

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

54 |
55 | Be It Enacted by the Legislature of the State of Florida:
56 |

57 Section 1. Section 373.4133, Florida Statutes, is created
58 to read:

59 373.4133 Port conceptual permits.—

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

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

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

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

112 (5) A port conceptual permit provides the permit holder
113 with assurance, during the duration of the permit, that the
114 engineering and environmental concepts upon which the designs of
115 the port conceptual permit are based are likely to meet
116 applicable rule criteria for the issuance of construction
117 permits for subsequent phases of the project, if:

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

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

140 (6) Notwithstanding any other provision of law, a port
141 conceptual permit or associated construction permit, including
142 any applicable sovereignty submerged lands authorization, may
143 authorize advance mitigation for impacts expected as a result of
144 the activities described in the port conceptual permit. Such
145 advance mitigation shall be credited to offset the impacts of
146 such activities when undertaken, to the extent that the advance
147 mitigation is successful.

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

162 (8) Except as otherwise provided in this section, the
163 following procedures apply to the approval or denial of an
164 application for a port conceptual permit or a final permit or
165 authorization:

166 (a) Applications for a port conceptual permit, including
167 any request for the conceptual approval of the use of

168 sovereignty submerged lands, shall be processed in accordance
169 with the provisions of ss. 373.427 and 120.60. However, if the
170 applicant believes that any request for additional information
171 is not authorized by law or agency rule, the applicant may
172 request an informal hearing pursuant to s. 120.57(2) before the
173 Secretary of Environmental Protection to determine whether the
174 application is complete.

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

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

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

195 party files a motion for summary hearing, regardless of whether
 196 the parties agree to the summary proceeding.

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

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

223 necessary to provide reasonable assurance that stormwater
 224 discharged from the system will meet the applicable state water
 225 quality standards in the receiving waters.

226 (11) The department and the board may adopt rules to
 227 implement the provisions of this section under the joint coastal
 228 permit provisions of chapter 161, the sovereignty submerged
 229 lands provisions of chapter 253, and the environmental resource
 230 permit provisions of this part. The adoption of such rules is
 231 not subject to any special rulemaking requirements related to
 232 small business.

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

236 Section 2. Paragraph (a) of subsection (3) of section
 237 311.07, Florida Statutes, is amended to read:

238 311.07 Florida seaport transportation and economic
 239 development funding.—

240 (3) (a) Program funds shall be used to fund approved
 241 projects on a 50-50 matching basis with any of the deepwater
 242 ports, as listed in s. 403.021(9) (b), which is governed by a
 243 public body or any other deepwater port which is governed by a
 244 public body and which complies with the water quality provisions
 245 of s. 403.061, the comprehensive master plan requirements of s.
 246 163.3178(2) (k), and the local financial management and reporting
 247 provisions of part III of chapter 218. However, program funds
 248 used to fund projects that involve the rehabilitation of
 249 wharves, docks, berths, bulkheads, or similar structures shall
 250 require a 25-percent match of funds. Program funds also may be

251 used by the Seaport Transportation and Economic Development
 252 Council to develop with the Florida Trade Data Center such trade
 253 data information products which will assist Florida's seaports
 254 and international trade.

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

257 311.09 Florida Seaport Transportation and Economic
 258 Development Council.—

259 (10) The Department of Transportation shall include in its
 260 annual legislative budget request a Florida Seaport
 261 Transportation and Economic Development grant program for
 262 expenditure of funds of not less than \$8 million per year. Such
 263 budget shall include funding for projects approved by the
 264 council which have been determined by each agency to be
 265 consistent and which have been determined by the Office of
 266 Tourism, Trade, and Economic Development to be economically
 267 beneficial. The department shall include the specific approved
 268 seaport projects to be funded under this section during the
 269 ensuing fiscal year in the tentative work program developed
 270 pursuant to s. 339.135(4). The total amount of funding to be
 271 allocated to seaport projects under s. 311.07 during the
 272 successive 4 fiscal years shall also be included in the
 273 tentative work program developed pursuant to s. 339.135(4). The
 274 council may submit to the department a list of approved projects
 275 that could be made production-ready within the next 2 years. The
 276 list shall be submitted by the department as part of the needs
 277 and project list prepared pursuant to s. 339.135(2)(b) ~~s.~~
 278 ~~339.135~~. However, the department shall, upon written request of

279 the Florida Seaport Transportation and Economic Development
 280 Council, submit work program amendments pursuant to s.
 281 339.135(7) to the Governor within 10 days after the later of the
 282 date the request is received by the department or the effective
 283 date of the amendment, termination, or closure of the applicable
 284 funding agreement between the department and the affected
 285 seaport, as required to release the funds from the existing
 286 commitment. Notwithstanding s. 339.135(7)(c), any work program
 287 amendment to transfer prior year funds from one approved seaport
 288 project to another seaport project is subject to the procedures
 289 in s. 339.135(7)(d). Notwithstanding any provision of law to the
 290 contrary, the department may transfer unexpended budget between
 291 the seaport projects as identified in the approved work program
 292 amendments.

