

By the Policy and Steering Committee on Ways and Means; the Committees on Transportation and Economic Development Appropriations; Environmental Preservation and Conservation; and Commerce; and Senator Ring

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1 A bill to be entitled
2 An act relating to seaports; creating s. 373.4133,
3 F.S.; providing legislative findings; providing for
4 port conceptual permits; providing which ports may
5 apply for a port conceptual permit; authorizing a
6 private entity that has adjacent property to apply for
7 a permit; specifying the length of time for which
8 permit may be issued; providing that a permit is a
9 conceptual certification of compliance with state
10 water quality standards and a conceptual determination
11 of consistency with the state coastal zone management
12 program; providing for permit applications and
13 application requirements; requiring the Department of
14 Environmental Protection to effect a certain balance
15 between the benefits of the facility and the
16 environment; providing that a permit provides certain
17 assurances with respect to construction permits if
18 certain requirements are met; providing for advance
19 mitigation; providing that approval of certain
20 submerged lands authorization by the Board of Trustees
21 of the Internal Improvement Trust Fund constitutes the
22 delegation of authority to the department for final
23 agency action; providing an exception; providing
24 procedures for the approval or denial of an
25 application; providing for administrative challenges;
26 authorizing the department and the board to issue
27 certain permits and authorizations before certain
28 actions are taken under the Endangered Species Act;
29 authorizing certain alternative stormwater treatment

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30 and design criteria; providing requirements for
31 proposing such criteria; authorizing the department
32 and the board to adopt rules; providing for
33 implementation; amending s. 311.07, F.S.; revising
34 matching-fund requirements for projects to
35 rehabilitate wharves, docks, berths, bulkheads, or
36 similar structures; amending s. 311.09, F.S.;
37 requiring the Department of Transportation to include
38 certain projects' funding allocations in its
39 legislative budget request and to submit specified
40 work program amendments within a certain timeframe;
41 providing for the transfer of unexpended budget
42 between seaport projects; amending s. 403.061, F.S.;
43 removing the requirement to enter into a memorandum of
44 agreement with the Florida Ports Council from the
45 authority granted to the Department of Environmental
46 Protection to provide supplemental permitting
47 processes for the issuance of certain permits;
48 amending s. 403.813, F.S.; revising requirements
49 relating to maintenance dredging at seaports;
50 expanding the parameters for mixing zones and return-
51 water discharges; prohibiting mixing zones from
52 entering wetland communities; increasing the time
53 allowance for maintenance dredging following a storm
54 event; amending ss. 161.055 and 253.002, F.S.;
55 conforming provisions to changes made by the act;
56 authorizing seaports to enter into public-private
57 agreements for port-related public infrastructure
58 projects; providing effective dates.

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

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 internationally competitive.

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

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88 zone management program.

89 (3) A port conceptual permit application must contain
90 sufficient information to provide reasonable assurance that the
91 engineering and environmental concepts upon which the designs
92 are based are likely to meet applicable rule criteria for
93 issuance of construction permits for subsequent phases of the
94 project. At a minimum, the application must include the
95 identification of proposed construction areas and areas where
96 construction will not occur; the estimated or maximum
97 anticipated impacts to wetlands and other surface waters and any
98 proposed mitigation for those impacts; the estimated or maximum
99 amount of anticipated impervious surface and the nature of the
100 stormwater treatment system for those areas; and the general
101 location and types of activities on sovereignty submerged lands.
102 Except where construction approval is requested as part of a
103 port conceptual permit application, the application is not
104 required to include final design specifications and drawings.
105 The department shall include conditions in the port conceptual
106 permit specifying the additional information that must be
107 submitted as part of any request for a subsequent construction
108 permit or authorization.

109 (4) In determining whether a port conceptual permit
110 application is approved in whole, approved with modifications or
111 conditions, or denied, the department shall effect a reasonable
112 balance between the potential benefits of the facility and the
113 impacts upon water quality, fish and wildlife, water resources,
114 and other natural resources of the state resulting from the
115 construction and operation of the facility.

