



138108

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/13/2010	.	
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The Committee on Transportation and Economic Development  
Appropriations (Gardiner) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 373.4133, Florida Statutes, is created  
to read:

373.4133 Port conceptual permits.-

(1) The Legislature finds that seaport facilities are  
critical infrastructure facilities that significantly support  
the economic development of the state. The Legislature further  
finds that it is necessary to provide a method of priority  
permit review that allows seaports in this state to become



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13 internationally competitive.

14 (2) Any port listed in s. 311.09(1) may apply to the  
15 department for a port conceptual permit, including any  
16 applicable authorization under chapter 253 to use sovereignty  
17 submerged lands under a joint coastal permit pursuant to s.  
18 161.055 or an environmental resource permit issued pursuant to  
19 this part, for all or a portion of the area within the  
20 geographic boundaries of the port. A private entity that has a  
21 controlling interest in property used for private industrial  
22 marine activities in the immediate vicinity of a port listed in  
23 s. 311.09(1) may also apply for a port conceptual permit under  
24 this section. A port conceptual permit may be issued for up to  
25 20 years and extended one time for an additional 10 years. A  
26 port conceptual permit constitutes the state's conceptual  
27 certification of compliance with state water quality standards  
28 for purposes of s. 401 of the Clean Water Act and the state's  
29 conceptual determination that the activities contained in the  
30 port conceptual permit are consistent with the state coastal  
31 zone management program.

32 (3) A port conceptual permit application must contain  
33 sufficient information to provide reasonable assurance that the  
34 engineering and environmental concepts upon which the designs  
35 are based are likely to meet applicable rule criteria for  
36 issuance of construction permits for subsequent phases of the  
37 project. At a minimum, the application must include the  
38 identification of proposed construction areas and areas where  
39 construction will not occur; the estimated or maximum  
40 anticipated impacts to wetlands and other surface waters and any  
41 proposed mitigation for those impacts; the estimated or maximum



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42 amount of anticipated impervious surface and the nature of the  
43 stormwater treatment system for those areas; and the general  
44 location and types of activities on sovereignty submerged lands.  
45 Except where construction approval is requested as part of a  
46 port conceptual permit application, the application is not  
47 required to include final design specifications and drawings.  
48 The department shall include conditions in the port conceptual  
49 permit specifying the additional information that must be  
50 submitted as part of any request for a subsequent construction  
51 permit or authorization.

52 (4) In determining whether a port conceptual permit  
53 application is approved in whole, approved with modifications or  
54 conditions, or denied, the department shall effect a reasonable  
55 balance between the potential benefits of the facility and the  
56 impacts upon water quality, fish and wildlife, water resources,  
57 and other natural resources of the state resulting from the  
58 construction and operation of the facility.

59 (5) A port conceptual permit provides the permitholder with  
60 assurance, during the duration of the permit, that the  
61 engineering and environmental concepts upon which the designs of  
62 the port conceptual permit are based are likely to meet  
63 applicable rule criteria for the issuance of construction  
64 permits for subsequent phases of the project if:

65 (a) There are no changes in the rules governing the  
66 conditions of issuance of permits for future phases of the  
67 project and the port conceptual permit is not inconsistent with  
68 any total maximum daily load or basin management action plan  
69 adopted for the waterbody into which the system discharges or is  
70 located pursuant to s. 403.067(7) and chapter 62-304, Florida



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71 Administrative Code; and  
72 (b) Applications for proposed future phase activities under  
73 the port conceptual permit are consistent with the design and  
74 conditions of the issued port conceptual permit. Primary areas  
75 for consistency comparisons include the size, location, and  
76 extent of the system; type of activity; percent of  
77 imperviousness; allowable discharge and points of discharge;  
78 location and extent of wetland and other surface water impacts  
79 and, if required, a proposed mitigation plan; control  
80 elevations; extent of stormwater reuse; and detention or  
81 retention volumes. If an application for any subsequent phase  
82 activity is made that is not consistent with the terms and  
83 conditions of the port conceptual permit, the applicant may  
84 request a modification of the port conceptual permit to resolve  
85 the inconsistency or that the application be processed  
86 independent of the permit.  
87 (6) Notwithstanding any other provision of law, a port  
88 conceptual permit or associated construction permit, including  
89 any applicable sovereignty submerged lands authorization, may  
90 authorize advance mitigation for impacts expected as a result of  
91 the activities described in the port conceptual permit. Such  
92 advance mitigation shall be credited to offset the impacts of  
93 such activities when undertaken, to the extent that the advance  
94 mitigation is successful.  
95 (7) Final agency action on a port conceptual sovereignty  
96 submerged lands authorization associated with a port conceptual  
97 permit may not be delegated by the Board of Trustees of the  
98 Internal Improvement Trust Fund. However, approval of such an  
99 authorization by the board constitutes a delegation of authority