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

295 403.061 Department; powers and duties.—The department
 296 shall have the power and the duty to control and prohibit
 297 pollution of air and water in accordance with the law and rules
 298 adopted and promulgated by it and, for this purpose, to:

299 (37) Provide ~~Enter into a memorandum of agreement with the~~
 300 ~~Florida Ports Council which provides~~ a supplemental permitting
 301 process for the issuance of a joint coastal permit pursuant to
 302 s. 161.055 or environmental resource permit pursuant to part IV
 303 of chapter 373, to a port listed in s. 311.09(1), for
 304 maintenance dredging and the management of dredged materials
 305 from maintenance dredging of all navigation channels, port
 306 harbors, turning basins, and harbor berths. Such permit shall be

307 issued for a period of 5 years and shall be annually extended
308 for an additional year if the port is in compliance with all
309 permit conditions at the time of extension. The department is
310 authorized to adopt rules to implement this subsection.

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

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

328 403.813 Permits issued at district centers; exceptions.—

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

334 (a) A mixing zone for turbidity is granted within a 150-

335 meter ~~100-meter~~ radius from the point of dredging while dredging
 336 is ongoing, except that the mixing zone may ~~does~~ not extend into
 337 areas supporting wetland communities, submerged aquatic
 338 vegetation, or hardbottom communities.

339 (b) The discharge of the return water from the site used
 340 for the disposal of dredged material shall be allowed only if
 341 such discharge does not result in a violation of water quality
 342 standards in the receiving waters. ~~The~~ ~~However,~~ ~~any such~~ return-
 343 water discharge into receiving manmade waters shall be that are
 344 ~~not in Monroe County~~ is granted a mixing zone for turbidity
 345 within a 150-meter radius from the point of discharge during and
 346 immediately after the ~~discharge while dredging is ongoing,~~
 347 except that the mixing zone may ~~does~~ not extend into areas
 348 supporting wetland communities, submerged aquatic vegetation, or
 349 hardbottom communities ~~outside the manmade waters. As used in~~
 350 ~~this paragraph, the term "manmade waters" means surface waters~~
 351 ~~that were wholly excavated from lands other than wetlands and~~
 352 ~~other surface waters or semienclosed port berths.~~

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

356 (d) The use of flocculants at the site used for disposal
 357 of the dredged material is allowed if the use, including
 358 supporting documentation, is coordinated in advance with the
 359 department and the department has determined that the use is not
 360 harmful to water resources.

361 (e) This subsection does not prohibit maintenance dredging
 362 of areas where the loss of original design function and

363 constructed configuration has been caused by a storm event,
 364 provided that the dredging is performed as soon as practical
 365 after the storm event. Maintenance dredging that commences
 366 within 3 ~~2~~ years after the storm event shall be presumed to
 367 satisfy this provision. If more than 3 ~~2~~ years are needed to
 368 commence the maintenance dredging after the storm event, a
 369 request for a specific time extension to perform the maintenance
 370 dredging shall be submitted to the department, prior to the end
 371 of the 3-year ~~2-year~~ period, accompanied by a statement,
 372 including supporting documentation, demonstrating that
 373 contractors are not available or that additional time is needed
 374 to obtain authorization for the maintenance dredging from the
 375 United States Army Corps of Engineers.

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

378 161.055 Concurrent processing of permits.-

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

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

388 253.002 Department of Environmental Protection, water
 389 management districts, Fish and Wildlife Conservation Commission,
 390 and Department of Agriculture and Consumer Services; duties with

391 respect to state lands.—

392 (2) Delegations to the department, or a water management
 393 district, or the Department of Agriculture and Consumer Services
 394 of authority to take final agency action on applications for
 395 authorization to use submerged lands owned by the board of
 396 trustees, without any action on behalf of the board of trustees,
 397 shall be by rule, provided that delegations related to
 398 conceptual permits shall be in accordance with s. 373.4133.

399 Until rules adopted pursuant to this subsection become
 400 effective, existing delegations by the board of trustees shall
 401 remain in full force and effect. However, the board of trustees
 402 is not limited or prohibited from amending these delegations.
 403 The board of trustees shall adopt by rule any delegations of its
 404 authority to take final agency action without action by the
 405 board of trustees on applications for authorization to use board
 406 of trustees-owned submerged lands. Any final agency action,
 407 without action by the board of trustees, taken by the
 408 department, or a water management district, or the Department of
 409 Agriculture and Consumer Services on applications to use board
 410 of trustees-owned submerged lands shall be subject to the
 411 provisions of s. 373.4275. Notwithstanding any other provision
 412 of this subsection, the board of trustees, the Department of
 413 Legal Affairs, and the department retain the concurrent
 414 authority to assert or defend title to submerged lands owned by
 415 the board of trustees.

416 Section 8. A seaport listed in s. 311.09(1), Florida
 417 Statutes, may receive or solicit proposals from and enter into a
 418 public-private infrastructure project agreement with a private

CS/CS/CS/HB 963

2010

419 entity, or a consortium of private entities, to build, operate,
420 manage, maintain, or finance a port-related public
421 infrastructure project.

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