

By the Committees on Environmental Preservation and Conservation; and Commerce; and Senator Ring

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1                   A bill to be entitled  
2           An act relating to ports; amending ss. 161.055 and  
3           253.002, F.S.; conforming provisions to changes made  
4           by the act; amending s. 311.09, F.S.; requiring the  
5           Department of Transportation to include certain  
6           seaport projects and funding related to the Florida  
7           Seaport Transportation and Economic Development grant  
8           program in its legislative budget request; requiring  
9           the department to submit work program amendments  
10          requested by the Florida Seaport Transportation and  
11          Economic Development Council within a certain  
12          timeframe; amending s. 373.403, F.S.; revising the  
13          definition for "stormwater management system" to  
14          exempt certain structures from regulation; creating s.  
15          373.4133, F.S.; providing legislative findings;  
16          providing for port conceptual permits; providing which  
17          ports may apply for a port conceptual permit;  
18          authorizing a private entity that has adjacent  
19          property to apply for a permit; specifying the length  
20          of time for which a permit may be issued; providing  
21          that a conceptual permit is the state's water quality  
22          compliance certification and conceptual determination  
23          of consistency with the state's coastal zone  
24          management program; providing for permit applications  
25          and application requirements; requiring the department  
26          to effect a certain balance between the benefits of  
27          the facility and the environment; providing that a  
28          permit provides certain assurances with respect to  
29          construction permits if certain requirements are met;

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30 providing for advance mitigation; providing that  
31 certain actions may not be delegated by the Board of  
32 Trustees of the Internal Improvement Trust Fund;  
33 providing an exception for sovereignty submerged  
34 lands; providing procedures for the approval or denial  
35 of an application; providing for administrative  
36 challenges; authorizing the department and the board  
37 to issue certain permits and authorizations before  
38 certain actions are taken under the Endangered Species  
39 Act; authorizing the department and the board to adopt  
40 rules; amending s. 403.061, F.S.; removing the  
41 requirement for the Department of Environmental  
42 Protection to enter into memoranda of agreement  
43 relating to the issuance of certain joint coastal  
44 permits or other permits with the Florida Ports  
45 Council; amending s. 403.813, F.S.; revising  
46 requirements relating to maintenance dredging at  
47 seaports; revising the mixing zone and a requirement  
48 relating to the discharge of return water; increasing  
49 the time allowance for maintenance dredging after a  
50 storm event; providing an effective date.

51  
52 Be It Enacted by the Legislature of the State of Florida:

53  
54 Section 1. Subsection (1) of section 161.055, Florida  
55 Statutes, is amended to read:

56 161.055 Concurrent processing of permits.—

57 (1) If ~~When~~ an activity for which a permit is required  
58 under this chapter also requires a permit, authorization, or

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59 approval described in paragraph (2) (b), or a port conceptual  
60 permit under s. 373.4133, the department may, by rule, provide  
61 that the activity may be undertaken only upon receipt of a  
62 single permit from the department called a "joint coastal  
63 permit," as provided in this section.

64 Section 2. Subsection (2) of section 253.002, Florida  
65 Statutes, is amended to read:

66 253.002 Department of Environmental Protection, water  
67 management districts, Fish and Wildlife Conservation Commission,  
68 and Department of Agriculture and Consumer Services; duties with  
69 respect to state lands.—

70 (2) Delegations to the department, or a water management  
71 district, or the Department of Agriculture and Consumer Services  
72 of authority to take final agency action on applications for  
73 authorization to use submerged lands owned by the Board of  
74 Trustees of the Internal Improvement Trust Fund, without any  
75 action on behalf of the board ~~of trustees~~, shall be by rule;  
76 however, delegations related to conceptual permits must be in  
77 accordance with s. 373.4133. Until rules adopted pursuant to  
78 this subsection become effective, existing delegations by the  
79 board ~~of trustees shall~~ remain in full force and effect.

