

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 267 State Preemption of Seaport Regulations

SPONSOR(S): Local Administration & Veterans Affairs Subcommittee, Tourism, Infrastructure & Energy Subcommittee, Roach and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 426

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	12 Y, 6 N, As CS	Willson	Keating
2) Local Administration & Veterans Affairs Subcommittee	11 Y, 6 N, As CS	Miller	Miller
3) Commerce Committee			

SUMMARY ANALYSIS

Federal admiralty and maritime law generally controls the regulation of maritime commerce upon the navigable waters of the United States. Municipalities and counties derive broad home rule authority from the Florida Constitution and general law.

Florida has 15 deepwater ports, including 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, Key West, and Fernandina.

The bill provides that a local ballot initiative or referendum may not restrict maritime commerce in the seaports of this state, including, but not limited to, regulating or restricting a vessel's type, size, capacity, source, type, loading or unloading of cargo, or number, origin, nationality, embarkation or disembarkation of passengers, or the environmental or health records of particular vessels. Any such ballot initiative or referendum, or any charter amendment, ordinance, resolution, regulation, or policy adopted by such initiative or referendum, whether before or after the effective date of the bill, is expressly preempted to the state, prohibited, and void.

The bill prohibits a municipality or its political subdivision from restricting maritime commerce as to any federally authorized passenger cruise ship based on factors analogous to those prohibited from being imposed generally by ballot initiative or referendum. An exception is provided as to vessel type, size, number, or capacity if due to certain physical limitations the port cannot accommodate such vessels. Any conflicting charter provision, ordinance, resolution, regulation, policy, initiative, or referendum predating or adopted after the effective date of the bill is void. Special districts created by special law, municipal governments consolidated with county governments, or certain defined counties are exempt from this provision of the bill.

However, the bill does not limit municipal or special district authority to engage in certain port regulatory or managerial activities.

The fiscal impact of the bill is indeterminate. See *Fiscal Comments* section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Regulation of Vessels and Maritime Commerce

Federal law controls¹ the regulation of maritime commerce², navigation,³ seaport security⁴, the regulation of commercial vessels, shipping⁵ and common carriers, vessel-related environmental and pollution standards,⁶ disease and quarantine efforts,⁷ and other aspects of admiralty law in and upon the navigable waters of the United States. The U.S. Supreme Court has consistently determined that federal supremacy principles mandate preemption of efforts of state and local governments to impose conditions on port entry controlled by federal law.⁸

Federal law requires the formulation of federal policies applicable to navigation, vessel safety, and security of ports and waterways to consider local practices, customs, and the input of local authorities.⁹ The U. S. Supreme Court has held that fees to defray the cost of purely local regulation of harbor traffic is not an objectionable burden on commerce.¹⁰

The United States Coast Guard (USCG) regulates all commercial vessels, including cruise vessels, calling on U.S. ports, regardless of the vessel's country of origin. The USCG inspects each foreign-flagged cruise vessel calling on a U.S. port at least twice a year to ensure compliance with certain treaties and U.S. regulations governing safety, security, and environmental protections.¹¹

¹ *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) Where Congress has explicitly preempted state law in an area, federal law supplants all state regulation in that area. Even in the absence of express congressional intent to preempt state law, federal preemption is implied where (1) state law “actually conflicts with federal law” or (2) federal law so thoroughly occupies a legislative field “as to make reasonable the inference that Congress left no room for the States to supplement it.”

² *United States v. Locke*, 529 U.S. 89, 103 (2000). (“The existence of the treaties and agreements on standards of shipping is of relevance, of course, for these agreements give force to the longstanding rule that the enactment of a uniform federal scheme displaces state law, and the treaties indicate Congress will have demanded national uniformity regarding maritime commerce.”)

³ *See, generally*, 46 U.S.C. §§ 101 et seq.

