MEMORANDUM

DATE: March 19, 2020

TO: Florida Port Directors

FROM: Michael Rubin, Vice President Governmental Affairs

SUBJECT: LEGISLATIVE REPORT – END OF SESSION REPORT

The Legislature completed the substantive part of Regular Session on Friday, March 13th, and extended until Thursday, March 19th to allow for the 72-hour posting and vote on the Fiscal Year 2020/2021 General Appropriations Act. The COVID-19 impact made a strange Regular Session 2020 a little crazier. Similar to last year many substantive issues failed to pass at the end of the day – including teacher pay, gambling pact with the Seminole Indian Tribe, and additional school safety issues.

The Florida Legislature continued its trend of passing few bills with a similar amount of bills filed and passed this year. Out of the 3,517 bills filed (slightly less than the 3,571 filed last year) by members or committees, only 210 bills were passed (slightly more than the 196 bills passed last year).

We are pleased to report that the Florida Legislature has again fully funded our seaport budget items. We provide the following report on seaport-related issues that either passed or failed to pass during Regular Session 2020:

Legislation Passed by the Florida Legislature

1. Fiscal Year 2020/2021 Budget (HB 5001 by House Appropriations and SB 2500 by Senate Appropriations). The negotiation process was delayed by COVID-19 discussions, and it is unclear at this time if a Special Session will be called to deal with additional revenue issues resulting for the closure of multiple businesses and activities around the state. As usual the final budget negotiations included millions of dollars of “supplemental” member projects added by House and Senate leadership. The budget fully funds the FDOT Work Program for Fiscal Year 2020/2021 at $9.2 billion. This includes $123 million for seaport projects and programs in the following specific line items:

   B. Line Item 1921 -- $10 million for debt reserve payments (FPFC 1999 Bond Refinance).
The final budget also included the following additional projects or proviso related to seaport projects or areas:

A. **Line Item 1922** – contains the following recommended proviso language for the FSTED Program Seaport Security Grant Program – “From the funds in Specific Appropriation 1922, $2,000,000 is provided for the Seaport Security Grant Program, pursuant to section 311.12(6), Florida Statutes. The funding provided shall focus on filling seaport security technology gaps utilizing situational awareness tools and enhanced cyber security technologies. If the Florida Seaport Transportation and Economic Development Council determines that a statewide purchase of such items provides savings and efficiency, the council may also purchase such items on behalf of all seaports listed in section 311.09(1), Florida Statutes.” This language is similar to the proviso language approved by the Florida Legislature but also includes a statement allowing the FSTED Council to purchase items on behalf of all seaports.

B. **Line Item 1958A (Local Transportation Projects)** – includes $300,000 for a “Space Maritime Access Feasibility Study” right outside of Port Canaveral’s jurisdictional area. This project was requested by Representative Altman (R-Indian Harbor Beach).

C. **Line Item 2234B (Special Categories)** – includes $150,000 from General Revenue for the Seaport Employment Training Grant Program contained in s. 311.11, F.S. We have heard that this was a request from the International Longshoremen’s Association in Miami. Pursuant to statute, the Department of Economic Opportunity is responsible for administering the program “in cooperation with” the FSTED Council.

2. **Public Financing of Construction Projects (CS/HB 579 by Representative Aloupis and CS/CS/SB 178 by Senator J. Rodriguez).** This legislation is similar to the legislation filed in previous years by Senator Rodriguez concerning sea level impact projection studies. This legislation would prohibit state-financed contractors from commencing construction of certain structures in coastal areas without first conducting a sea level impact projection (SLIP) study. The bill would require the Department of Environmental Protection (DEP) to develop rules for the standards of conducting a sea level impact project study – to include 50-year sea level rise, storm damage and flooding risks. Language relating to a legal cause of action for damages was removed from the Legislation. The bill was also amended to specify that DEP’s rule regarding SLIP studies is effective one year after the date it is finalized and applies only to projects that have not yet commenced as of the date the rule is finalized. The rule may not apply retroactively to projects that commenced before the date the rule is finalized.

We spoke with Senate Rodriguez and Representative Aloupis concerning the fiscal impact of this legislation and they informed us that they believe the impact would be minimal with the potential of a “check-off” form developed by DEP. Senator Rodriguez stated that the effective date for the
DEP requirement was delayed a year to allow for additional statutory changes if the impact created a significant negative fiscal impact on local governments.

3. **Public Construction (HB 101 by Representative Andrade and CS/SB 246 by Senator Hooper).** This legislation is identical to the legislation filed last year that did not pass modifying payment retainage by local government entities. The legislation would modify statutory retainage authority as follows:

   A. For contracts less than $200,000, the bill reduces the maximum amount the state may retain from a payment to a contractor from ten percent to five percent.
   B. For contracts more than $200,000, the bill reduces the maximum amount that may be retained from ten percent to five percent for the entire project.
   C. The bill also repeals the ability of a contractor to request the government entity release up to half of the retained amount after half of the project is completed; and the ability of a contractor to withhold more than five percent of each progress payment to his or her subcontractors after half of a project for a government entity is completed.

