

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

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

50 |
 51 | Be It Enacted by the Legislature of the State of Florida:

52 |
 53 | Section 1. Section 373.4133, Florida Statutes, is created
 54 | to read:

55 | 373.4133 Port conceptual permits.—

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

62 (2) Any port listed in s. 311.09(1) may apply to the
63 department for a port conceptual permit, including any
64 applicable authorization under chapter 253 to use sovereignty
65 submerged lands under a joint coastal permit pursuant to s.
66 161.055 or an environmental resource permit issued pursuant to
67 this part, for all or a portion of the area within the
68 geographic boundaries of the port. A private entity with a
69 controlling interest in property used for private industrial
70 marine activities in the immediate vicinity of a port listed in
71 s. 311.09(1) may also apply for a port conceptual permit under
72 this section. A port conceptual permit may be issued for a
73 period of up to 20 years and extended one time for an additional
74 10 years. A port conceptual permit constitutes the state's
75 conceptual certification of compliance with state water quality
76 standards for purposes of s. 401 of the Clean Water Act and the
77 state's conceptual determination that the activities contained
78 in the port conceptual permit are consistent with the state
79 coastal zone management program.

80 (3) A port conceptual permit application must contain
81 sufficient information to provide reasonable assurance that the
82 engineering and environmental concepts upon which the designs
83 are based are likely to meet applicable rule criteria for

84 issuance of construction permits for subsequent phases of the
85 project. At a minimum, a port conceptual permit application must
86 include the identification of proposed construction areas and
87 areas where construction will not occur; the estimated or
88 maximum anticipated impacts to wetlands and other surface waters
89 and any proposed mitigation for those impacts; the estimated or
90 maximum amount of anticipated impervious surface and the nature
91 of the stormwater treatment system for those areas; and the
92 general location and types of activities on sovereignty
93 submerged lands. Except where construction approval is requested
94 as part of a port conceptual permit application, the application
95 is not required to include final design specifications and
96 drawings. The department shall include conditions in the port
97 conceptual permit specifying the additional information that
98 must be submitted as part of any request for a subsequent
99 construction permit or authorization.

100 (4) In determining whether a port conceptual permit
101 application shall be approved in whole, approved with
102 modifications or conditions, or denied, the department shall
103 effect a reasonable balance between the potential benefits of
104 the facility and the impacts upon water quality, fish and
105 wildlife, water resources, and other natural resources of the
106 state resulting from the construction and operation of the
107 facility.

108 (5) A port conceptual permit provides the permit holder
109 with assurance, during the duration of the permit, that the
110 engineering and environmental concepts upon which the designs of
111 the port conceptual permit are based are likely to meet

112 applicable rule criteria for the issuance of construction
113 permits for subsequent phases of the project, if:

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

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

136 (6) Notwithstanding any other provision of law, a port
137 conceptual permit or associated construction permit, including
138 any applicable sovereignty submerged lands authorization, may
139 authorize advance mitigation for impacts expected as a result of

140 the activities described in the port conceptual permit. Such
 141 advance mitigation shall be credited to offset the impacts of
 142 such activities when undertaken, to the extent that the advance
 143 mitigation is successful.

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

158 (8) Except as otherwise provided in this section, the
 159 following procedures apply to the approval or denial of an
 160 application for a port conceptual permit or a final permit or
 161 authorization:

162 (a) Applications for a port conceptual permit, including
 163 any request for the conceptual approval of the use of
 164 sovereignty submerged lands, shall be processed in accordance
 165 with the provisions of ss. 373.427 and 120.60. However, if the
 166 applicant believes that any request for additional information
 167 is not authorized by law or agency rule, the applicant may

168 request an informal hearing pursuant to s. 120.57(2) before the
169 Secretary of Environmental Protection to determine whether the
170 application is complete.

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

176 (c) Final agency action on a port conceptual permit is
177 subject to challenge pursuant to ss. 120.569 and 120.57.
178 However, final agency action to authorize subsequent
179 construction of facilities contained in a port conceptual permit
180 may only be challenged by a third party for consistency with the
181 port conceptual permit.

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

193 (9) Notwithstanding any other provision of law, the
194 department and the board are authorized to issue permits and
195 authorizations pursuant to this section in advance of the

196 issuance of any take authorization as provided for in the
197 Endangered Species Act and its implementing regulations if the
198 permits and authorizations include a condition requiring that
199 authorized activities shall not commence until such take
200 authorization is issued and shall be consistent with such
201 authorization. The department shall unilaterally modify any
202 permit or authorization issued pursuant to this section to make
203 the permit or authorization consistent with any subsequently
204 issued incidental take authorization. Such a unilateral
205 modification does not create a point of entry for any
206 substantially affected person to request administrative
207 proceedings under ss. 120.569 and 120.57.