⁴ For example, the Maritime Transportation Security Act of 2002 created a broad range of programs to improve the security conditions at the ports and along American waterways, such as identifying and tracking vessels, assessing security preparedness, and limiting access to sensitive areas

⁵ *See* Shipping Act of 1984. 46 U.S.C. §§ 40101(1), 40101(2). One purpose of the Act is to “establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs.” A second purpose is to ensure that U.S.-flag ships are on a level playing field with foreign vessels.

⁶ In 1973, the International Maritime Organization (IMO) adopted the International Convention for the Prevention of Pollution by Ships and subsequently modified it by Protocol in 1978. The Convention is widely known as MARPOL 73/78. Its objective is to limit ship-borne pollution by restricting operational pollution and reducing the possibility of accidental pollution. MARPOL specifies standards for stowing, handling, shipping, and transferring pollutant cargoes, as well as standards for discharge of ship-generated operational wastes. Acceptance of the convention by national government obliges them to make the requirements part of domestic law. USCG, *Office of Commercial Vessel Compliance*, <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/Domestic-Compliance-Division/MARPOL/> (last visited Mar. 1, 2021).

⁷ *See* John T. Oliver, *Legal and Policy Factors Governing the Imposition of Conditions on Access and Jurisdiction Over Foreign-Flag Vessels in U.S. Ports*, 5 S.C. J. Int'l. L. & Bus. 209, 2 (2009) footnotes 153 & 154. 42 U.S.C. § 267(a): “[The Surgeon General] shall from time to time select suitable sites for and establish such additional ... anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States.” “It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations” U.S.C. § 268(b). Congress has provided statutory authority for controlling infectious diseases, including quarantining of suspect vessels and their crews and passengers. 42 U.S.C. §§ 264-272. The President regularly updates the list of communicable diseases subject to quarantine. Exec. Order No. 13,295, Apr. 4, 2003, 68 Fed. Reg. 17,255 (Apr. 9, 2003), reprinted in 42 U.S.C. § 264, as amended by Exec. Order No. 13,375, Apr. 1, 2005, 70 Fed. Reg. 17299 (Apr. 5, 2005). He has also delegated to the Secretary of Health and Human Services his authority to carry out duties under the statute.

⁸ *See United States v. Locke*, *supra* n. 2.

⁹ *See* 46 U.S.C. §§ 70001, 70004. *See also United States v. Locke*, 529 U.S. 89, 109 (2000).

¹⁰ *See Clyde Mallory Lines v. State of Alabama ex rel. State Docks Comm'n*, 296 U.S. 261, 267 (1935). The Court observed that state regulations of harbor traffic, even if they incidentally affect commerce, interstate or foreign, are of local concern, so long as they do not impede the free flow of commerce and are not made the subject of regulation by Congress are not forbidden.

¹¹ U.S. House of Representatives, Subcommittee on Coast Guard and Maritime Transportation. *Hearing on “Commercial and Passenger Vessel Safety: Challenges and Opportunities*, p. 4 (Nov. 9, 2019) <https://www.congress.gov/116/meeting/house/110181/documents/HHRG-116-PW07-20191114-SD001.pdf> (last visited Feb. 28, 2021)

Florida Ports

There are 15 deepwater seaports in Florida:¹²

- Port Canaveral,
- Port Citrus,
- Port Everglades,
- Port of Fernandina,
- Port of Fort Pierce,
- Port of Jacksonville
- Port of Key West,
- Port Manatee,
- Port of Miami,
- Port of Palm Beach
- Port of Panama City,
- Port of Pensacola,
- Port of Port St. Joe,
- Port of St. Petersburg, and
- Port of Tampa.