   The bill still maintains current law which provides that the state retainage requirement does not apply to “construction services purchased by a public entity which are paid for, in whole or in part, with federal funds.”

**Legislation NOT Passed by the Florida Legislature**

As stated above, the 2020 Florida Legislature continued the trend of passing a limited number of bills by only passing 210 bills. Priority issues that failed to pass this Legislature included a new gambling compact with the Seminole Tribe, fiduciary duty of care for certain local government officials, and school safety reform. Additional legislation we were following this year that also failed to pass included:

1. **Transportation (CS/CS/CS/HB 395 by Representative Andrade and SB 1172 by Senator Albritton).** CS/CS/CS/HB 395 was the House’s omnibus transportation package for 2020. The legislation would have included several FDOT administrative provisions as well as several other transportation bills filed in the House. The legislation included the following issues related to seaports:

   A. Added “luxury ground transportation network company” to the statutory list of Transportation Network Companies contained in section 627.748, F.S. Regulation of these companies would be preempted by that statute. That statute would still not prohibit “an airport or seaport from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport or seaport for their use of the airport’s or seaport’s facilities or prohibit the airport or seaport from designating locations for staging, pickup, and other similar operations at the airport or seaport.”
   B. Provided proposed statutory language in section 327.59, F.S., concerning the removal of vessels under 500 gross tons at marinas located in a deepwater seaport after the U.S. Coast Guard sets condition Yankee at such seaport. Such vessels may not remain in a marina “that has been deemed not suitable for refuge during a hurricane.” The provision
authorized the marina owner/operator to remove the vessel if the owner of the vessel fails to remove the vessel.

C. Exempted airports, as defined in s. 332.004, F.S., from the prohibition against using the same entity to perform design and construction, engineering, and inspection services. We exempted seaports from this prohibition last year. The House language did not include the “conflict of interest” language amended on SB 7054 as discussed below.

D. Removed the July 1, 2020 “sunset” date that would have terminated the Intermodal Logistics Center Infrastructure Support Program contained in section 311.101, F.S.

CS/CS/CS/HB 395 died in the Senate Committee on Infrastructure and Security. SB 1172 was never heard in a Senate committee.

2. **Transportation (CS/HB 1315 by Representative Fetterhoff and SB 7054 by the Senate Infrastructure and Security Committee).** SB 7054 was the Senate’s omnibus transportation package for 2020. Senator Lee, Chair of the Senate Infrastructure and Security Committee was the Senate primary sponsor of this transportation package, and he had announced early that he was concerned about whether this package would pass out of the Legislature this year. The bill was similar to the House package, and included several FDOT provisions. The bill also contained the following issues related to seaports:

   A. Provided proposed statutory language in section 327.59, F.S., concerning the removal of vessels under 500 gross tons at marinas located in a deepwater seaport after the U.S. Coast Guard sets condition Yankee at such seaport. Such vessels may not remain in a marina “that has been deemed not suitable for refuge during a hurricane.” The provision authorizes the marina owner/operator to remove the vessel if the owner of the vessel fails to remove the vessel.

   B. Exempted airports, as defined in s. 332.004, F.S., from the prohibition against using the same entity to perform design and construction, engineering, and inspection services. We exempted seaports from this prohibition last year. The amendment also requires seaports and airports to adopt by January 1, 2021, “necessary controls for oversight and prevention of conflicts of interest when an entity is engaged to provide design services and to provide construction engineering and inspection services for the same seaport or airport project. Senator Lee stated that this conflict of interest requirement was already required by the federal government on these types of projects and that this language was similar to those federal requirements. As noted above, this language in not in any House legislation at this time.

   C. Removed the July 1, 2020 “sunset” date that would have terminated the Intermodal Logistics Center Infrastructure Support Program contained in section 311.101, F.S.

SB 7054 died in the full Senate Appropriations Committee. CS/HB 1315 died in the House Subcommittee on Transportation and Tourism Appropriations.

3. **Marina Evacuations (HB 1329 by Representative Plasencia and CS/CS/SB 826 by Senator Mayfield).** CS/CS/SB 826 was a stand-alone bill that included just the marina language contained in the two bills above. The language is identical to language amended on to
CS/CS/CS/HB 395 and SB 7054 referenced above concerning the removal of vessels under 500 gross tons at marinas located in a deepwater seaport after the declaration of a hurricane warning.

CS/CS/SB 826 died in House messages. HB 1329 was never heard in a House committee.

As always, we appreciate the effort you, your staff, and your individual lobbyists take with respect to communicating with “one-voice” on seaport related issues. These efforts continue to have a significant impact on our success each legislative session. Please call or email us if you have any questions.

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