80 However, the board ~~of trustees~~ is not limited or prohibited from  
81 amending these delegations. The board ~~of trustees~~ shall adopt by  
82 rule any delegations of its authority to take final agency  
83 action without action by the board ~~of trustees~~ on applications  
84 for authorization to use board of trustees-owned submerged  
85 lands. Any final agency action, without action by the board ~~of~~  
86 ~~trustees~~, taken by the department, or a water management  
87 district, or the Department of Agriculture and Consumer Services

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88 on applications to use board of trustees-owned submerged lands  
89 ~~is shall be~~ subject to ~~the provisions of~~ s. 373.4275.

90 Notwithstanding any other provision of this subsection, the  
91 board of trustees, the Department of Legal Affairs, and the  
92 department retain ~~the~~ concurrent authority to assert or defend  
93 title to submerged lands owned by the board ~~of trustees~~.

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

96 311.09 Florida Seaport Transportation and Economic  
97 Development Council.—

98 (10) The Department of Transportation shall include in its  
99 annual legislative budget request a Florida Seaport  
100 Transportation and Economic Development grant program for  
101 expenditure of funds of not less than \$8 million per year. The  
102 ~~Such~~ budget request must shall include funding for projects  
103 approved by the council which have been determined by each  
104 agency to be consistent and which have been determined by the  
105 Office of Tourism, Trade, and Economic Development to be  
106 economically beneficial.

107 (a) The department shall include a list of the approved  
108 seaport projects from the tentative work program developed  
109 pursuant to s. 339.135(4) which are to be funded during the next  
110 fiscal year. The department shall also include the total amount  
111 of funding under s. 311.07 to be allocated to seaport projects  
112 during the successive 4 fiscal years of the tentative work  
113 program.

114 (b) The council may submit to the department a list of  
115 approved projects that could be made production-ready within the  
116 next 2 years. The list shall be submitted as part of the needs

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117 and project list prepared pursuant to s. 339.135(2)(b) ~~339.135~~.  
118 Upon the written request of the council, the department shall  
119 submit work program amendments pursuant to s. 339.135(7) to the  
120 Governor within 10 days after the date the request is received  
121 by the department, or the effective date of the amendment,  
122 termination, or closure of the applicable funding agreement  
123 between the department and the seaport required to release the  
124 funds from the existing commitment, whichever occurs later.

125 Section 4. Subsection (10) of section 373.403, Florida  
126 Statutes, is amended to read:

127 373.403 Definitions.—When appearing in this part or in any  
128 rule, regulation, or order adopted pursuant thereto, the  
129 following terms mean:

130 (10) "Stormwater management system" means a system that  
131 ~~which~~ is designed and constructed or implemented to control  
132 discharges that ~~which~~ are caused ~~necessitated~~ by rainfall  
133 events, incorporating methods to collect, convey, store, absorb,  
134 inhibit, treat, use, or reuse water to prevent or reduce  
135 flooding, overdrainage, environmental degradation, and water  
136 pollution or otherwise affect the quantity and quality of  
137 discharges from the system. Overwater piers, docks, and similar  
138 structures located in a port listed in s. 311.09(1) are not part  
139 of a stormwater management system and are not considered  
140 impervious surfaces under this chapter or chapter 403 if the  
141 port has a stormwater pollution prevention plan developed  
142 pursuant to the National Pollution Discharge Elimination System.

143 Section 5. Section 373.4133, Florida Statutes, is created  
144 to read:

145 373.4133 Port conceptual permits.—

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146       (1) The Legislature finds that seaport facilities are  
147 critical infrastructure facilities that significantly support  
148 the economic development of the state. The Legislature further  
149 finds that it is necessary to provide a method of permit review  
150 that allows seaports in this state to become internationally  
151 competitive.