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100 to the department to take final agency action on behalf of the  
101 board on any sovereignty submerged lands authorization necessary  
102 to construct facilities included in the port conceptual  
103 sovereignty submerged lands authorization, unless a member of  
104 the board specifically requests that final agency action be  
105 brought before the board. Any delegation of authority to the  
106 department concerning a private project does not exempt the  
107 private project from applicable rules of the board, including  
108 lease and easement fees.

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

113 (a) Applications for a port conceptual permit, including  
114 any request for the conceptual approval of the use of  
115 sovereignty submerged lands, shall be processed in accordance  
116 with ss. 373.427 and 120.60. However, if the applicant believes  
117 that any request for additional information is not authorized by  
118 law or agency rule, the applicant may request an informal  
119 hearing pursuant to s. 120.57(2) before the Secretary of  
120 Environmental Protection to determine whether the application is  
121 complete.

122 (b) Upon issuance of the department's notice of intent to  
123 issue or deny a port conceptual permit, the applicant shall  
124 publish a one-time notice of such intent, prepared by the  
125 department, in the newspaper with the largest general  
126 circulation in the county or counties where the port is located.

127 (c) Final agency action on a port conceptual permit is  
128 subject to challenge pursuant to ss. 120.569 and 120.57.



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129 However, final agency action to authorize subsequent  
130 construction of facilities contained in a port conceptual permit  
131 may only be challenged by a third party for consistency with the  
132 port conceptual permit.

133 (d) A person who will be substantially affected by a final  
134 agency action described in paragraph (c) must initiate  
135 administrative proceedings pursuant to ss. 120.569 and 120.57  
136 within 21 days after the publication of the notice of the  
137 proposed action. If administrative proceedings are requested,  
138 the proceedings are subject to the summary hearing provisions of  
139 s. 120.574. However, if the decision of the administrative law  
140 judge will be a recommended order rather than a final order, a  
141 summary proceeding must be conducted within 90 days after a  
142 party files a motion for summary hearing, regardless of whether  
143 the parties agree to the summary proceeding.

144 (9) Notwithstanding any other provision of law, the  
145 department and the board may issue permits and authorizations  
146 pursuant to this section in advance of the issuance of any take  
147 authorization as provided for in the Endangered Species Act and  
148 its implementing regulations if the permits and authorizations  
149 include a condition requiring that authorized activities may not  
150 commence until such take authorization is issued and must be  
151 consistent with such authorization. The department shall  
152 unilaterally modify any permit or authorization issued pursuant  
153 to this section to make the permit or authorization consistent  
154 with any subsequently issued incidental take authorization. Such  
155 unilateral modification does not create a point of entry for any  
156 substantially affected person to request administrative  
157 proceedings under ss. 120.569 and 120.57.



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158       (10) In lieu of meeting the generally applicable stormwater  
159 design standards in rules adopted under this part, which create  
160 a presumption that stormwater discharged from the system will  
161 meet the applicable state water quality standards in the  
162 receiving waters, any port listed in s. 311.09(1) may propose  
163 alternative stormwater treatment and design criteria for the  
164 construction, operation, and maintenance of stormwater  
165 management systems serving overwater piers. The proposal shall  
166 include structural components or best management practices to  
167 address the stormwater discharge from the pier, including  
168 consideration of activities conducted on the pier, as are  
169 necessary to provide reasonable assurance that stormwater  
170 discharged from the system will meet the applicable state water  
171 quality standards in the receiving waters.

172       (11) The department and the board may adopt rules to  
173 implement the provisions of this section under the joint coastal  
174 permit provisions of chapter 161, the sovereignty submerged  
175 lands provisions of chapter 253, and the environmental resource  
176 permit provisions of this part. The adoption of such rules is  
177 not subject to any special rulemaking requirements related to  
178 small business.

179       (12) This section shall take effect July 1, 2010, and its  
180 implementation may not be delayed pending the adoption of rules.

