

## CHAPTER 2011-164

### Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 399

An act relating to infrastructure investment; amending s. 20.23, F.S.; requiring the Secretary of Transportation to designate duties relating to certain investment opportunities and transportation projects to an assistant secretary; amending s. 311.09, F.S.; revising requirements for the inclusion of certain goals and objectives in the Florida Seaport Mission Plan; requiring the Florida Seaport Transportation and Economic Development Council to develop a priority list of projects and submit the list to the Department of Transportation; amending s. 311.14, F.S.; requiring certain ports to develop strategic plans; providing criteria for such plans; requiring such plans to be consistent with local government comprehensive plans; requiring such plans to be submitted to the Florida Seaport Transportation and Economic Development Council; requiring the Florida Seaport Transportation and Economic Development Council to review such plans and include related information in the Florida Seaport Mission Plan; amending s. 339.155, F.S.; clarifying and revising the principles on which the Florida Transportation Plan is based; amending s. 339.63, F.S.; adding certain existing and planned facilities to the list of facilities included in the Strategic Intermodal System and the Emerging Strategic Intermodal System; amending s. 373.406, F.S.; exempting overwater piers, docks, and structures located in deepwater ports from stormwater management system requirements under specified conditions; amending s. 373.4133, F.S.; requiring the Department of Environmental Protection to approve or deny an application for a port conceptual permit within a specified time; providing a limitation for the request of additional information from an applicant by the department; providing that failure of an applicant to respond to such a request within a specified time constitutes withdrawal of the application; providing that a third party who challenge the issuance of a port conceptual permit has the burden of ultimate persuasion and the burden of going forward with evidence; amending s. 403.813, F.S.; exempting specified seaports and inland navigation districts from requirements to conduct maintenance dredging under certain conditions; excluding ditches, pipes, and similar linear conveyances from consideration as receiving waters for the disposal of dredged materials; authorizing public ports and inland navigation districts to use sovereignty submerged lands in connection with maintenance dredging; authorizing the disposal of spoil material on specified sites; providing an exemption from permitting requirements for sites that meet specified criteria; requiring notice to the Department of Environmental Protection of intent to use the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (1) of section 20.23, Florida Statutes, is amended to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(1)

(d) The secretary may appoint up to three assistant secretaries who shall be directly responsible to the secretary and who shall perform such duties as are assigned by the secretary. The secretary shall designate to an assistant secretary the duties related to enhancing economic prosperity, including, but not limited to, the responsibility of liaison with the head of economic development in the Executive Office of the Governor. Such assistant secretary shall be directly responsible for providing the Executive Office of the Governor with investment opportunities and transportation projects that expand the state's role as a global hub for trade and investment and enhance the supply chain system in the state to process, assemble, and ship goods to markets throughout the eastern United States, Canada, the Caribbean, and Latin America. The secretary may delegate to any assistant secretary the authority to act in the absence of the secretary.

Section 2. Subsection (3) of section 311.09, Florida Statutes, is amended to read:

311.09 Florida Seaport Transportation and Economic Development Council.—

(3) The council shall prepare a 5-year Florida Seaport Mission Plan defining the goals and objectives of the council concerning the development of port facilities and an intermodal transportation system consistent with the goals of the Florida Transportation Plan developed pursuant to s. 339.155. The Florida Seaport Mission Plan shall include specific recommendations for the construction of transportation facilities connecting any port to another transportation mode and for the efficient, cost-effective development of transportation facilities or port facilities for the purpose of enhancing ~~international~~ trade, promoting cargo flow, increasing cruise passenger movements, increasing port revenues, and providing economic benefits to the state. The council shall develop a priority list of projects based on these recommendations annually and submit the list to the Department of Transportation. The council shall update the 5-year Florida Seaport Mission Plan annually and shall submit the plan no later than February 1 of each year to the President of the Senate; the Speaker of the House of Representatives; the Office of Tourism, Trade, and Economic Development; the Department of Transportation; and the Department of Community Affairs. The council shall develop programs, based on an examination of existing programs in Florida and other states, for the training of minorities and secondary school students in job skills associated with employment opportunities in the maritime industry, and report on progress and

recommendations for further action to the President of the Senate and the Speaker of the House of Representatives annually.

Section 3. Section 311.14, Florida Statutes, is amended to read:

311.14 Seaport ~~freight-mobility~~ planning.—

(1) The Florida Seaport Transportation and Economic Development Council, in cooperation with the Office of the State Public Transportation Administrator within the Department of Transportation, shall develop freight-mobility and trade-corridor plans to assist in making freight-mobility investments that contribute to the economic growth of the state. Such plans should enhance the integration and connectivity of the transportation system across and between transportation modes throughout Florida for people and freight.

