

By the Committee on Commerce; and Senator Ring

577-02767-10

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1 A bill to be entitled
2 An act relating to seaports; creating s. 311.06, F.S.;
3 providing legislative intent; authorizing certain
4 ports to submit a port master plan to the Department
5 of Environmental Protection entitling a port to the
6 summary issuance of certain final permits; defining
7 terms; specifying the required contents of a port
8 master plan; specifying methods by which an applicant
9 port may demonstrate compliance with the regulatory
10 requirements of the Department of Environmental
11 Protection; specifying interests that the Department
12 of Environmental Protection must balance in approving
13 or denying a port master plan authorization;
14 specifying the requirements for a final permit or
15 authorization for an activity in a port master plan
16 authorization; specifying procedures for the approval
17 or denial of a port master plan or final permit or
18 authorization; amending s. 311.09, F.S.; requiring the
19 Florida Seaport Transportation and Economic
20 Development Council to submit certain information to
21 the Department of Transportation for inclusion in its
22 annual legislative budget request; requiring the
23 council to allocate funds to seaports for specified
24 projects contingent upon appropriation; amending s.
25 403.061, F.S.; removing the requirement to enter into
26 memoranda of agreement with the Florida Ports Council
27 from the authority granted to the Department of
28 Environmental Protection to provide supplemental
29 permitting processes for the issuance of certain

577-02767-10

20102000c1

30 permits; providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Section 311.106, Florida Statutes, is created to
35 read:

36 311.106 Port master plan authorization.-

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

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

44 (a) "Department" means the Department of Environmental
45 Protection.

46 (b) "Port master plan authorization" means an entitlement
47 of a port to the summary issuance of a final permit or
48 authorization to conduct activities or construct facilities or
49 developments described in the port master plan authorization.
50 The authorization is valid for as long as the authorized
51 activities occur or the facilities or developments exist. A port
52 master plan authorization is final, but does not authorize any
53 development to occur. A port master plan authorization
54 constitutes compliance with the state's water quality
55 certification for purposes of s. 401 of the Clean Water Act, and
56 the state's determination that the activities contained in the
57 authorized port master plan are consistent with this state's
58 federally approved coastal zone management program.

577-02767-10

20102000c1

59 (3) A port authority having jurisdiction over any port
60 listed in s. 403.021(9)(b), or any other person or legal entity
61 having a controlling interest in property that is or will be
62 used predominantly for purposes directly related to deepwater
63 commercial navigation at any port listed in s. 403.021(9)(b),
64 may submit by application a port master plan to the department
65 in order to receive a port master plan authorization. A port
66 master plan may, but need not be, a port master plan that has
67 been incorporated into the appropriate local government
68 comprehensive plan pursuant to s. 163.3178(2)(k).

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

71 (b) When the port master plan is submitted to the
72 department, the plan must include all available information,
73 except for final design specifications and drawings, required by
74 other applicable laws for the department to issue the permit or
75 authorization requested.

76 (c) When the port master plan is submitted to the
77 department, the plan must include all available information
78 necessary for the department to determine whether the plan is
79 consistent with this state's federally approved coastal zone
80 management program.

81 (4) The information required by paragraphs (3)(a)-(c) must
82 include:

83 (a) The size of proposed impervious surfaces;

84 (b) A description of the design approach for storm water
85 treatment facilities;

86 (c) An explanation of how the proposed future activities
87 will be constructed and operated so as to not cause or

577-02767-10

20102000c1

88 contribute to any violations of any applicable water quality
89 standards;

90 (d) An explanation of how, by balancing the factors in s.
91 373.414(1)(a), the proposed future activity is:

92 1. Not contrary to the public interest; or

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

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

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

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

101 (h) A qualitative mitigation approach to offset any loss of
102 wetland function resulting from the construction of the future
103 facilities;

104 (i) To the extent required by the department's substantive
105 standards, a qualitative characterization of the proposed
106 approach to treatment methods for a discharge of wastewater from
107 a point source or emissions of pollutants from a stationary
108 source;

109 (j) The size, location, and description of any waters
110 proposed to be filled, including qualitative benthic surveys,
111 the source or type of fill, and methods to be used to control
112 turbidity;

113 (k) The size, location, and descriptions of any areas to be
114 dredged, including qualitative benthic surveys, dredging methods
115 to be used, methods to be used to control turbidity, and
116 location and a description of the spoil disposal site and return

577-02767-10

20102000c1

117 water discharge;

118 (l) A qualitative characterization of, a description of the
119 management of, and a description of methods available for the
120 disposal of solid wastes expected to be generated at the
121 proposed future facilities;

122 (m) The potential adverse effect, if any, of the proposed
123 future facilities on animal species listed on the federal list
124 of endangered and threatened wildlife and plants and a
125 description of management or mitigation techniques to minimize
126 or eliminate any such effects;

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

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

133 (p) An explanation of the form of an authorization to use
134 sovereign submerged lands which will be required for the
135 proposed facilities and, to the extent required by chapter 253,
136 an explanation of how the future activity qualifies for the
137 authorizations.