Approximately half of Florida's deepwater ports are organized as independent or dependent special districts.¹³ The remainder are organized within their respective municipal or county governments.¹⁴

According to the Florida Ports Council, Florida seaports generate nearly 900,000 direct and indirect jobs and contribute \$117.6 billion in economic value to the state through cargo and cruise activities. Florida maritime activities account for approximately 13 percent of Florida's gross domestic product while contributing \$4.2 billion in state and local taxes.¹⁵ In 2018, approximately 110,268,130 tons of cargo and 16,835,986 passengers moved through Florida's seaports.¹⁶

State Law Relating to Seaports

Florida Seaport and Economic Development Program

In 1990, the Legislature created ch. 311, F.S., authorizing the Florida Seaport Transportation and Economic Development (FSTED) Program.¹⁷ The program established a collaborative relationship between the Florida Department of Transportation (DOT) and the seaports, and currently codifies an annual minimum of \$25 million for a seaport grant program.¹⁸ FSTED funds are to be used on approved projects on a 50-50 matching basis.¹⁹ Funding grants under the FSTED program are limited to the following port facilities or port transportation projects:

- Transportation facilities within the jurisdiction of the port;
- The dredging or deepening of channels, turning basins, or harbors;

¹² For a map of Florida's deepwater seaports which indicates the primary streams of commerce (i.e. cargo, cruise passenger, other, or a combination thereof) see DOT, *Seaport System*, <https://www.fdot.gov/seaport/seamap.shtm> (last visited Mar. 16, 2021).

¹³ Ports operated by independent special districts are Port Canaveral, Port of Fernandina, Port of Palm Beach, Port of Port St. Joe, and Port of Tampa. Ports operated by dependent special districts are Port Citrus, Port of Jacksonville, Port Manatee, and Port of Panama City.

<http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 16, 2021). A "dependent special district" is a special district subject to significant control by the governing body of a single county or municipality. S. 189.012(2), F.S. An "independent special district" is any district that is not a dependent special district. S. 189.012(3), F.S.

¹⁴ The Ports of Key West, Pensacola, and St. Petersburg are departments of their respective municipalities. See at <https://flaports.org/seaports/> (last visited March 31, 2021).

¹⁵ Florida Ports Council, *The Florida System of Seaports*, <https://flaports.org/about/the-florida-system-of-seaports/> (last visited Mar. 1, 2021).

¹⁶ FDOT, *2018 Update of Tables and Figures*, p.4, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/seaport/pdfs/2018-update-of-tables-and-figures-florida-seaport-system-plan-717752830.pdf?sfvrsn=e1879b60_2 (last visited Mar. 1, 2021).

¹⁷ Ch. 90-136, Laws Of Fla.

¹⁸ Ss. 311.07 and 311.09, F.S.

¹⁹ S. 311.07(3)(a), F.S.

- 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 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: those necessary to meet requirements imposed by a state agency as a condition of a permit or other form of state approval; those necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; those necessary for the acquisition of spoil disposal sites; or those resulting from the funding of eligible projects;
- Transportation facilities which are not otherwise part of DOT's adopted Work Program.²⁰
- Intermodal access projects;
- Construction or rehabilitation of port facilities, excluding any park or recreational facility, in ports listed in statute,²¹ with operating revenues of \$5 million or less, provided that such project creates economic development opportunities, capital improvements, and positive financial returns to such ports; and
- Seaport master plan or strategic plan development updates, including the purchase of data to support such plans or other provisions of the Community Planning Act.²²

The FSTED program is managed by the FSTED Council, which consists of each port director, or director's designee, of the 15 deepwater ports, the Secretary of DOT or his or her designee, and the Executive Director of the Department of Economic Opportunity or his or her designee.²³ To be eligible for consideration by the FSTED Council, a project must be consistent with the port's comprehensive master plan, which is incorporated as part of the approved local government comprehensive plan.