(2) The Office of the State Public Transportation Administrator shall act to integrate freight-mobility and trade-corridor plans into the Florida Transportation Plan developed pursuant to s. 339.155 and into the plans and programs of metropolitan planning organizations as provided in s. 339.175. The office may also provide assistance in expediting the transportation permitting process relating to the construction of seaport freight-mobility projects located outside the physical borders of seaports. The Department of Transportation may contract, as provided in s. 334.044, with any port listed in s. 311.09(1) or any such other statutorily authorized seaport entity to act as an agent in the construction of seaport freight-mobility projects.

(3) Each port shall develop a strategic plan with a 10-year horizon. Each plan must include the following:

(a) An economic development component that identifies targeted business opportunities for increasing business and attracting new business for which a particular facility has a strategic advantage over its competitors, identifies financial resources and other inducements to encourage growth of existing business and acquisition of new business, and provides a projected schedule for attainment of the plan's goals.

(b) An infrastructure development and improvement component that identifies all projected infrastructure improvements within the plan area which require improvement, expansion, or development in order for a port to attain a strategic advantage for competition with national and international competitors.

(c) A component that identifies all intermodal transportation facilities, including sea, air, rail, or road facilities, which are available or have potential, with improvements, to be available for necessary national and international commercial linkages and provides a plan for the integration of port, airport, and railroad activities with existing and planned transportation infrastructure.

(d) A component that identifies physical, environmental, and regulatory barriers to achievement of the plan's goals and provides recommendations for overcoming those barriers.

(e) An intergovernmental coordination component that specifies modes and methods to coordinate plan goals and missions with the missions of the Department of Transportation, other state agencies, and affected local, general-purpose governments.

To the extent feasible, the port strategic plan must be consistent with the local government comprehensive plans of the units of local government in which the port is located. Upon approval of a plan by the port's board, the plan shall be submitted to the Florida Seaport Transportation and Economic Development Council.

(4) The Florida Seaport Transportation and Economic Development Council shall review the strategic plans submitted by each port and prioritize strategic needs for inclusion in the Florida Seaport Mission Plan prepared pursuant to s. 311.09(3).

Section 4. Subsection (1) of section 339.155, Florida Statutes, is amended to read:

339.155 Transportation planning.—

(1) THE FLORIDA TRANSPORTATION PLAN.—The department shall develop and annually update a statewide transportation plan, to be known as the Florida Transportation Plan. The plan shall be designed so as to be easily read and understood by the general public. The plan shall consider the needs of the entire state transportation system and examine the use of all modes of transportation to effectively and efficiently meet such needs. The purpose of the Florida Transportation Plan is to establish and define the state's long-range transportation goals and objectives to be accomplished over a period of at least 20 years within the context of the State Comprehensive Plan, and any other statutory mandates and authorizations and based upon the prevailing principles of:

(a) Preserving the existing transportation infrastructure.;

(b) Enhancing Florida's economic competitiveness.;

(c) Improving travel choices to ensure mobility.

~~(d) Expanding the state's role as a hub for trade and investment. The Florida Transportation Plan shall consider the needs of the entire state transportation system and examine the use of all modes of transportation to effectively and efficiently meet such needs.~~

Section 5. Subsection (2) of section 339.63, Florida Statutes, is amended to read:

339.63 System facilities designated; additions and deletions.—

(2) The Strategic Intermodal System and the Emerging Strategic Intermodal System include ~~four~~ three different types of facilities that each form one component of an interconnected transportation system which types include:

(a) Existing or planned hubs that are ports and terminals including airports, seaports, spaceports, passenger terminals, and rail terminals serving to move goods or people between Florida regions or between Florida and other markets in the United States and the rest of the world.;

(b) Existing or planned corridors that are highways, rail lines, waterways, and other exclusive-use facilities connecting major markets within Florida or between Florida and other states or nations.;

(c) Existing or planned intermodal connectors that are highways, rail lines, waterways or local public transit systems serving as connectors between the components listed in paragraphs (a) and (b).

(d) Existing or planned facilities that significantly improve the state's competitive position to compete for the movement of additional goods into and through this state.