152       (2) Any port listed in s. 311.09(1) may apply to the  
153 department for a port conceptual permit, which may include  
154 authorization to use sovereignty submerged lands under chapter  
155 253 under a joint coastal permit issued pursuant to s. 161.055  
156 or an environmental resource permit issued pursuant to this part  
157 for all or a portion of the area within the geographic  
158 boundaries of the port. A private entity that has a controlling  
159 interest in property used for private industrial marine  
160 activities in the immediate vicinity of such port may also apply  
161 under this section. A port conceptual permit may be issued for  
162 up to 20 years and extended once for 10 additional years. A port  
163 conceptual permit constitutes the state's conceptual water  
164 quality compliance certification for purposes of s. 401 of the  
165 Clean Water Act, and the state's conceptual determination that  
166 the activities contained in the permit are consistent with the  
167 state's federally approved coastal zone management program.

168       (3) A port conceptual permit application must include  
169 sufficient information to provide reasonable assurance that the  
170 engineering and environmental concepts upon which the designs  
171 are based are likely to meet applicable rule criteria for the  
172 issuance of construction permits for subsequent phases of the  
173 project. At a minimum, the application should include  
174 projections of costs, revenue, and job creation for proposed

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175 development; proposed construction areas and areas where  
176 construction will not occur; estimated or maximum anticipated  
177 impacts to wetlands and other surface waters, and any proposed  
178 mitigation for those impacts; estimated or maximum amount of  
179 anticipated impervious surface and the nature of the stormwater  
180 treatment system for those areas; and the general location and  
181 types of activities on sovereignty submerged lands. Except where  
182 construction approval is requested as part of the application,  
183 the application is not expected to include final design  
184 specifications and drawings. The department shall specify any  
185 additional information that must be submitted as part of a  
186 request for a subsequent construction permit or authorization in  
187 the port conceptual permit.

188 (4) In determining whether a port conceptual permit  
189 application should be approved in whole, with modifications or  
190 conditions, or denied, the department shall effect a reasonable  
191 balance between the potential benefits of the facility and the  
192 impacts upon water quality, fish and wildlife, water resources,  
193 and other natural resources of the state resulting from the  
194 construction and operation of the facility.

195 (5) A port conceptual approval permit provides the  
196 permitholder with assurance during the duration of the permit  
197 that the engineering and environmental concepts upon which the  
198 designs are based are likely to meet applicable rule criteria  
199 for the issuance of construction permits for subsequent phases  
200 of the project if:

201 (a) There are no changes in the rules governing the  
202 conditions of issuance of permits for future phases of the  
203 project and the conceptual approval permit is not inconsistent

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204 with any total maximum daily load or basin management action  
205 plan adopted for the water body into which the system discharges  
206 or is located pursuant to s. 403.067(7) and rule 62-304, Florida  
207 Administrative Code; and

208 (b) Applications for proposed future phase activities under  
209 the permit are consistent with the design and conditions of the  
210 permit. Primary areas for consistency comparisons include the  
211 size, location, and extent of the system; type of activity;  
212 percent imperviousness; allowable discharge and points of  
213 discharge; location and extent of wetland and other surface  
214 water impacts and proposed mitigation plan, if required; control  
215 elevations; extent of stormwater reuse; and detention-retention  
216 volumes. If an application for subsequent phase activity is not  
217 consistent with the terms and conditions of the approved permit,  
218 the applicant may request a modification of the permit to  
219 resolve the inconsistency or may request that the application be  
220 processed independently of the permit.

221 (6) Notwithstanding any other provision of law, a port  
222 conceptual permit or associated construction permit, including  
223 any applicable sovereignty submerged lands authorization, may  
224 authorize advance mitigation for impacts expected as a result of  
225 the activities described in the port conceptual permit. Such  
226 advance mitigation shall be credited to offset the impacts of  
227 the activities when undertaken to the extent that the advance  
228 mitigation is successful.