138 (5) An applicant for a port master plan authorization must
139 demonstrate compliance with the department's regulatory
140 requirements by:

141 (a) Including all information required to demonstrate
142 compliance with the department's regulatory requirements as part
143 of the port master plan authorization application before the
144 approval of the port master plan.

145 (b) Submitting all of the information required to

577-02767-10

20102000c1

146 demonstrate compliance with the department's regulatory
147 requirements for a port master plan authorization as a part of a
148 request for a final permit or authorization and before any
149 construction activities. If an applicant chooses this method of
150 demonstrating compliance with the department's regulatory
151 requirements, the department must include conditions in the port
152 master plan authorization specifying the additional information
153 that must be submitted as part of a request for a final permit
154 or authorization.

155 (6) In determining whether to issue a port master plan
156 authorization, the department shall review the port master plan
157 submitted by a port for compliance with the standards of a joint
158 coastal permit pursuant to s. 161.055, an environmental resource
159 permit pursuant to part IV of chapter 373, a sovereign submerged
160 lands authorization pursuant to chapter 253, or any combination
161 of these permits and authorizations, as applicable. A port
162 master plan submitted to the department for review must specify
163 which of these permits or authorizations apply to the port
164 master plan.

165 (7) (a) In determining whether a port master plan
166 authorization shall be approved in whole, approved with
167 modifications or conditions, or denied, the department shall
168 effect a reasonable balance between:

- 169 1. The need for the facility and its potential benefits;
170 and
171 2. The impacts upon air and water quality, fish and
172 wildlife, water resources, and other natural resources of the
173 state resulting from the construction and operation of the
174 facility.

577-02767-10

20102000c1

175 (b) In effecting such a balance, the department must
176 consider whether, and the extent to which, the location,
177 construction, and operation of the proposed future port
178 facilities will, after any final permits or authorizations are
179 issued:

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

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

184 3. Minimize, through the use of reasonable and available
185 methods, the adverse effects on human health, the environment,
186 and wildlife, including aquatic life;

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

188 5. Comply with the department's regulatory requirements
189 established by statute or rule, excluding any provisions
190 prescribing forms, fees, procedures, or time limits for the
191 review or processing of information submitted to demonstrate
192 compliance with such regulatory requirements.

193 (8) After a port master plan authorization is issued, a
194 permit or authorization for activities approved in the port
195 master plan authorization may be requested. The request must
196 provide final construction plans and details about the
197 activities actually proposed.

198 (9) Except as otherwise provided in this subsection, the
199 following procedures apply to the approval or denial of an
200 application for a port master plan authorization or a final
201 permit or authorization:

202 (a) The department shall issue or deny an application for a
203 port master plan authorization or final permit or authorization

577-02767-10

20102000c1

204 pursuant to s. 120.60. However, if the department determines
205 that an application or request is incomplete, it may request
206 additional information only twice, except as provided in this
207 paragraph. An application or request is deemed complete upon the
208 earlier of: the receipt of all the information necessary to
209 process the application or the request; or the receipt of a
210 response to the department's second request for additional
211 information. The department may request additional information
212 more than two times only if the department first demonstrates by
213 clear and convincing evidence to an administrative law judge,
214 appointed by the Director of the Division of Administrative
215 Hearings, that the applicant has failed to fully respond to its
216 second request for additional information. Unless waived by the
217 applicant, an administrative law judge appointed to make such a
218 determination shall issue a final order determining whether the
219 application for a port master plan authorization is complete
220 within 45 days after the department requests such a
221 determination.

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

227 (c) A person who will be substantially affected by the
228 proposed action must initiate administrative proceedings,
229 pursuant to ss. 120.569 and 120.57, within 14 days after the
230 publication of the notice of the proposed action.