181       Section 2. Paragraph (a) of subsection (3) of section  
182 311.07, Florida Statutes, is amended to read:

183       311.07 Florida seaport transportation and economic  
184 development funding.—

185       (3) (a) Program funds shall be used to fund approved  
186 projects on a 50-50 matching basis with any of the deepwater



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187 ports, as listed in s. 403.021(9)(b), which is governed by a  
188 public body or any other deepwater port which is governed by a  
189 public body and which complies with the water quality provisions  
190 of s. 403.061, the comprehensive master plan requirements of s.  
191 163.3178(2)(k), and the local financial management and reporting  
192 provisions of part III of chapter 218. However, program funds  
193 used to fund projects that involve the rehabilitation of  
194 wharves, docks, berths, bulkheads, or similar structures shall  
195 require a 25-percent match of funds. Program funds also may be  
196 used by the Seaport Transportation and Economic Development  
197 Council to develop with the Florida Trade Data Center such trade  
198 data information products which will assist Florida's seaports  
199 and international trade.

200 Section 3. Subsection (10) of section 311.09, Florida  
201 Statutes, is amended to read:

202 311.09 Florida Seaport Transportation and Economic  
203 Development Council.—

204 (10) The Department of Transportation shall include in its  
205 annual legislative budget request a Florida Seaport  
206 Transportation and Economic Development grant program for  
207 expenditure of funds of not less than \$8 million per year. Such  
208 budget shall include funding for projects approved by the  
209 council which have been determined by each agency to be  
210 consistent and which have been determined by the Office of  
211 Tourism, Trade, and Economic Development to be economically  
212 beneficial. The department shall include the specific approved  
213 seaport projects to be funded under this section during the  
214 ensuing fiscal year in the tentative work program developed  
215 pursuant to s. 339.135(4). The total amount of funding to be





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216 allocated to seaport projects under s. 311.07 during the  
217 successive 4 fiscal years shall also be included in the  
218 tentative work program developed pursuant to s. 339.135(4). The  
219 council may submit to the department a list of approved projects  
220 that could be made production-ready within the next 2 years. The  
221 list shall be submitted by the department as part of the needs  
222 and project list prepared pursuant to s. 339.135(2) (b) ~~s.~~  
223 339.135. However, the department shall, upon written request of  
224 the Florida Seaport Transportation and Economic Development  
225 Council, submit work program amendments pursuant to s.  
226 339.135(7) to the Governor within 10 days after the later of the  
227 date the request is received by the department or the effective  
228 date of the amendment, termination, or closure of the applicable  
229 funding agreement between the department and the affected  
230 seaport, as required to release the funds from the existing  
231 commitment. Notwithstanding s. 339.135(7) (c), any work program  
232 amendment to transfer prior year funds from one approved seaport  
233 project to another seaport project is subject to the procedures  
234 in s. 339.135(7) (d)2. Notwithstanding any provision of law to  
235 the contrary, the department may transfer unexpended balances  
236 between the seaport projects as identified in the approved work  
237 program amendments.

238 Section 4. Subsections (37) and (38) of section 403.061,  
239 Florida Statutes, are amended to read:

240 403.061 Department; powers and duties.—The department shall  
241 have the power and the duty to control and prohibit pollution of  
242 air and water in accordance with the law and rules adopted and  
243 promulgated by it and, for this purpose, to:

244 (37) Provide ~~Enter into a memorandum of agreement with the~~



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245 ~~Florida Ports Council which provides~~ a supplemental permitting  
246 process for the issuance of a joint coastal permit pursuant to  
247 s. 161.055 or environmental resource permit pursuant to part IV  
248 of chapter 373, to a port listed in s. 311.09(1), for  
249 maintenance dredging and the management of dredged materials  
250 from maintenance dredging of all navigation channels, port  
251 harbors, turning basins, and harbor berths. Such permit shall be  
252 issued for ~~a period of~~ 5 years and shall be annually extended  
253 for an additional year if the port is in compliance with all  
254 permit conditions at the time of extension. The department may  
255 ~~is authorized to~~ adopt rules to administer ~~implement~~ this  
256 subsection.

