

**By** the Committees on Budget; Transportation; and Commerce and Tourism; and Senator Ring

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1                                   A bill to be entitled  
2           An act relating to seaports; amending s. 373.406,  
3           F.S.; exempting overwater piers, docks, and structures  
4           located in deepwater ports from stormwater management  
5           system requirements under specified conditions;  
6           amending s. 373.4133, F.S.; providing exceptions to  
7           time limitations for the Department of Environmental  
8           Protection to issue a notice of intent to issue a port  
9           conceptual permit; providing that a third party who  
10          challenges the issuance of a port conceptual permit  
11          has the ultimate burden of proof and the burden of  
12          going forward with the evidence in the first instance;  
13          deleting the requirement to publish notice of the  
14          department's intent to issue or deny a port conceptual  
15          permit; amending s. 403.813, F.S.; exempting specified  
16          seaports and inland navigation districts from  
17          requirements to conduct maintenance dredging under  
18          certain circumstances; providing that ditches, pipes,  
19          and similar linear conveyances are not receiving  
20          waters; authorizing public ports and inland navigation  
21          districts to use sovereignty submerged lands in  
22          connection with maintenance dredging; providing an  
23          additional exemption from permitting requirements to  
24          allow the disposal of spoil material on a self-  
25          contained, upland spoil site if certain conditions are  
26          met; requiring notice to the department of intent to  
27          use the exemption; providing conditions; amending s.  
28          310.002, F.S.; redefining the term "port" to include  
29          Port Citrus; amending s. 311.09, F.S.; including a

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30 representative of Port Citrus as a member of the  
31 Florida Seaport Transportation and Economic  
32 Development Council; amending s. 374.976, F.S.;  
33 conforming provisions to include Port Citrus in  
34 provisions relating to the authority of inland  
35 navigation districts; amending s. 403.021, F.S.;  
36 conforming provisions to include Port Citrus in  
37 legislative declarations relating to environmental  
38 control; amending s. 403.061, F.S.; conforming  
39 provisions to include Port Citrus in provisions  
40 relating to powers of the Department of Environmental  
41 Protection; amending s. 403.813, F.S.; conforming  
42 provisions to include Port Citrus in provisions  
43 relating to permits issued at Department of  
44 Environmental Protection district centers; amending s.  
45 403.816, F.S.; conforming provisions to include Port  
46 Citrus in provisions relating to certain maintenance  
47 projects at deepwater ports and beach restoration  
48 projects; providing an effective date.

49  
50 Be It Enacted by the Legislature of the State of Florida:

51  
52 Section 1. Subsection (12) is added to section 373.406,  
53 Florida Statutes, to read:

54 373.406 Exemptions.—The following exemptions shall apply:

55 (12) An overwater pier, dock, or a similar structure  
56 located in a deepwater port listed in s. 311.09 is not  
57 considered to be part of a stormwater management system for  
58 which this chapter or chapter 403 requires stormwater from

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59 impervious surfaces to be treated if:

60 (a) The port has a stormwater pollution prevention plan for  
61 industrial activities pursuant to the National Pollutant  
62 Discharge Elimination System Program; and

63 (b) The stormwater pollution prevention plan also provides  
64 similar pollution prevention measures for other activities that  
65 are not subject to the National Pollutant Discharge Elimination  
66 System Program and that occur on the port's overwater piers,  
67 docks, and similar structures.

68 Section 2. Subsection (8) of section 373.4133, Florida  
69 Statutes, is amended to read:

70 373.4133 Port conceptual permits.-

71 (8) Except as otherwise provided in this section, the  
72 following procedures apply to the approval or denial of an  
73 application for a port conceptual permit or a final permit or  
74 authorization:

75 (a) Applications for a port conceptual permit, including  
76 any request for the conceptual approval of the use of  
77 sovereignty submerged lands, shall be processed in accordance  
78 with the provisions of ss. 373.427 and 120.60, with the  
79 following exceptions:-

80 1. An application for a port conceptual permit, and any  
81 applications for subsequent construction contained in a port  
82 conceptual permit, must be approved or denied within 60 days  
83 after receipt of a completed application.

84 2. The department may request additional information no  
85 more than twice, unless the applicant waives this limitation in  
86 writing. If the applicant does not provide a response to the  
87 second request for additional information within 90 days or

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88 another time period mutually agreed upon between the applicant  
89 and the department, the application shall be considered  
90 withdrawn. However,

91 3. If the applicant believes that any request for  
92 additional information is not authorized by law or agency rule,  
93 the applicant may request an informal hearing pursuant to s.  
94 120.57(2) before the Secretary of Environmental Protection to  
95 determine whether the application is complete.

96 4. If a third party petitions to challenge the issuance of  
97 a port conceptual permit by the department, the petitioner  
98 initiating the action has the burden of ultimate persuasion and,  
99 in the first instance, has the burden of going forward with the  
100 evidence.

101 ~~(b) Upon issuance of the department's notice of intent to~~  
102 ~~issue or deny a port conceptual permit, the applicant shall~~  
103 ~~publish a one-time notice of such intent, prepared by the~~  
104 ~~department, in the newspaper with the largest general~~  
105 ~~circulation in the county or counties where the port is located.~~

106 (b) ~~(e)~~ Final agency action on a port conceptual permit is  
107 subject to challenge pursuant to ss. 120.569 and 120.57.  
108 However, final agency action to authorize subsequent  
109 construction of facilities contained in a port conceptual permit  
110 may only be challenged by a third party only for consistency  
111 with the port conceptual permit.