Section 6. Subsection (12) is added to section 373.406, Florida Statutes, to read:

373.406 Exemptions.—The following exemptions shall apply:

(12) An overwater pier, dock, or a similar structure located in a deep-water port listed in s. 311.09 is not considered to be part of a stormwater management system for which this chapter or chapter 403 requires stormwater from impervious surfaces to be treated if:

(a) The port has a stormwater pollution prevention plan for industrial activities pursuant to the National Pollutant Discharge Elimination System Program; and

(b) The stormwater pollution prevention plan also provides similar pollution prevention measures for other activities that are not subject to the National Pollutant Discharge Elimination System Program and that occur on the port's overwater piers, docks, and similar structures.

Section 7. Paragraph (a) of subsection (8) of section 373.4133, Florida Statutes, is amended to read:

373.4133 Port conceptual permits.—

(8) Except as otherwise provided in this section, the following procedures apply to the approval or denial of an application for a port conceptual permit or a final permit or authorization:

(a) Applications for a port conceptual permit, including any request for the conceptual approval of the use of sovereignty submerged lands, shall be processed in accordance with the provisions of ss. 373.427 and 120.60, with the following exceptions:-

1. An application for a port conceptual permit, and any applications for subsequent construction contained in a port conceptual permit, must be approved or denied within 60 days after receipt of a completed application.

2. The department may request additional information no more than twice, unless the applicant waives this limitation in writing. If the applicant does not provide a response to the second request for additional information within 90 days or another time period mutually agreed upon between the applicant and department, the application shall be considered withdrawn. However,

3. 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) before the Secretary of Environmental Protection to determine whether the application is complete.

4. If a third party petitions to challenge the issuance of a port conceptual permit by the department, the petitioner initiating the action has the burden of ultimate persuasion and, in the first instance, has the burden of going forward with the evidence.

Section 8. Subsection (3) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(3) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for maintenance dredging conducted under this section by the seaports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina or by inland navigation districts if the dredging to be performed is no more than is necessary to restore previously dredged areas to original design specifications or configurations, previously undisturbed natural areas are not significantly impacted, and the work conducted does not violate the protections for manatees under s. 379.2431(2)(d). In addition:

(a) A mixing zone for turbidity is granted within a 150-meter radius from the point of dredging while dredging is ongoing, except that the mixing zone may not extend into areas supporting wetland communities, submerged aquatic vegetation, or hardbottom communities.

(b) The discharge of the return water from the site used for the disposal of dredged material shall be allowed only if such discharge does not result in a violation of water quality standards in the receiving waters. The return-

water discharge into receiving waters shall be granted a mixing zone for turbidity within a 150-meter radius from the point of discharge into the receiving waters during and immediately after the dredging, except that the mixing zone may not extend into areas supporting wetland communities, submerged aquatic vegetation, or hardbottom communities. Ditches, pipes, and similar types of linear conveyances may not be considered receiving waters for the purposes of this paragraph.

(c) The state may not exact a charge for material that this subsection allows a public port or an inland navigation district to remove. In addition, consent to use any sovereignty submerged lands pursuant to this section is hereby granted.

(d) The use of flocculants at the site used for disposal of the dredged material is allowed if the use, including supporting documentation, is coordinated in advance with the department and the department has determined that the use is not harmful to water resources.

(e) The spoil material from maintenance dredging may be deposited in a self-contained, upland disposal site. The site is not required to be permitted if:

1. The site exists as of January 1, 2011;
2. A professional engineer certifies that the site has been designed in accordance with generally accepted engineering standards for such disposal sites;
3. The site has adequate capacity to receive and retain the dredged material; and
4. The site has operating and maintenance procedures established that allow for discharge of return flow of water and to prevent the escape of the spoil material into the waters of the state.

(f) The department must be notified at least 30 days before the commencement of maintenance dredging. The notice shall include, if applicable, the professional engineer certification required by paragraph (e).

(g)(e) This subsection does not prohibit maintenance dredging of areas where the loss of original design function and constructed configuration has been caused by a storm event, provided that the dredging is performed as soon as practical after the storm event. Maintenance dredging that commences within 3 years after the storm event shall be presumed to satisfy this provision. If more than 3 years are needed to commence the maintenance dredging after the storm event, a request for a specific time extension to perform the maintenance dredging shall be submitted to the department, prior to the end of the 3-year period, accompanied by a statement, including supporting documentation, demonstrating that contractors are not available or that additional time is needed to obtain

authorization for the maintenance dredging from the United States Army Corps of Engineers.

Section 9. This act shall take effect July 1, 2011.

Approved by the Governor June 17, 2011.

Filed in Office Secretary of State June 17, 2011.