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

222 (11) The department and the board may adopt rules to
223 implement the provisions of this section under the joint coastal

224 permit provisions of chapter 161, the sovereignty submerged
 225 lands provisions of chapter 253, and the environmental resource
 226 permit provisions of this part. The adoption of such rules is
 227 not subject to any special rulemaking requirements related to
 228 small business.

229 (12) This section shall take effect upon this act becoming
 230 a law and its implementation may not be delayed by any
 231 rulemaking under this section.

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

234 311.09 Florida Seaport Transportation and Economic
 235 Development Council.—

236 (10) The Department of Transportation shall include in its
 237 annual legislative budget request a Florida Seaport
 238 Transportation and Economic Development grant program for
 239 expenditure of funds of not less than \$8 million per year. Such
 240 budget shall include funding for projects approved by the
 241 council which have been determined by each agency to be
 242 consistent and which have been determined by the Office of
 243 Tourism, Trade, and Economic Development to be economically
 244 beneficial. The department shall include the specific approved
 245 seaport projects to be funded under this section during the
 246 ensuing fiscal year in the tentative work program developed
 247 pursuant to s. 339.135(4). The total amount of funding to be
 248 allocated to seaport projects under s. 311.07 during the
 249 successive 4 fiscal years shall also be included in the
 250 tentative work program developed pursuant to s. 339.135(4). The
 251 council may submit to the department a list of approved projects

252 that could be made production-ready within the next 2 years. The
 253 list shall be submitted by the department as part of the needs
 254 and project list prepared pursuant to s. 339.135(2)(b) ~~s.~~
 255 ~~339.135.~~ However, the department shall, upon written request of
 256 the Florida Seaport Transportation and Economic Development
 257 Council, submit work program amendments pursuant to s.
 258 339.135(7) to the Governor within 10 days after the later of the
 259 date the request is received by the department or the effective
 260 date of the amendment, termination, or closure of the applicable
 261 funding agreement between the department and the affected
 262 seaport, as required to release the funds from the existing
 263 commitment.

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

266 403.061 Department; powers and duties.—The department
 267 shall have the power and the duty to control and prohibit
 268 pollution of air and water in accordance with the law and rules
 269 adopted and promulgated by it and, for this purpose, to:

270 (37) Provide ~~Enter into a memorandum of agreement with the~~
 271 ~~Florida Ports Council which provides~~ a supplemental permitting
 272 process for the issuance of a joint coastal permit pursuant to
 273 s. 161.055 or environmental resource permit pursuant to part IV
 274 of chapter 373, to a port listed in s. 311.09(1), for
 275 maintenance dredging and the management of dredged materials
 276 from maintenance dredging of all navigation channels, port
 277 harbors, turning basins, and harbor berths. Such permit shall be
 278 issued for a period of 5 years and shall be annually extended
 279 for an additional year if the port is in compliance with all

280 permit conditions at the time of extension. The department is
 281 authorized to adopt rules to implement this subsection.

282 (38) Provide ~~Enter into a memorandum of agreement with the~~
 283 ~~Florida Ports Council which provides~~ a supplemental permitting
 284 process for the issuance of a conceptual joint coastal permit
 285 pursuant to s. 161.055 or environmental resource permit pursuant
 286 to part IV of chapter 373, to a port listed in s. 311.09(1), for
 287 dredging and the management of materials from dredging and for
 288 other related activities necessary for development, including
 289 the expansion of navigation channels, port harbors, turning
 290 basins, harbor berths, and associated facilities. Such permit
 291 shall be issued for a period of up to 15 years. The department
 292 is authorized to adopt rules to implement this subsection.
 293 The department shall implement such programs in conjunction with
 294 its other powers and duties and shall place special emphasis on
 295 reducing and eliminating contamination that presents a threat to
 296 humans, animals or plants, or to the environment.

297 Section 4. Subsection (3) of section 403.813, Florida
 298 Statutes, is amended to read:

299 403.813 Permits issued at district centers; exceptions.—

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

305 (a) A mixing zone for turbidity is granted within a 150-
 306 meter ~~100-meter~~ radius from the point of dredging while dredging
 307 is ongoing, except that the mixing zone may ~~does~~ not extend into

308 areas supporting wetland communities, submerged aquatic
309 vegetation, or hardbottom communities.