Community Planning Act

The Community Planning Act includes four primary references to deepwater ports:

A local government's comprehensive plan transportation element must include different levels of transportation analysis based on the size and location of the local government and whether it is in the metropolitan planning area of a Metropolitan Planning Organization. Traffic circulation issues related to ports must be addressed as well as plans for port facilities. Cities with populations greater than 50,000 and counties with populations greater than 75,000 must include "Plans for port . . . and related facilities coordinated with the general circulation and transportation element." Some or all of these requirements can be addressed in the port master plan.²⁴

A comprehensive plan's coastal management element must "(d)irect the orderly development, maintenance, and use of ports to facilitate deepwater commercial navigation and other related activities." This requirement also can be addressed in the port master plan.²⁵

Port master plans must be included in the local government's coastal management element and must identify existing port facilities and any proposed expansions.²⁶ To the extent the following are applicable, port master plans must:

- Provide a land use and inventory map of existing coastal uses;
- Analyze the environmental, socioeconomic, and fiscal impact of development;

²⁰ DOT's Work Program is adopted pursuant to s. 339.135, F.S.

²¹ S. 311.09(1), F.S. The ports listed are Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

²² Part II of Ch. 163, F.S.

²³ S. 311.09(1), F.S.

²⁴ S. 163.3177(6)(b), F.S.

²⁵ S. 163.3177(6)(g)8., F.S.

²⁶ S. 163.3178(2), F.S.

- Analyze effects of existing drainage systems on estuarine water quality;
- Outline principles for hazard mitigation and protection of human life;
- Outline principles for protecting existing beach and dune systems;
- Outline principles to eliminate inappropriate and unsafe development;
- Identify public access to shoreline areas and preservation of working waterfronts;
- Designate coastal high-hazard areas and mitigation criteria;
- Outline principles to assure that public facilities will be in place; and,
- Mitigate the threat to human life and protect the coastal environment.

Certain eligible port expansions, projects, and facilities, both on the port and within three miles of the port, cannot be designated as Developments of Regional Impact if they are consistent with a port master plan.²⁷

Port Facility Financing

Any county, port district²⁸, port authority²⁹, municipality, or certain governmental units created pursuant to the Florida Interlocal Cooperation Act³⁰ that include at least one deepwater port are authorized³¹ to:

- Exercise jurisdiction, control and supervision over any port facilities now or hereafter acquired, owned, or constructed by the local government(s).
- Operate and maintain, and to fix and collect rates, rentals, fees and other charges for any of the services and facilities provided by the port facilities now or hereafter acquired, owned or constructed by the unit excluding state bar pilots.
- Lease or rent, or contract with others for the operation of all or any part of any port facilities now or hereafter acquired, owned or constructed by the unit, on such terms and for such period or periods and subject to such conditions as the governing body shall determine to be in the best interests of the local government(s).

Vessel movement and related fees

A port has authority to regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.³²

Ports are authorized to establish fees and compensation for these services when provided by the port.

Harbor safety

Ports, in agreement with the United States Coast Guard, state harbor pilots, and other ports in its operating port area, must adopt guidelines for:

- Minimum bottom clearance for each berth and channel,
- The movement of vessels, and
- Radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.³³

²⁷ S. 163.3178(3), F.S.

²⁸ A "port district" is any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities. S. 315.02(1), F.S.

²⁹ A "port authority" is created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. S. 315.02(2), F.S.

³⁰ S. 163.01(7)(d), F.S.

³¹ S. 315.03, F.S.

³² S. 313.22, F.S.,

³³ S. 313.23, F.S.

County seaport projects and facilities

Counties have broad authority to provide for port improvements within their jurisdiction,³⁴ including the ability to:

- Construct, acquire, establish, improve, extend, enlarge, reconstruct, equip, maintain, repair, and operate any project³⁵, either within or without the territorial boundaries of the county.
- Subject to the jurisdiction of the United States and the State of Florida and the general laws of Florida relating to dredging and filling, to construct, establish, and improve harbors in the county and all navigable and nonnavigable waters connected therewith; to regulate and control all such waters; to construct and maintain such canals, slips, turning basins, and channels and upon such terms and conditions as may be required by the United States; and to enact, adopt, and establish by resolution rules and regulations for the complete exercise of jurisdiction and control over all such waters.
- Appoint shipping masters for ports or harbors under its control, to determine their qualifications, and to adopt rules and regulations prescribing their duties.
- License stevedores as independent contractors for hire to handle stevedoring at and in the harbors and airports in the county, to fix the terms and conditions of such licenses, and to determine the fees to be charged for same.
- Make and enter into all contracts and agreements and to do and perform all acts and deeds necessary and incidental to the performance of its duties and the exercise of its powers.
- Fix, regulate, and collect rates and charges for the services and facilities furnished by any project under its control; to establish, limit, and control the use of any project as may be deemed necessary to ensure the proper operation of the project; to impose sanctions to promote and enforce compliances; to prescribe rules and regulations and impose penalties and sanctions to ensure the proper performance of the duties of any stevedore or of any shipping master and the enforcement of any rule or regulation which the county may adopt in the regulation of the ports, harbors, wharves, docks, airports, and other projects under its control.
- Fix the rates of wharfage, dockage, warehousing, storage, and port and terminal charges for the use of the port and harbor facilities located within or without the county and owned or operated by the county; and to fix and determine the rates, tolls, and other charges for the use of harbor and airport improvements and harbor and airport facilities located within or without the county insofar as it may do so under the State Constitution and the Constitution and laws of the United States.
- Regulate the operation, docking, storing, and conduct of all watercraft of any kind plying or using the waterways within the county and of all aircraft of any kind operating over and within the county or utilizing any other area, field, location, or place within the county for air navigation purposes or for the repair, storage, or handling of aircraft within the county.
- Receive and accept, from any federal agency, grants for or in aid of the construction, improvement, or operation of any project and to receive and accept contributions from any source of either money, property, labor, or other things of value.
- Make any and all applications required by the Treasury Department and other departments or agencies of the United States Government as a condition precedent to the establishment within the county of a free port, foreign trade zone, or area for the reception from foreign countries of articles of commerce; to expedite and encourage foreign commerce and the handling, processing, and delivery thereof into foreign commerce free from the payment of custom duties and to enter into any agreements required by such departments or agencies in connection therewith; and to make like applications and agreements with respect to the establishment within the county of one or more bonded warehouses.
- Enter into any contract with the government of the United States or any agency thereof which may be necessary in order to procure assistance, appropriations, and aid for the deepening,

³⁴ S. 125.012, F.S.

³⁵ S. 125.011(2)(a), F.S. defines “project” as one or more of the following: “harbor, port, shipping, and airport facilities of all kinds and includes, but is not limited to, harbors, channels, turning basins, anchorage areas, jetties, breakwaters, waterways, canals, locks, tidal basins, wharves, docks, piers, slips, bulkheads, public landings, warehouses, terminals, refrigerating and cold storage plants, railroads and motor terminals for passengers and freight, rolling stock, car ferries, boats, conveyors and appliances of all kinds for the handling, storage, inspection and transportation of freight and the handling of passenger traffic, ... and the loading and unloading and handling of passengers, mail, express and freight;”

widening, and extending of channels and turning basins, the building and construction of public mass transit facilities, airport and airport facilities, slips, wharves, breakwaters, jetties, bulkheads, and any and all other harbor and air navigation improvements and facilities.