116 (5) A port conceptual permit provides the permit holder with

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117 assurance, during the duration of the permit, that the
118 engineering and environmental concepts upon which the designs of
119 the port conceptual permit are based are likely to meet
120 applicable rule criteria for the issuance of construction
121 permits for subsequent phases of the project if:

122 (a) There are no changes in the rules governing the
123 conditions of issuance of permits for future phases of the
124 project and the port conceptual permit is not inconsistent with
125 any total maximum daily load or basin management action plan
126 adopted for the waterbody into which the system discharges or is
127 located pursuant to s. 403.067(7) and chapter 62-304, Florida
128 Administrative Code; and

129 (b) Applications for proposed future phase activities under
130 the port conceptual permit are consistent with the design and
131 conditions of the issued port conceptual permit. Primary areas
132 for consistency comparisons include the size, location, and
133 extent of the system; type of activity; percent of
134 imperviousness; allowable discharge and points of discharge;
135 location and extent of wetland and other surface water impacts
136 and, if required, a proposed mitigation plan; control
137 elevations; extent of stormwater reuse; and detention or
138 retention volumes. If an application for any subsequent phase
139 activity is made that is not consistent with the terms and
140 conditions of the port conceptual permit, the applicant may
141 request a modification of the port conceptual permit to resolve
142 the inconsistency or that the application be processed
143 independent of the permit.

144 (6) Notwithstanding any other provision of law, a port
145 conceptual permit or associated construction permit, including

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146 any applicable sovereignty submerged lands authorization, may
147 authorize advance mitigation for impacts expected as a result of
148 the activities described in the port conceptual permit. Such
149 advance mitigation shall be credited to offset the impacts of
150 such activities when undertaken, to the extent that the advance
151 mitigation is successful.

152 (7) Final agency action on a port conceptual sovereignty
153 submerged lands authorization associated with a port conceptual
154 permit may not be delegated by the Board of Trustees of the
155 Internal Improvement Trust Fund. However, approval of such an
156 authorization by the board constitutes a delegation of authority
157 to the department to take final agency action on behalf of the
158 board on any sovereignty submerged lands authorization necessary
159 to construct facilities included in the port conceptual
160 sovereignty submerged lands authorization, unless a member of
161 the board specifically requests that final agency action be
162 brought before the board. Any delegation of authority to the
163 department concerning a private project does not exempt the
164 private project from applicable rules of the board, including
165 lease and easement fees.

166 (8) Except as otherwise provided in this section, the
167 following procedures apply to the approval or denial of an
168 application for a port conceptual permit or a final permit or
169 authorization:

170 (a) Applications for a port conceptual permit, including
171 any request for the conceptual approval of the use of
172 sovereignty submerged lands, shall be processed in accordance
173 with ss. 373.427 and 120.60. However, if the applicant believes
174 that any request for additional information is not authorized by

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175 law or agency rule, the applicant may request an informal
176 hearing pursuant to s. 120.57(2) before the Secretary of
177 Environmental Protection to determine whether the application is
178 complete.

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

184 (c) Final agency action on a port conceptual permit is
185 subject to challenge pursuant to ss. 120.569 and 120.57.
186 However, final agency action to authorize subsequent
187 construction of facilities contained in a port conceptual permit
188 may only be challenged by a third party for consistency with the
189 port conceptual permit.

190 (d) A person who will be substantially affected by a final
191 agency action described in paragraph (c) must initiate
192 administrative proceedings pursuant to ss. 120.569 and 120.57
193 within 21 days after the publication of the notice of the
194 proposed action. If administrative proceedings are requested,
195 the proceedings are subject to the summary hearing provisions of
196 s. 120.574. However, if the decision of the administrative law
197 judge will be a recommended order rather than a final order, a
198 summary proceeding must be conducted within 90 days after a
199 party files a motion for summary hearing, regardless of whether
200 the parties agree to the summary proceeding.

201 (9) Notwithstanding any other provision of law, the
202 department and the board may issue permits and authorizations
203 pursuant to this section in advance of the issuance of any take

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204 authorization as provided for in the Endangered Species Act and
205 its implementing regulations if the permits and authorizations
206 include a condition requiring that authorized activities may not
207 commence until such take authorization is issued and must be
208 consistent with such authorization. The department shall
209 unilaterally modify any permit or authorization issued pursuant
210 to this section to make the permit or authorization consistent
211 with any subsequently issued incidental take authorization. Such
212 unilateral modification does not create a point of entry for any
213 substantially affected person to request administrative
214 proceedings under ss. 120.569 and 120.57.

