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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/10/2010	.	
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The Committee on Commerce (Oelrich) recommended the following:

Senate Amendment (with title amendment)

Delete lines 101 - 129

and insert:

Section 3. Section 311.106, Florida Statutes, is created to read:

311.106 Port master plan authorization.-

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



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14 (2) For the purposes of this section, the term:

15 (a) "Department" means the Department of Environmental
16 Protection.

17 (b) "Port master plan authorization" means an entitlement
18 of a port to the summary issuance of a final permit or
19 authorization to conduct activities or construct facilities or
20 developments described in the port master plan authorization.
21 The authorization is valid for as long as the authorized
22 activities occur or the facilities or developments exist. A port
23 master plan authorization is final, but does not authorize any
24 development to occur. A port master plan authorization
25 constitutes compliance with the state's water quality
26 certification for purposes of s. 401 of the Clean Water Act, and
27 the state's determination that the activities contained in the
28 authorized port master plan are consistent with this state's
29 federally approved coastal zone management program.

30 (3) A port authority having jurisdiction over any port
31 listed in s. 403.021(9) (b), or any other person or legal entity
32 having a controlling interest in property that is or will be
33 used predominantly for purposes directly related to deepwater
34 commercial navigation at any port listed in s. 403.021(9) (b),
35 may submit by application a port master plan to the department
36 in order to receive a port master plan authorization. A port
37 master plan may, but need not be, a port master plan that has
38 been incorporated into the appropriate local government
39 comprehensive plan pursuant to s. 163.3178(2) (k).

40 (a) The port master plan must include projections of costs,
41 revenue, and job creation for any proposed development.

42 (b) When the port master plan is submitted to the



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43 department, the plan must include all available information,
44 except for final design specifications and drawings, required by
45 other applicable laws for the department to issue the permit or
46 authorization requested.

47 (c) When the port master plan is submitted to the
48 department, the plan must include all available information
49 necessary for the department to determine whether the plan is
50 consistent with this state's federally approved coastal zone
51 management program.

52 (4) The information required by paragraphs (3) (a)-(c) must
53 include:

54 (a) The size of proposed impervious surfaces;

55 (b) A description of the design approach for storm water
56 treatment facilities;

57 (c) An explanation of how the proposed future activities
58 will be constructed and operated so as to not cause or
59 contribute to any violations of any applicable water quality
60 standards;

61 (d) An explanation of how, by balancing the factors in s.
62 373.414(1) (a), the proposed future activity is:

63 1. Not contrary to the public interest; or

64 2. Clearly in the public interest if the proposed future
65 activity is located within an Outstanding Florida Water;

66 (e) The overall size of the future facilities;

67 (f) The acreage and type of jurisdictional wetlands to be
68 impacted by the proposed future facilities;

69 (g) The uniform mitigation assessment method scores for all
70 wetlands to be disturbed which are under the jurisdiction of the
71 United States Army Corps of Engineers;



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72 (h) A qualitative mitigation approach to offset any loss of
73 wetland function resulting from the construction of the future
74 facilities;

75 (i) To the extent required by the department's substantive
76 standards, a qualitative characterization of the proposed
77 approach to treatment methods for a discharge of wastewater from
78 a point source or emissions of pollutants from a stationary
79 source;

80 (j) The size, location, and description of any waters
81 proposed to be filled, including qualitative benthic surveys,
82 the source or type of fill, and methods to be used to control
83 turbidity;

84 (k) The size, location, and descriptions of any areas to be
85 dredged, including qualitative benthic surveys, dredging methods
86 to be used, methods to be used to control turbidity, and
87 location and a description of the spoil disposal site and return
88 water discharge;

89 (l) A qualitative characterization of, a description of the
90 management of, and a description of methods available for the
91 disposal of solid wastes expected to be generated at the
92 proposed future facilities;

93 (m) The potential adverse effect, if any, of the proposed
94 future facilities on animal species listed on the federal list
95 of endangered and threatened wildlife and plants and a
96 description of management or mitigation techniques to minimize
97 or eliminate any such effects;

98 (n) A description of why and how the proposed future
99 activities will not result in any unacceptable secondary or
100 cumulative impacts;



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101 (o) An explanation of how the proposed future activity will
102 comply with the standards contained in s. 161.053 to the extent
103 applicable; and

104 (p) An explanation of the form of an authorization to use
105 sovereign submerged lands which will be required for the
106 proposed facilities and to the extent required by chapter 253,
107 an explanation of how the future activity qualifies for the
108 authorizations.

109 (5) An applicant for a port master plan authorization must
110 demonstrate compliance with the department's regulatory
111 requirements by:

112 (a) Including all information required to demonstrate
113 compliance with the department's regulatory requirements as part
114 of the port master plan authorization application before the
115 approval of the port master plan.

116 (b) Submitting all of the information required to
117 demonstrate compliance with the department's regulatory
118 requirements for a port master plan authorization as a part of a
119 request for a final permit or authorization and before any
120 construction activities. If an applicant chooses this method of
121 demonstrating compliance with the department's regulatory
122 requirements, the department must include conditions in the port
123 master plan authorization specifying the additional information
124 that must be submitted as part of a request for a final permit
125 or authorization.