- Make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings, and estimates of cost and revenues as it may deem necessary and to prepare and adopt a comprehensive plan or plans for the location, construction, improvement, and development of any project.
- Grant exclusive or nonexclusive franchises to persons, firms, or corporations for the operating of restaurants, cafeterias, bars, taxicabs, vending machines, and other concessions of a nonaeronautical nature in, on, and in connection with any project owned and operated by the county.
- Adopt and promulgate suitable rules, regulations, and directions for the operation and conduct of any project owned or operated by the county and for the use of any such project and any facility connected therewith by others.
- Enter into contracts with utility companies or others for the supplying by such utility companies or others of water, electricity, or telephone service to or in connection with any project.
- Own, maintain, operate, and control export trading companies, foreign sales corporations, and consulting services corporations as provided by the laws of the United States or this state; to enter into management contracts with such corporations or companies established for the purpose of providing or operating such facilities; to own, maintain, operate, and control cargo clearance centers and customs clearance facilities, and to enter into management contracts with corporations established for the purpose of providing or operating such facilities; to maintain the confidentiality of trade information and data pursuant to the patent or copyright laws of the United States, pursuant to the patent or copyright laws of foreign nations to the extent that same are enforced by the courts of the United States, and pursuant to the trade secrets doctrine; and to authorize airport and port employees to serve as officers and directors of export trading companies, foreign sales corporations, customs and cargo clearance corporations, and consulting services corporations for the sale of services to others. Counties are hereby authorized to expend any unobligated and available surplus funds from the activities authorized in this subsection for the construction of capital facilities.

State freight logistics zones and the Intermodal Logistics Center Infrastructure Support Program

Counties may designate geographic areas as freight logistics zones.³⁶ A freight logistics zone is a grouping of activities and infrastructure associated with freight transportation and related services within a defined area around an intermodal logistics center. The Intermodal Logistics Center Infrastructure Support Program is designed to provide DOT funds for roads, rail facilities, or other means for the conveyance or shipment of goods through a seaport and allow the state to respond to private sector market demands and meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities.

Passenger transportation fees and for-hire vehicles

A seaport may charge reasonable fees to for-hire vehicles for their use of the airport's or seaport's facilities as well as designate locations for staging, pickup, or other similar operations at the seaport.³⁷

Municipal Government, Consolidated Government, and Defined Counties

Municipalities may be established or abolished by general or special law.³⁸ Once created, they have governmental, corporate and proprietary powers enabling them to conduct municipal government, perform municipal functions, render municipal services, and may exercise any power for municipal purposes consistent with general law.³⁹ Municipalities are not political subdivisions of the state as are

³⁶ S. 311.103, F.S.

³⁷ Ss. 316.85(6), 627.748(17)(b), F.S.

³⁸ Art. VIII, s. 2(a), Fla. Const. Under a separate provision, Miami-Dade County has sole authority to establish or abolish municipalities within the County. *See* art. VIII, s. 6(e), Fla. Const., incorporating art. VIII, s. 11, Fla. Const. (1885, as amended).

³⁹ Art. VIII, s. 2(b), Fla. Const.

counties⁴⁰ and are not entitled to the same immunities and privileges unless so provided in law.⁴¹ Not every action of a municipality is a “municipal purpose”⁴² unless it meets the current statutory definition.⁴³ “Municipal government” may not be synonymous with “municipality,” as counties may be authorized to exercise municipal powers in certain contexts.⁴⁴

The Florida Constitution authorizes a county and one or more municipalities in that county to consolidate their governmental powers under a special act approved by the voters.⁴⁵ Currently, the only consolidated government in Florida is that of the City of Jacksonville/Duval County.⁴⁶

For certain statutory purposes, “county” is defined as any county operating under a home rule charter adopted under specified provisions of the Florida Constitution of 1885.⁴⁷

Port Districts

A port district is a type of special district created by general or special law and authorized to own or operate port facilities.⁴⁸ A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.⁴⁹ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter. ⁵⁰ A “dependent special district” is a special district subject to significant control by the governing body of a single county or municipality.⁵¹ An “independent special district” is any district that is not a dependent special district.⁵²

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.⁵³

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature “has preempted a particular subject area” or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.⁵⁴

⁴⁰ Art. VIII, s. 1(a), Fla. Const.

⁴¹ *Dept. of Revenue v. City of Gainesville*, 918 So. 2d 250 (Fla. 2005).

⁴² See *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801 (Fla. 1972).