231 (d) If administrative proceedings are requested, the
232 approval or denial of any port master plan authorization is

577-02767-10

20102000c1

233 subject to the summary hearing provisions of s. 120.574.
234 However, if the decision of an administrative law judge will be
235 a recommended order, rather than a final order, a summary
236 proceeding must be conducted within 90 days after a party files
237 a motion for a summary hearing, regardless of whether the
238 parties agree to the summary proceeding.

239 (e) Upon request, the department shall issue a final permit
240 or authorization if the proposed activities and facilities are
241 consistent with the activities and facilities described in an
242 approved port master plan authorization and upon the receipt of
243 all information required by any conditions in the approved port
244 master plan authorization. The purpose of a request for final
245 permit or authorization is solely for the department to monitor
246 compliance with the approved port master plan authorization.
247 Consequently, a final permit or authorization issued following
248 the approval of a port master plan authorization does not
249 constitute agency action as defined in s. 120.52 and is not
250 subject to ss. 120.569 and 120.57, and paragraphs (b)-(d) do not
251 apply to a request for final permit or authorization.

252 (f) If the activities or facilities proposed in a request
253 for a final permit or authorization are inconsistent with the
254 activities and facilities described in an approved port master
255 plan authorization, the procedures to process an application
256 prescribed by other law apply, unless the inconsistency is
257 deemed by the department to be de minimis.

258 Section 2. Subsection (10) of section 311.09, Florida
259 Statutes, is amended to read:

260 311.09 Florida Seaport Transportation and Economic
261 Development Council.—

577-02767-10

20102000c1

262 (10) The Department of Transportation shall include in its
263 annual legislative budget request a Florida Seaport
264 Transportation and Economic Development grant program for
265 expenditure of funds of not less than \$8 million per year. Such
266 budget shall include funding for projects approved by the
267 council which have been determined by each agency to be
268 consistent and which have been determined by the Office of
269 Tourism, Trade, and Economic Development to be economically
270 beneficial. The council shall ~~may~~ submit to the department a
271 list of approved projects that could be made production-ready
272 within the next 5 2 years following the end of the current
273 fiscal year. The list shall be submitted by the department as
274 part of its annual legislative budget request for seaport
275 economic development projects submitted ~~the needs and project~~
276 ~~list prepared~~ pursuant to s. 339.135(2) ~~339.135~~. However, the
277 department may not require the identification or funding of a
278 specific project as part of its legislative budget request.
279 Contingent upon legislative appropriation each year, the council
280 shall allocate funds to seaports for approved projects that
281 improve the movement and intermodal transportation of cargo or
282 passengers in commerce and trade and that support the interests,
283 purposes, and requirements of ports located in this state.

284 Section 3. Subsections (37) and (38) of section 403.061,
285 Florida Statutes, are amended to read:

286 403.061 Department; powers and duties.—The department shall
287 have the power and the duty to control and prohibit pollution of
288 air and water in accordance with the law and rules adopted and
289 promulgated by it and, for this purpose, to:

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

577-02767-10

20102000c1

291 ~~Florida Ports Council which provides~~ a supplemental permitting
292 process for the issuance of a joint coastal permit pursuant to
293 s. 161.055 or environmental resource permit pursuant to part IV
294 of chapter 373, to a port listed in s. 311.09(1), for
295 maintenance dredging and the management of dredged materials
296 from maintenance dredging of all navigation channels, port
297 harbors, turning basins, and harbor berths. Such permit shall be
298 issued for a period of 5 years and shall be annually extended
299 for an additional year if the port is in compliance with all
300 permit conditions at the time of extension. The department is
301 authorized to adopt rules to implement this subsection.

302 (38) Provide ~~Enter into a memorandum of agreement with the~~
303 ~~Florida Ports Council which provides~~ a supplemental permitting
304 process for the issuance of a conceptual joint coastal permit
305 pursuant to s. 161.055 or environmental resource permit pursuant
306 to part IV of chapter 373, to a port listed in s. 311.09(1), for
307 dredging and the management of materials from dredging and for
308 other related activities necessary for development, including
309 the expansion of navigation channels, port harbors, turning
310 basins, harbor berths, and associated facilities. Such permit
311 shall be issued for a period of up to 15 years. The department
312 is authorized to adopt rules to implement this subsection.
313 The department shall implement such programs in conjunction with
314 its other powers and duties and shall place special emphasis on
315 reducing and eliminating contamination that presents a threat to
316 humans, animals or plants, or to the environment.

317 Section 4. This act shall take effect July 1, 2010.