229 (7) Final agency action on a port conceptual sovereignty  
230 submerged lands authorization associated with a port conceptual  
231 permit may not be delegated by the Board of Trustees of the  
232 Internal Improvement Trust Fund. However, approval of the



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233 authorization by the board delegates to the department authority  
234 to take final agency action on behalf of the board on any  
235 sovereignty submerged lands authorization necessary to construct  
236 facilities included in the authorization, unless a member of the  
237 board specifically requests that final agency action be brought  
238 before the board. Any delegation to the department concerning a  
239 private project does not exempt the private project from  
240 applicable board rules, including lease and easement fees.

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

245 (a) Applications for a port conceptual permit, including  
246 any request for the conceptual approval of the use of sovereign  
247 submerged lands, must be processed in accordance with ss.  
248 373.427 and 120.60. However, if the applicant believes a request  
249 for additional information is not authorized by law or agency  
250 rule, the applicant may request an informal hearing pursuant to  
251 s. 120.57(2) before the secretary of the department to determine  
252 whether the application is complete.

253 (b) Upon issuance of the department's notice of intent to  
254 issue or deny a port conceptual permit, the applicant shall  
255 publish a one-time notice of such intent, prepared by the  
256 department, in the newspaper having the largest general  
257 circulation in the county or counties where the port is located.

258 (c) Final agency action on a port conceptual permit is  
259 subject to challenge under ss. 120.569 and 120.57. However,  
260 final agency action to authorize subsequent construction of  
261 facilities contained in a port conceptual permit may be

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262 challenged only by a third party for consistency with the port  
263 conceptual permit.

264 (d) A person who will be substantially affected by a final  
265 agency action described in paragraph (c) must initiate  
266 administrative proceedings pursuant to ss. 120.569 and 120.57  
267 within 21 days after the publication of the notice of the  
268 proposed action. If administrative proceedings are requested,  
269 the proceedings are subject to the summary hearing provisions of  
270 s. 120.574. However, if the decision of the administrative law  
271 judge will be a recommended order, rather than a final order, a  
272 summary proceeding must be conducted within 90 days after a  
273 party files a motion for summary hearing regardless of whether  
274 the parties agree to the summary proceeding.

275 (9) Notwithstanding any other provision of law, the  
276 department and the Board of Trustees of the Internal Improvement  
277 Trust Fund may issue permits and authorizations pursuant to this  
278 section in advance of the issuance of a take authorization as  
279 provided in the federal Endangered Species Act and its  
280 implementing regulations. However, the permits and  
281 authorizations must include a condition requiring that  
282 authorized activities may not commence until such take  
283 authorization is issued and such activities must be consistent  
284 with such authorization. The department shall unilaterally  
285 modify any permit or authorization issued pursuant to this  
286 section to make the permit or authorization consistent with any  
287 subsequently issued incidental take authorization. Such  
288 unilateral modification does not create a point of entry for any  
289 substantially affected person to request administrative  
290 proceedings under ss. 120.569 and 120.57.

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291       (10) The department and the Board of Trustees of the  
292 Internal Improvement Trust Fund may adopt rules to administer  
293 this section under the joint coastal permit provisions of  
294 chapter 161, the sovereign lands provisions of chapter 253, and  
295 the environmental resource permit provisions of this part.  
296 Adoption of such rules is not subject to any special rulemaking  
297 requirements related to small businesses. Notwithstanding this  
298 grant of rulemaking authority, this section is intended to be  
299 available effective July 1, 2010, and its implementation may not  
300 be delayed pending the adoption of rules.

301       Section 6. Subsections (37) and (38) of section 403.061,  
302 Florida Statutes, are amended to read:

303       403.061 Department; powers and duties.—The department shall  
304 have the power and the duty to control and prohibit pollution of  
305 air and water in accordance with the law and rules adopted and  
306 promulgated by it and, for this purpose, to:

307       (37) ~~Provide~~ ~~Enter into a memorandum of agreement with the~~  
308 ~~Florida Ports Council which provides~~ a supplemental permitting  
309 process for the issuance of a joint coastal permit pursuant to  
310 s. 161.055 or environmental resource permit pursuant to part IV  
311 of chapter 373, to a port listed in s. 311.09(1), for  
312 maintenance dredging and the management of dredged materials  
313 from maintenance dredging of all navigation channels, port  
314 harbors, turning basins, and harbor berths. Such permit shall be  
315 issued for ~~a period of~~ 5 years and shall be annually extended  
316 for an additional year if the port is in compliance with all  
317 permit conditions at the time of extension. The department may  
318 ~~is authorized to~~ adopt rules to administer ~~implement~~ this  
319 subsection.