⁴³ S. 166.021(2), F.S.

⁴⁴ Counties providing municipal services are authorized to levy additional ad valorem taxes of no more than 10 mills for municipal purposes. Art. VII, s. 9(b), Fla. Const.; s. 125.01(1)(q), F.S. Miami-Dade County is authorized to exercise all powers provided to municipalities to the extent not inconsistent with general law. Art. VIII, s. 6(f), Fla. Const.

⁴⁵ Art. VIII, s. 3, Fla. Const.

⁴⁶ The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Fla., adopted pursuant to Art. VIII, s. 9, Fla. Const. (1885). The charter was readopted by ch. 92-341, Laws of Fla.

⁴⁷ S. 125.011(1), F.S. The incorporated provisions include ss. 10 (Monroe County), 11 (Miami-Dade County), and (24) (Hillsborough County) of article VIII of the 1885 Constitution.

⁴⁸ S. 315.02, F.S.

⁴⁹ See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

⁵⁰ 2020 – 2022 *Local Gov’t Formation Manual*, pp. 60-61, at

<https://myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf> (last accessed 1/26/2021).

⁵¹ S. 189.012(2), F.S. Types of such control include the county or municipality governing body acting as the district governing body, having the authority to appoint or remove at will district board members, or having final approval authority over the district’s budget.

⁵² S. 189.012(3), F.S.

⁵³ Art. VII, s. 9(a), Fla. Const.

⁵⁴ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009). Historically, certain types of local action have been found to frustrate the purpose of state law, and, thus, conflict has resulted. Specifically, Florida jurisprudence makes clear that local action cannot 1) provide for more stringent regulation than the state legislation in violation of the express wording of the statute; 2) provide for a more

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.⁵⁵ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.⁵⁶ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.⁵⁷ In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.⁵⁸

Key West Ordinance

On November 3, 2020, voters adopted three charter amendments to the City Charter for the City of Key West.⁵⁹ The amendments:

- Limit the number of persons disembarking from cruise ships to a total of not more than 1,500 persons per day at any and all public and privately owned or leased property located within the municipal boundary of the City of Key West.
- Prohibit cruise ships with a capacity of 1,300 or more persons (passengers and crew) from disembarking individuals at any and all public and privately owned or leased property located within the municipal boundary of the City of Key West.
- Give preference and priority to cruise ships and cruise lines that have the best record (the lowest number of environmental violations, penalties and fines) and best health record (the best scores and least number of violations in health inspections and reports issued by the Center for Disease Control Vessel Sanitation Program).

Effect of the Bill

The bill creates s. 311.25, F.S., to provide that a ballot initiative or referendum, or a provision of a local government charter, ordinance, resolution, regulation, or policy created by ballot initiative or referendum, may not restrict or regulate⁶⁰ commerce⁶¹ in the seaports of this state, including, but not limited to, regulating or restricting a vessel's type or size, source or type of cargo, or number, origin, or nationality of passengers. Any such initiative, referendum, charter provision, ordinance, resolution, regulation, or policy predating or adopted after the effective date of the bill is preempted and void.

The bill prohibits a municipality or its political subdivision from restricting maritime commerce as to any federally authorized passenger cruise ship based on factors analogous to those prohibited from being imposed generally by ballot initiative or referendum. An exception is provided as to vessel type, size, number, or capacity if due to certain physical limitations the port cannot accommodate such vessels. Any conflicting charter provision, ordinance, resolution, regulation, policy, initiative, or referendum predating or adopted after the effective date of the bill is void. The bill exempts special districts created by special law, municipal governments consolidated with county governments, or certain defined counties are exempt from this provision.

stringent penalty than that allowed by state statute; 3) prohibit behavior otherwise allowed by state legislation; 4) allow behavior otherwise prohibited by state statute; or 5) provide for a different method for doing a particular act than the method proscribed by state legislation.