310 (b) The discharge of the return water from the site used
311 for the disposal of dredged material shall be allowed only if
312 such discharge does not result in a violation of water quality
313 standards in the receiving waters. ~~The However, any such~~ return-
314 water discharge into receiving manmade waters shall be that are
315 ~~not in Monroe County~~ is granted a mixing zone for turbidity
316 within a 150-meter radius from the point of discharge during and
317 immediately after the ~~discharge while dredging is ongoing,~~
318 except that the mixing zone may ~~does~~ not extend outside into
319 areas supporting wetland communities, submerged aquatic
320 vegetation, or hardbottom communities ~~the manmade waters. As~~
321 ~~used in this paragraph, the term "manmade waters" means surface~~
322 ~~waters that were wholly excavated from lands other than wetlands~~
323 ~~and other surface waters or semienclosed port berths.~~

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

327 (d) The use of flocculants at the site used for disposal
328 of the dredged material is allowed if the use, including
329 supporting documentation, is coordinated in advance with the
330 department and the department has determined that the use is not
331 harmful to water resources.

332 (e) This subsection does not prohibit maintenance dredging
333 of areas where the loss of original design function and
334 constructed configuration has been caused by a storm event,
335 provided that the dredging is performed as soon as practical

336 after the storm event. Maintenance dredging that commences
 337 within 3 ~~2~~ years after the storm event shall be presumed to
 338 satisfy this provision. If more than 3 ~~2~~ years are needed to
 339 commence the maintenance dredging after the storm event, a
 340 request for a specific time extension to perform the maintenance
 341 dredging shall be submitted to the department, prior to the end
 342 of the 3-year ~~2-year~~ period, accompanied by a statement,
 343 including supporting documentation, demonstrating that
 344 contractors are not available or that additional time is needed
 345 to obtain authorization for the maintenance dredging from the
 346 United States Army Corps of Engineers.

347 Section 5. Subsection (1) of section 161.055, Florida
 348 Statutes, is amended to read:

349 161.055 Concurrent processing of permits.—

350 (1) When an activity for which a permit is required under
 351 this chapter also requires a permit, authorization, or approval
 352 described in paragraph (2) (b), including a port conceptual
 353 permit pursuant to s. 373.4133, the department may, by rule,
 354 provide that the activity may be undertaken only upon receipt of
 355 a single permit from the department called a "joint coastal
 356 permit," as provided in this section.

357 Section 6. Subsection (2) of section 253.002, Florida
 358 Statutes, is amended to read:

359 253.002 Department of Environmental Protection, water
 360 management districts, Fish and Wildlife Conservation Commission,
 361 and Department of Agriculture and Consumer Services; duties with
 362 respect to state lands.—

363 (2) Delegations to the department, or a water management

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364 district, or the Department of Agriculture and Consumer Services
365 of authority to take final agency action on applications for
366 authorization to use submerged lands owned by the board of
367 trustees, without any action on behalf of the board of trustees,
368 shall be by rule, provided that delegations related to
369 conceptual permits shall be in accordance with s. 373.4133.

370 Until rules adopted pursuant to this subsection become
371 effective, existing delegations by the board of trustees shall
372 remain in full force and effect. However, the board of trustees
373 is not limited or prohibited from amending these delegations.
374 The board of trustees shall adopt by rule any delegations of its
375 authority to take final agency action without action by the
376 board of trustees on applications for authorization to use board
377 of trustees-owned submerged lands. Any final agency action,
378 without action by the board of trustees, taken by the
379 department, or a water management district, or the Department of
380 Agriculture and Consumer Services on applications to use board
381 of trustees-owned submerged lands shall be subject to the
382 provisions of s. 373.4275. Notwithstanding any other provision
383 of this subsection, the board of trustees, the Department of
384 Legal Affairs, and the department retain the concurrent
385 authority to assert or defend title to submerged lands owned by
386 the board of trustees.

387 Section 7. A seaport listed in s. 311.09(1), Florida
388 Statutes, may receive or solicit proposals from and enter into a
389 public-private infrastructure project agreement with a private
390 entity, or a consortium of private entities, to build, operate,

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391 manage, maintain, or finance a port-related public
392 infrastructure project.

393 Section 8. Except as otherwise expressly provided in this
394 act, this act shall take effect July 1, 2010.