126 (6) In determining whether to issue a port master plan
127 authorization, the department shall review the port master plan
128 submitted by a port for compliance with the standards of a joint
129 coastal permit pursuant to s. 161.055, an environmental resource



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130 permit pursuant to part IV of chapter 373, a sovereign submerged
131 lands authorization pursuant to chapter 253, or any combination
132 of these permits and authorizations, as applicable. A port
133 master plan submitted to the department for review must specify
134 which of these permits or authorizations apply to the port
135 master plan.

136 (7) (a) In determining whether a port master plan
137 authorization shall be approved in whole, approved with
138 modifications or conditions, or denied, the department shall
139 effect a reasonable balance between:

140 1. The need for the facility and its potential benefits;
141 and

142 2. The impacts upon air and water quality, fish and
143 wildlife, water resources, and other natural resources of the
144 state resulting from the construction and operation of the
145 facility.

146 (b) In effecting such a balance, the department must
147 consider whether, and the extent to which, the location,
148 construction, and operation of the proposed future port
149 facilities will, after any final permits or authorizations are
150 issued:

151 1. Provide operational safeguards that are technically
152 sufficient for the public welfare and protection;

153 2. Meet the seaport infrastructure needs of the state in an
154 orderly, reliable, and timely fashion;

155 3. Minimize, through the use of reasonable and available
156 methods, the adverse effects on human health, the environment,
157 and wildlife including aquatic life;

158 4. Serve and protect the broad interests of the public; and



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159 5. Comply with the department's regulatory requirements
160 established by statute or rule, excluding any provisions
161 prescribing forms, fees, procedures, or time limits for the
162 review or processing of information submitted to demonstrate
163 compliance with such regulatory requirements.

164 (8) After a port master plan authorization is issued, a
165 permit or authorization for activities approved in the port
166 master plan authorization may be requested. The request must
167 provide final construction plans and details about the
168 activities actually proposed.

169 (9) Except as otherwise provided in this subsection, the
170 following procedures apply to the approval or denial of an
171 application for a port master plan authorization or a final
172 permit or authorization:

173 (a) The department shall issue or deny an application for a
174 port master plan authorization or final permit or authorization
175 pursuant to s. 120.60. However, if the department determines
176 that an application or request is incomplete, it may request
177 additional information only twice, except as provided in this
178 paragraph. An application or request is deemed complete upon the
179 earlier of: the receipt of all the information necessary to
180 process the application or the request; or the receipt of a
181 response to the department's second request for additional
182 information. The department may request additional information
183 more than two times only if the department first demonstrates by
184 clear and convincing evidence to an administrative law judge,
185 appointed by the Director of the Division of Administrative
186 Hearings, that the applicant has failed to fully respond to its
187 second request for additional information. Unless waived by the



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188 applicant, an administrative law judge appointed to make such a
189 determination shall issue a final order determining whether the
190 application for a port master plan authorization is complete
191 within 45 days after the department requests such a
192 determination.

193 (b) Upon the issuance of the department's notice of intent
194 to issue or deny a port master plan authorization, the applicant
195 shall publish a notice of such intent, prepared by the
196 department, one time only in the largest newspaper of general
197 circulation in the county or counties where the port is located.

198 (c) A person who will be substantially affected by the
199 proposed action must initiate administrative proceedings
200 pursuant to s. 120.569 and 120.57, within 14 days after the
201 publication of the notice of the proposed action.

202 (d) If administrative proceedings are requested, the
203 approval or denial of any port master plan authorization is
204 subject to the summary hearing provisions of s. 120.574.
205 However, if the decision of an administrative law judge will be
206 a recommended order, rather than a final order, a summary
207 proceeding must be conducted within 90 days after a party files
208 a motion for a summary hearing, regardless of whether the
209 parties agree to the summary proceeding.

210 (e) Upon request, the department shall issue a final permit
211 or authorization if the proposed activities and facilities are
212 consistent with the activities and facilities described in an
213 approved port master plan authorization and upon the receipt of
214 all information required by any conditions in the approved port
215 master plan authorization. The purpose of a request for final
216 permit or authorization is solely for the department to monitor



217 compliance with the approved port master plan authorization.
218 Consequently, a final permit or authorization issued following
219 the approval of a port master plan authorization does not
220 constitute agency action as defined in s. 120.52 and is not
221 subject to s. 120.569 and 120.57. and is not subject to
222 paragraphs (b)-(d) do not apply to a request for final permit or
223 authorization.

224 (f) If the activities or facilities proposed in a request
225 for a final permit or authorization are inconsistent with the
226 activities and facilities described in an approved port master
227 plan authorization, the procedures to process an application
228 prescribed by other law apply, unless the inconsistency is
229 deemed by the department to be de minimis.

230
231 ===== T I T L E A M E N D M E N T =====

232 And the title is amended as follows:

233 Delete lines 13 - 23

234 and insert:

235 creating s. 311.06, F.S.; providing legislative
236 intent; authorizing certain ports to submit a port
237 master plan to the Department of Environmental
238 Protection entitling a port to the summary issuance of
239 certain final permits; defining terms; specifying the
240 required contents of a port master plan; specifying
241 methods by which an applicant port may demonstrate
242 compliance with the regulatory requirements of the
243 Department of Environmental Protection; specifying
244 interests that the Department of Environmental
245 Protection must balance in approving or denying a port



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246 master plan authorization; specifying the requirements
247 for a final permit or authorization for an activity in
248 a port master plan authorization; specifying
249 procedures for the approval or denial of a port master
250 plan or final permit or authorization; amending s.
251 311.09, F.S.;