Generally, a local government can pass more stringent regulations than those provided for by statute. However, if the state legislation expressly forbids a stricter regulation or if the imposition of a stricter regulation frustrates the purpose of the statute, the local government must abstain

⁵⁵ See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

⁵⁶ *Mulligan*, 934 So. 2d at 1243.

⁵⁷ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

⁵⁸ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

⁵⁹ City of Key West, *Code of Ordinances*, Charter Amendment of 11-16-2020.

https://library.municode.com/fl/key_west/ordinances/code_of_ordinances?nodeId=1052747 (last visited Feb. 28, 2021).

⁶⁰ "Regulate" means "to govern or direct according to rule;" "to bring under the control of law or constituted authority;" "to make regulations for or concerning;" or "to bring order, method, or uniformity to." <https://www.merriam-webster.com/dictionary/regulate> (last visited Mar. 1, 2021).

⁶¹ "Commerce" means "an interchange of goods or commodities, especially on a large scale between different countries (foreign commerce) or between different parts of the same country (domestic commerce); trade; business." <https://www.dictionary.com/browse/commerce> (last visited Mar. 1, 2021).

The bill specifies that, unless preempted by federal or state law, the bill does not limit the authority of a municipality or port district owned or operated by a municipality to:

- Regulate vessel movements within its jurisdiction pursuant to s. 313.22(1), F.S.;
- Establish fees and compensation for its services pursuant to s. 313.22(2), F.S.;
- Adopt guidelines for minimum bottom clearance, for the movement of vessels, and for radio communications of vessel traffic pursuant to s. 313.23, F.S.;
- Issue and enforce tariffs properly filed with the Federal Maritime Commission; or
- Enter into leases and other contracts pertaining to the management of the port.

B. SECTION DIRECTORY:

Section 1 Creates s. 311.25, F.S.; preempting to the state the regulation of commerce in state seaports; providing exceptions.

Section 2 Directs the Division of Law Revision to replace a certain phrase with the actual date the bill becomes law.

Section 3 Provides the act is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. *See Fiscal Comments section.*

2. Expenditures:

Indeterminate. *See Fiscal Comments section.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. *See Fiscal Comments section.*

2. Expenditures:

Indeterminate. *See Fiscal Comments section.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. *See Fiscal Comments section.*

D. FISCAL COMMENTS:

Due to the potential breadth of the preemption, the scope of fiscal impacts on state and local government and the private sector is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear whether the bill preempts to the state certain matters (vessel's type or size, source or type of cargo, or number, origin, or nationality of passengers) that may already be preempted by the federal government.

As drafted, the bill may preempt the ability of a seaport governed by a municipal government to regulate non-vessel related commerce, such as parking lot fees, food vendors, construction contracts, and other land-based activities.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Narrowed the breadth of the preemption by replacing “Notwithstanding any other law to the contrary” with “Except as authorized by general law”.
- Limited the scope of the preemption to the regulation of seaports by municipal governments only.

On April 1, 2021, the Local Administration & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Prohibited certain restrictions on maritime commerce from being adopted by ballot initiative or referendum or from being adopted as ordinances, resolutions, regulations, or policies by ballot initiative or referendum. All such provisions adopted by ballot initiative or referendum are preempted and declared void whether or not those provisions predated or were adopted after the effective date of the bill.
- Prohibits municipalities or special port districts not created by the Legislature from restricting maritime commerce as to federally authorized passenger cruise ships. Any charter provision, ordinance, regulation, resolution, policy, ballot initiative, or referendum in conflict with the statute is preempted and void.
- Exempts consolidated county/municipal governments, defined counties, and special districts created by special act from the passenger cruise ship prohibition.
- Does not limit the authority of municipal governments and special port districts created and controlled by municipalities to continue regulating and managing their ports generally as provided in statute.

This analysis is drafted to the committee substitute as approved by the Local Administration & Veterans Affairs Subcommittee.