257 (38) Provide ~~Enter into a memorandum of agreement with the~~  
258 ~~Florida Ports Council which provides~~ a supplemental permitting  
259 process for the issuance of a conceptual joint coastal permit  
260 pursuant to s. 161.055 or environmental resource permit pursuant  
261 to part IV of chapter 373, to a port listed in s. 311.09(1), for  
262 dredging and the management of materials from dredging and for  
263 other related activities necessary for development, including  
264 the expansion of navigation channels, port harbors, turning  
265 basins, harbor berths, and associated facilities. Such permit  
266 shall be issued for ~~a period of~~ up to 15 years. The department  
267 may ~~is authorized to~~ adopt rules to administer ~~implement~~ this  
268 subsection.

269  
270 The department shall implement such programs in conjunction with  
271 its other powers and duties and shall place special emphasis on  
272 reducing and eliminating contamination that presents a threat to  
273 humans, animals or plants, or to the environment.



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274 Section 5. Subsection (3) of section 403.813, Florida  
275 Statutes, is amended to read:

276 403.813 Permits issued at district centers; exceptions.—

277 (3) For maintenance dredging conducted under this section  
278 by the seaports of Jacksonville, Port Canaveral, Fort Pierce,  
279 Palm Beach, Port Everglades, Miami, Port Manatee, St.  
280 Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key  
281 West, and Fernandina or by inland navigation districts:

282 (a) A mixing zone for turbidity is granted within a 150-  
283 meter ~~100-meter~~ radius from the point of dredging while dredging  
284 is ongoing, except that the mixing zone may ~~does~~ not extend into  
285 areas supporting wetland communities, submerged aquatic  
286 vegetation, or hardbottom communities.

287 (b) The discharge of the return water from the site used  
288 for the disposal of dredged material shall be allowed only if  
289 such discharge does not result in a violation of water quality  
290 standards in the receiving waters. ~~The However, any such~~ return-  
291 water discharge into receiving manmade waters shall be that are  
292 ~~not in Monroe County~~ is granted a mixing zone for turbidity  
293 within a 150-meter radius from the point of discharge during and  
294 immediately after the ~~discharge while dredging is ongoing~~,  
295 except that the mixing zone may ~~does~~ not extend into areas  
296 supporting wetland communities, submerged aquatic vegetation, or  
297 hardbottom communities ~~outside the manmade waters. As used in~~  
298 ~~this paragraph, the term "manmade waters" means surface waters~~  
299 ~~that were wholly excavated from lands other than wetlands and~~  
300 ~~other surface waters or semienclosed port berths.~~

301 (c) The state may not exact a charge for material that this  
302 subsection allows a public port or an inland navigation district



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303 to remove.

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

309 (e) This subsection does not prohibit maintenance dredging  
310 of areas where the loss of original design function and  
311 constructed configuration has been caused by a storm event if,  
312 ~~provided that~~ the dredging is performed as soon as practical  
313 after the storm event. Maintenance dredging that commences  
314 within 3 ~~2~~ years after the storm event is ~~shall be~~ presumed to  
315 satisfy this provision. If more than 3 ~~2~~ years are needed to  
316 commence the maintenance dredging after the storm event, a  
317 request for a specific time extension to perform the maintenance  
318 dredging shall be submitted to the department, before ~~prior to~~  
319 the end of the 3-year ~~2-year~~ period, accompanied by a statement,  
320 including supporting documentation, demonstrating that  
321 contractors are not available or that additional time is needed  
322 to obtain authorization for the maintenance dredging from the  
323 United States Army Corps of Engineers.

324 Section 6. Subsection (1) of section 161.055, Florida  
325 Statutes, is amended to read:

326 161.055 Concurrent processing of permits.—

327 (1) If ~~When~~ an activity for which a permit is required  
328 under this chapter also requires a permit, authorization, or  
329 approval described in paragraph (2) (b), including a port  
330 conceptual permit pursuant to s. 373.4133, the department may,  
331 by rule, provide that the activity may be undertaken only upon



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332 receipt of a single permit from the department called a "joint  
333 coastal permit," as provided in this section.

334 Section 7. Subsection (2) of section 253.002, Florida  
335 Statutes, is amended to read:

336 253.002 Department of Environmental Protection, water  
337 management districts, Fish and Wildlife Conservation Commission,  
338 and Department of Agriculture and Consumer Services; duties with  
339 respect to state lands.—

340 (2) Delegations to the department, or a water management  
341 district, or the Department of Agriculture and Consumer Services  
342 of authority to take final agency action on applications for  
343 authorization to use submerged lands owned by the board of  
344 trustees, without any action on behalf of the board of trustees,  
345 shall be by rule if delegations related to conceptual permits  
346 are in accordance with s. 373.4133. Until rules adopted pursuant  
347 to this subsection become effective, existing delegations by the  
348 board of trustees ~~shall~~ remain in full force and effect.