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320           (38) Provide ~~Enter into a memorandum of agreement with the~~  
321 ~~Florida Ports Council which provides~~ a supplemental permitting  
322 process for the issuance of a conceptual joint coastal permit  
323 pursuant to s. 161.055 or environmental resource permit pursuant  
324 to part IV of chapter 373, to a port listed in s. 311.09(1), for  
325 dredging and the management of materials from dredging and for  
326 other related activities necessary for development, including  
327 the expansion of navigation channels, port harbors, turning  
328 basins, harbor berths, and associated facilities. Such permit  
329 shall be issued for ~~a period of~~ up to 15 years. The department  
330 ~~may is authorized to~~ adopt rules to administer ~~implement~~ this  
331 subsection.

332  
333 The department shall implement such programs in conjunction with  
334 its other powers and duties and shall place special emphasis on  
335 reducing and eliminating contamination that presents a threat to  
336 humans, animals or plants, or to the environment.

337           Section 7. Subsection (3) of section 403.813, Florida  
338 Statutes, is amended to read:

339           403.813 Permits issued at district centers; exceptions.—

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

345           (a) A mixing zone for turbidity is granted within a 100-  
346 meter radius from the point of dredging while dredging is  
347 ongoing, except that the mixing zone may ~~does~~ not extend into  
348 areas supporting wetland communities, submerged aquatic

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349 vegetation, or hardbottom communities.

350 (b) The discharge of the return water from the site used  
351 for the disposal of dredged material shall be allowed only if  
352 such discharge does not result in a violation of water quality  
353 standards in the receiving waters. ~~The~~ However, ~~any such return-~~  
354 ~~water discharge into receiving manmade waters shall be that are~~  
355 ~~not in Monroe County is granted a mixing zone for turbidity~~  
356 ~~within a 150-meter radius from the point of discharge during and~~  
357 ~~immediately after the discharge while dredging is ongoing,~~  
358 ~~except that the mixing zone may does not extend into areas~~  
359 supporting wetland communities, submerged aquatic vegetation, or  
360 hardbottom communities outside the manmade waters. ~~As used in~~  
361 ~~this paragraph, the term "manmade waters" means surface waters~~  
362 ~~that were wholly excavated from lands other than wetlands and~~  
363 ~~other surface waters or semiencllosed port berths.~~

364 (c) The state may not exact a charge for material that this  
365 subsection allows a public port or an inland navigation district  
366 to remove.

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

372 (e) This subsection does not prohibit maintenance dredging  
373 of areas where the loss of original design function and  
374 constructed configuration has been caused by a storm event if  
375 ~~provided that~~ the dredging is performed as soon as practical  
376 after the storm event. Maintenance dredging that commences  
377 within 3 ~~2~~ years after the storm event is ~~shall be~~ presumed to

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378 satisfy this provision. If more than 3 ~~2~~ years are needed to  
379 commence the maintenance dredging after the storm event, a  
380 request for a specific time extension to perform the maintenance  
381 dredging must ~~shall~~ be submitted to the department before, ~~prior~~  
382 ~~to~~ the end of the 3-year ~~2-year~~ period, accompanied by a  
383 statement, including supporting documentation, demonstrating  
384 that contractors are not available or that additional time is  
385 needed to obtain authorization for the maintenance dredging from  
386 the United States Army Corps of Engineers.

387 Section 8. This act shall take effect July 1, 2010.