau County Board of County Commissioners.<sup>7</sup> Each commissioner must reside in the boundaries of the district he or she represents.<sup>8</sup>

To operate the port effectively, the Authority is authorized, in part, to:

- Purchase, construct, and maintain port facilities, including docks, warehouses, shipyards, and railways;<sup>9</sup>
- Improve and develop Fernandina Harbor and other waterways in Nassau County;<sup>10</sup>
- Fix rates for use of port facilities;<sup>11</sup>
- Construct and maintain infrastructure necessary to operate the port;<sup>12</sup> and
- Issue bonds.<sup>13</sup>

Authority operations are financed by a combination of port revenues, federal and state grants, port security revenue, rental income, and annual fees.<sup>14</sup>

The Authority is authorized to construct and equip an oil refinery.<sup>15</sup>

##### Florida Seaport Transportation and Economic Development Program

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<sup>1</sup> Section 189.012(3), F.S. (defining independent special district as any special district that is not a dependent special district under s. 189.012(2), F.S.)

<sup>2</sup> Chapter 41-21418, Laws of Fla.

<sup>3</sup> See ss. 3, 7(5), and 9, Charter of the Ocean Highway and Port Authority, as codified in s. 3, Ch. 2005-293, Laws of Fla. (herein Port Authority Charter) (board members elected by voters, power to set rates for use of port facilities, and power to apply for loans and grants from federal and state governments, respectively).

<sup>4</sup> Ch. 2005-293, Laws of Fla.

<sup>5</sup> See Ocean and Highway Port Authority, *SeaPort of Fernandina*, <http://www.portoffernandina.org/port-operator> (last visited Mar. 11, 2017).

<sup>6</sup> Section 3, Port Authority Charter.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Section 7(2), Port Authority Charter.

<sup>10</sup> Section 7(3), Port Authority Charter.

<sup>11</sup> Section 7(4), Port Authority Charter.

<sup>12</sup> Section 7(6), Port Authority Charter.

<sup>13</sup> Section 7(9), Port Authority Charter.

<sup>14</sup> See Ocean and Highway Port Authority, *2016-2017 Budget*, <http://www.portoffernandina.org/annual-budget> (last visited Mar. 11, 2017).

<sup>15</sup> Section 30, Port Authority Charter.

The Department of Transportation's (DOT) Florida Seaport Transportation and Economic Development Program (Program) assists in the financing of port transportation and port facilities projects to improve the transport of cargo and passengers.<sup>16</sup> The Program is allocated \$25 million per year from the State Transportation Trust Fund to finance projects.<sup>17</sup>

Program funds are used to finance approved projects on a 50-50 matching basis with any deepwater port listed in s. 311.09, F.S.<sup>18</sup> Eligible projects include:

- Transportation facilities within the jurisdiction of the port;
- The dredging or deepening of channels, turning basins, or harbors;
- The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with any of the foregoing;
- The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce;
- The acquisition of land to be used for port purposes;
- The acquisition, improvement, enlargement, or extension of existing port facilities;
- Environmental protection projects which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval; which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; which are necessary for the acquisition of spoil disposal sites and improvements to existing and future spoil sites; or which result from the funding of eligible projects listed in this paragraph;
- Transportation facilities as defined in s. 334.03(30), F.S. which are not otherwise part of the Department of Transportation's adopted work program;
- Intermodal access projects;
- Construction or rehabilitation of port facilities as defined in s. 315.02, excluding any park or recreational facilities, in ports listed in s. 311.09(1), F.S., with operating revenues of \$5 million or less, provided that such projects create economic development opportunities, capital improvements, and positive financial returns to such ports; and
- Seaport master plan or strategic plan development or updates, including the purchase of data to support such plans.<sup>19</sup>

Projects must be consistent with the port comprehensive master plan approved as part of the local government comprehensive plan as required by s. 163.3178(2)(k), F.S. or other provisions of the Community Planning Act, part II of chapter 163.<sup>20</sup> DOT may subject any project receiving funds under the Program to a final audit.<sup>21</sup>

#### Communication Services Provided by Local Governments

For a local government to operate a high-speed internet or other telecommunication services network, the local government must:

- Separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of such service;<sup>22</sup>
- Pay ad valorem taxes to any county in which the service operates;<sup>23</sup>
- Establish an enterprise fund to account for the operation of communications services;<sup>24</sup>

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<sup>16</sup> Section 311.07(1), F.S.