215 (10) In lieu of meeting the generally applicable stormwater
216 design standards in rules adopted under this part, which create
217 a presumption that stormwater discharged from the system will
218 meet the applicable state water quality standards in the
219 receiving waters, any port listed in s. 311.09(1) may propose
220 alternative stormwater treatment and design criteria for the
221 construction, operation, and maintenance of stormwater
222 management systems serving overwater piers. The proposal shall
223 include structural components or best management practices to
224 address the stormwater discharge from the pier, including
225 consideration of activities conducted on the pier, as are
226 necessary to provide reasonable assurance that stormwater
227 discharged from the system will meet the applicable state water
228 quality standards in the receiving waters.

229 (11) The department and the board may adopt rules to
230 implement the provisions of this section under the joint coastal
231 permit provisions of chapter 161, the sovereignty submerged
232 lands provisions of chapter 253, and the environmental resource

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233 permit provisions of this part. The adoption of such rules is
234 not subject to any special rulemaking requirements related to
235 small business.

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

238 Section 2. Paragraph (a) of subsection (3) of section
239 311.07, Florida Statutes, is amended to read:

240 311.07 Florida seaport transportation and economic
241 development funding.—

242 (3) (a) Program funds shall be used to fund approved
243 projects on a 50-50 matching basis with any of the deepwater
244 ports, as listed in s. 403.021(9)(b), which is governed by a
245 public body or any other deepwater port which is governed by a
246 public body and which complies with the water quality provisions
247 of s. 403.061, the comprehensive master plan requirements of s.
248 163.3178(2)(k), and the local financial management and reporting
249 provisions of part III of chapter 218. However, program funds
250 used to fund projects that involve the rehabilitation of
251 wharves, docks, berths, bulkheads, or similar structures shall
252 require a 25 percent match of funds. Program funds also may be
253 used by the Seaport Transportation and Economic Development
254 Council to develop with the Florida Trade Data Center such trade
255 data information products which will assist Florida's seaports
256 and international trade.

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

259 311.09 Florida Seaport Transportation and Economic
260 Development Council.—

261 (10) The Department of Transportation shall include in its

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262 annual legislative budget request a Florida Seaport
263 Transportation and Economic Development grant program for
264 expenditure of funds of not less than \$8 million per year. Such
265 budget shall include funding for projects approved by the
266 council which have been determined by each agency to be
267 consistent and which have been determined by the Office of
268 Tourism, Trade, and Economic Development to be economically
269 beneficial. The department shall include the specific approved
270 seaport projects to be funded under this section during the
271 ensuing fiscal year in the tentative work program developed
272 pursuant to s. 339.135(4). The total amount of funding to be
273 allocated to seaport projects under s. 311.07 during the
274 successive 4 fiscal years shall also be included in the
275 tentative work program developed pursuant to s. 339.135(4). The
276 council may submit to the department a list of approved projects
277 that could be made production-ready within the next 2 years. The
278 list shall be submitted by the department as part of the needs
279 and project list prepared pursuant to s. 339.135(2)(b) ~~s.~~
280 ~~339.135.~~ However, the department shall, upon written request of
281 the Florida Seaport Transportation and Economic Development
282 Council, submit work program amendments pursuant to s.
283 339.135(7) to the Governor within 10 days after the later of the
284 date the request is received by the department or the effective
285 date of the amendment, termination, or closure of the applicable
286 funding agreement between the department and the affected
287 seaport, as required to release the funds from the existing
288 commitment. Notwithstanding s. 339.135(7)(c), any work program
289 amendment to transfer prior year funds from one approved seaport
290 project to another seaport project is subject to the procedures

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291 in s. 339.135(7)(d). Notwithstanding any other provision of law,
292 the department may transfer unexpended budget between the
293 seaport projects as identified in the approved work program
294 amendments.

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

297 403.061 Department; powers and duties.—The department shall
298 have the power and the duty to control and prohibit pollution of
299 air and water in accordance with the law and rules adopted and
300 promulgated by it and, for this purpose, to:

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

314 (38) Provide ~~Enter into a memorandum of agreement with the~~
315 ~~Florida Ports Council which provides~~ a supplemental permitting
316 process for the issuance of a conceptual joint coastal permit
317 pursuant to s. 161.055 or environmental resource permit pursuant
318 to part IV of chapter 373, to a port listed in s. 311.09(1), for
319 dredging and the management of materials from dredging and for

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320 other related activities necessary for development, including
321 the expansion of navigation channels, port harbors, turning
322 basins, harbor berths, and associated facilities. Such permit
323 shall be issued for ~~a period of~~ up to 15 years. The department
324 ~~may is authorized to~~ adopt rules to administer ~~implement~~ this
325 subsection.