349 However, the board of trustees is not limited or prohibited from  
350 amending these delegations. The board of trustees shall adopt by  
351 rule any delegations of its authority to take final agency  
352 action without action by the board of trustees on applications  
353 for authorization to use board of trustees-owned submerged  
354 lands. Any final agency action, without action by the board of  
355 trustees, taken by the department, or a water management  
356 district, or the Department of Agriculture and Consumer Services  
357 on applications to use board of trustees-owned submerged lands  
358 are ~~shall be~~ subject to ~~the provisions of~~ s. 373.4275.

359 Notwithstanding any other provision of this subsection, the  
360 board of trustees, the Department of Legal Affairs, and the



361 department retain the concurrent authority to assert or defend  
362 title to submerged lands owned by the board of trustees.

363 Section 8. A seaport listed in s. 311.09(1), Florida  
364 Statutes, may receive or solicit proposals from and enter into a  
365 public-private infrastructure project agreement with a private  
366 entity, or a consortium of private entities, to build, operate,  
367 manage, maintain, or finance a port-related public  
368 infrastructure project.

369 Section 9. Except as otherwise expressly provided in this  
370 act, this act shall take effect July 1, 2010.

371  
372  
373 ===== T I T L E A M E N D M E N T =====

374 And the title is amended as follows:

375 Delete everything before the enacting clause  
376 and insert:

377 A bill to be entitled  
378 An act relating to seaports; creating s. 373.4133,  
379 F.S.; providing legislative findings; providing for  
380 port conceptual permits; providing which ports may  
381 apply for a port conceptual permit; authorizing a  
382 private entity that has adjacent property to apply for  
383 a permit; specifying the length of time for which  
384 permit may be issued; providing that a permit is a  
385 conceptual certification of compliance with state  
386 water quality standards and a conceptual determination  
387 of consistency with the state coastal zone management  
388 program; providing for permit applications and  
389 application requirements; requiring the Department of



390 Environmental Protection to effect a certain balance  
391 between the benefits of the facility and the  
392 environment; providing that a permit provides certain  
393 assurances with respect to construction permits if  
394 certain requirements are met; providing for advance  
395 mitigation; providing that approval of certain  
396 submerged lands authorization by the Board of Trustees  
397 of the Internal Improvement Trust Fund constitutes the  
398 delegation of authority to the department for final  
399 agency action; providing an exception; providing  
400 procedures for the approval or denial of an  
401 application; providing for administrative challenges;  
402 authorizing the department and the board to issue  
403 certain permits and authorizations before certain  
404 actions are taken under the Endangered Species Act;  
405 authorizing certain alternative stormwater treatment  
406 and design criteria; providing requirements for  
407 proposing such criteria; authorizing the department  
408 and the board to adopt rules; providing for  
409 implementation; amending s. 311.07, F.S.; revising  
410 matching-fund requirements for projects to  
411 rehabilitate wharves, docks, berths, bulkheads, or  
412 similar structures; amending s. 311.09, F.S.;

413 requiring the Department of Transportation to include  
414 certain projects' funding allocations in its  
415 legislative budget request and to submit specified  
416 work program amendments within a certain timeframe;  
417 providing for the transfer of unexpended balances  
418 between seaport projects; amending s. 403.061, F.S.;



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419 removing the requirement to enter into a memorandum of  
420 agreement with the Florida Ports Council from the  
421 authority granted to the Department of Environmental  
422 Protection to provide supplemental permitting  
423 processes for the issuance of certain permits;  
424 amending s. 403.813, F.S.; revising requirements  
425 relating to maintenance dredging at seaports;  
426 expanding the parameters for mixing zones and return-  
427 water discharges; prohibiting mixing zones from  
428 entering wetland communities; increasing the time  
429 allowance for maintenance dredging following a storm  
430 event; amending ss. 161.055 and 253.002, F.S.;  
431 conforming provisions to changes made by the act;  
432 authorizing seaports to enter into public-private  
433 agreements for port-related public infrastructure  
434 projects; providing effective dates.