<sup>17</sup> Section 311.07(2), F.S.

<sup>18</sup> Section 311.07(3)(a), F.S.. This list includes the Port of Fernandina, as well as the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, and Key West. S. 311.09(1), F.S.

<sup>19</sup> Section 311.07(3)(b)1.-11., F.S.

<sup>20</sup> Section 311.07(3)(c), F.S.

<sup>21</sup> Section 311.07(5), F.S.

<sup>22</sup> Section 125.421(1), F.S.

<sup>23</sup> Section 125.421(3), F.S.

- Adopt separate operating and capital budgets for communications services;<sup>25</sup> and
- Operate at a profit within 4 years.<sup>26</sup>

If the provision of communications services by the local government is not profitable within 4 years, the local government must either cease providing services, sell the system used to provide services, partner with a private entity to provide services at a profit, or approve continuing service by a majority vote.<sup>27</sup>

Districts are prohibited from:

- Setting rates below the cost of providing the communications service;<sup>28</sup>
- Operating outside of the boundaries of the district, without consent of the county and/or municipality in which services would be provided;<sup>29</sup>
- Issuing revenue bonds with maturities of longer than 15 years without voter approval;<sup>30</sup> and
- Using powers of eminent domain “solely or primarily” for the purpose of providing communications services.<sup>31</sup>

### **Effect of Proposed Changes**

The bill grants the Authority the power to construct and operate intermodal facilities, freight logistics zones, and transportation facilities which are not otherwise part of DOT’s adopted work program. The bill also authorizes the construction of education and research facilities, devoted to marine biology and other topics. The bill grants the Authority to power to construct and operate telecommunication services. The bill empowers the Authority to construct power generation facilities using all energy sources, including but not limited to solar, wind, and tidal. The bill removes the Authority’s power to build beach casinos.

The bill limits the power of the Authority to operate an oil refinery to to the refining of organic oils such as fish, pine, or tung oil.

The bill expands the Authority’s authority to construct toll roads and intermodal facilities to all of Nassau County and into the State of Georgia, removing a limitation that such extended toll roads terminate in the vicinity of Brunswick, Georgia.

The bill authorizes the Authority to sell bonds to finance the construction of intermodal facilities.

#### **B. SECTION DIRECTORY:**

Section 1: Amends ch. 2005-293, Laws of Florida, granting the Ocean Highway and Port Authority the power to construct intermodal facilities, educational and research facilities, telecommunications facilities, and power generation facilities; limiting the Authority’s ability to operate an oil refinery to refineries for organic oils; authorizing the Authority to sell bonds to finance the construction of intermodal facilities.

Section 2: Provides that the bill shall take effect upon becoming a law.

## **II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

<sup>24</sup> Section 350.81(2)(h), F.S.

<sup>25</sup> Section 350.81(2)(i), F.S.

<sup>26</sup> Section 350.81(l), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Section 350.81(2)(f), F.S.

<sup>29</sup> Section 350.81(2)(e)1.c, F.S.

<sup>30</sup> Section 350.81(2)(e)2, F.S.

<sup>31</sup> Section 350.81(2)(j), F.S.

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? November 24, 2016

WHERE? The *Nassau County Record*, a weekly newspaper published at Callahan in Nassau County, Florida.

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:

The effects of the provisions in the bill broadening the district's existing authority to construct toll roads extending into the State of Georgia are unclear. Presumably, this provision continues the authority for the district to participate with counterparts in Georgia in the construction of toll roads pursuant to authority granted by or subject to the approval of Congress.<sup>32</sup>

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>32</sup> Article I, s. 10, cl. 3, U.S. Const.  
STORAGE NAME: h1089d.TIS  
DATE: 4/5/2017