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327 The department shall implement such programs in conjunction with
328 its other powers and duties and shall place special emphasis on
329 reducing and eliminating contamination that presents a threat to
330 humans, animals or plants, or to the environment.

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

333 403.813 Permits issued at district centers; exceptions.—

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

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

344 (b) The discharge of the return water from the site used
345 for the disposal of dredged material shall be allowed only if
346 such discharge does not result in a violation of water quality
347 standards in the receiving waters. ~~The However, any such~~ return-
348 water discharge into receiving ~~manmade~~ waters shall be ~~that are~~

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349 ~~not in Monroe County is~~ granted a mixing zone for turbidity
350 within a 150-meter radius from the point of discharge during and
351 immediately after the ~~discharge while dredging is ongoing,~~
352 except that the mixing zone may ~~does~~ not extend into areas
353 supporting wetland communities, submerged aquatic vegetation, or
354 hardbottom communities ~~outside the manmade waters. As used in~~
355 ~~this paragraph, the term "manmade waters" means surface waters~~
356 ~~that were wholly excavated from lands other than wetlands and~~
357 ~~other surface waters or semienclosed port berths.~~

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

361 (d) The use of flocculants at the site used for disposal of
362 the dredged material is allowed if the use, including supporting
363 documentation, is coordinated in advance with the department and
364 the department has determined that the use is not harmful to
365 water resources.

366 (e) This subsection does not prohibit maintenance dredging
367 of areas where the loss of original design function and
368 constructed configuration has been caused by a storm event if
369 ~~provided that~~ the dredging is performed as soon as practical
370 after the storm event. Maintenance dredging that commences
371 within 3 ~~2~~ years after the storm event is ~~shall be~~ presumed to
372 satisfy this provision. If more than 3 ~~2~~ years are needed to
373 commence the maintenance dredging after the storm event, a
374 request for a specific time extension to perform the maintenance
375 dredging shall be submitted to the department, before ~~prior to~~
376 the end of the 3-year ~~2-year~~ period, accompanied by a statement,
377 including supporting documentation, demonstrating that

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378 contractors are not available or that additional time is needed
379 to obtain authorization for the maintenance dredging from the
380 United States Army Corps of Engineers.

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

383 161.055 Concurrent processing of permits.—

384 (1) ~~If~~ When an activity for which a permit is required
385 under this chapter also requires a permit, authorization, or
386 approval described in paragraph (2) (b), including a port
387 conceptual permit pursuant to s. 373.4133, the department may,
388 by rule, provide that the activity may be undertaken only upon
389 receipt of a single permit from the department called a "joint
390 coastal permit," as provided in this section.

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

393 253.002 Department of Environmental Protection, water
394 management districts, Fish and Wildlife Conservation Commission,
395 and Department of Agriculture and Consumer Services; duties with
396 respect to state lands.—

397 (2) Delegations to the department, or a water management
398 district, or the Department of Agriculture and Consumer Services
399 of authority to take final agency action on applications for
400 authorization to use submerged lands owned by the board of
401 trustees, without any action on behalf of the board of trustees,
402 shall be by rule if delegations related to conceptual permits
403 are in accordance with s. 373.4133. Until rules adopted pursuant
404 to this subsection become effective, existing delegations by the
405 board of trustees ~~shall~~ remain in full force and effect.
406 However, the board of trustees is not limited or prohibited from

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407 amending these delegations. The board of trustees shall adopt by
408 rule any delegations of its authority to take final agency
409 action without action by the board of trustees on applications
410 for authorization to use board of trustees-owned submerged
411 lands. Any final agency action, without action by the board of
412 trustees, taken by the department, or a water management
413 district, or the Department of Agriculture and Consumer Services
414 on applications to use board of trustees-owned submerged lands
415 are ~~shall be~~ subject to ~~the provisions of~~ s. 373.4275.

416 Notwithstanding any other provision of this subsection, the
417 board of trustees, the Department of Legal Affairs, and the
418 department retain the concurrent authority to assert or defend
419 title to submerged lands owned by the board of trustees.

420 Section 8. A seaport listed in s. 311.09(1), Florida
421 Statutes, may receive or solicit proposals from and enter into a
422 public-private infrastructure project agreement with a private
423 entity, or a consortium of private entities, to build, operate,
424 manage, maintain, or finance a port-related public
425 infrastructure project.

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