112 (c) ~~(d)~~ A person who will be substantially affected by a  
113 final agency action described in paragraph (b) ~~(e)~~ must initiate  
114 administrative proceedings pursuant to ss. 120.569 and 120.57  
115 within 21 days after the publication of the notice of the  
116 proposed action. If administrative proceedings are requested,

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117 the proceedings are subject to the summary hearing provisions of  
118 s. 120.574. However, if the decision of the administrative law  
119 judge will be a recommended order rather than a final order, a  
120 summary proceeding must be conducted within 90 days after a  
121 party files a motion for summary hearing, regardless of whether  
122 the parties agree to the summary proceeding.

123 Section 3. Subsection (3) of section 403.813, Florida  
124 Statutes, is amended to read:

125 403.813 Permits issued at district centers; exceptions.—

126 (3) A permit is not required under this chapter, chapter  
127 373, chapter 61-691, Laws of Florida, or chapter 25214 or  
128 chapter 25270, 1949, Laws of Florida, for maintenance dredging  
129 conducted under this section by the seaports of Jacksonville,  
130 Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami,  
131 Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City,  
132 Pensacola, Key West, and Fernandina or by inland navigation  
133 districts, if the dredging to be performed is no more than is  
134 necessary to restore previously dredged areas to original design  
135 specifications or configurations, if previously undisturbed  
136 natural areas are not significantly impacted, and if the work  
137 conducted does not violate the protections for manatees under s.  
138 379.2431(2)(d). In addition:

139 (a) A mixing zone for turbidity is granted within a 150-  
140 meter radius from the point of dredging while dredging is  
141 ongoing, except that the mixing zone may not extend into areas  
142 supporting wetland communities, submerged aquatic vegetation, or  
143 hardbottom communities.

144 (b) The discharge of the return water from the site used  
145 for the disposal of dredged material shall be allowed only if

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146 such discharge does not result in a violation of water quality  
147 standards in the receiving waters. The return-water discharge  
148 into receiving waters shall be granted a mixing zone for  
149 turbidity within a 150-meter radius from the point of discharge  
150 into the receiving waters during and immediately after the  
151 dredging, except that the mixing zone may not extend into areas  
152 supporting wetland communities, submerged aquatic vegetation, or  
153 hardbottom communities. Ditches, pipes, and similar types of  
154 linear conveyances are not considered receiving waters for the  
155 purposes of this paragraph.

156 (c) The state may not exact a charge for material that this  
157 subsection allows a public port or an inland navigation district  
158 to remove. In addition, consent to use any sovereignty submerged  
159 lands pursuant to this section is hereby granted.

160 (d) The use of flocculants at the site used for disposal of  
161 the dredged material is allowed if the use, including supporting  
162 documentation, is coordinated in advance with the department and  
163 the department has determined that the use is not harmful to  
164 water resources.

165 (e) The spoil material from maintenance dredging may be  
166 deposited in a self-contained, upland disposal site. The site is  
167 not required to be permitted if:

168 1. The site exists as of January 1, 2011;

169 2. A professional engineer certifies that the site has been  
170 designed in accordance with generally accepted engineering  
171 standards for such disposal sites;

172 3. The site has adequate capacity to receive and retain the  
173 dredged material; and

174 4. The site has operating and maintenance procedures that

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175 provide for discharge of return flow of water and prevent the  
176 escape of the spoil material into state waters.

177 (f) The department must be notified of the intent to use  
178 this exemption at least 30 days before the commencement of  
179 maintenance dredging. The notice shall include, if applicable,  
180 the professional engineer certification required by paragraph  
181 (e).

182 (g)~~(e)~~ This subsection does not prohibit maintenance  
183 dredging of areas where the loss of original design function and  
184 constructed configuration has been caused by a storm event,  
185 provided that the dredging is performed as soon as practical  
186 after the storm event. Maintenance dredging that commences  
187 within 3 years after the storm event shall be presumed to  
188 satisfy this provision. If more than 3 years are needed to  
189 commence the maintenance dredging after the storm event, a  
190 request for a specific time extension to perform the maintenance  
191 dredging shall be submitted to the department, prior to the end  
192 of the 3-year period, accompanied by a statement, including  
193 supporting documentation, demonstrating that contractors are not  
194 available or that additional time is needed to obtain  
195 authorization for the maintenance dredging from the United  
196 States Army Corps of Engineers.

197 Section 4. Subsection (4) of section 310.002, Florida  
198 Statutes, is amended to read:

199 310.002 Definitions.—As used in this chapter, except where  
200 the context clearly indicates otherwise:

201 (4) "Port" means any place in the state into which vessels  
202 enter or depart and includes, without limitation, Fernandina,  
203 Nassau Inlet, Jacksonville, St. Augustine, Canaveral, Port

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204 Citrus, Ft. Pierce, Palm Beach, Port Everglades, Miami, Key  
205 West, Boca Grande, Charlotte Harbor, Punta Gorda, Tampa, Port  
206 Tampa, Port Manatee, St. Petersburg, Clearwater, Apalachicola,  
207 Carrabelle, Panama City, Port St. Joe, and Pensacola.

208 Section 5. Subsection (1) of section 311.09, Florida  
209 Statutes, is amended to read:

210 311.09 Florida Seaport Transportation and Economic  
211 Development Council.—

212 (1) The Florida Seaport Transportation and Economic  
213 Development Council is created within the Department of  
214 Transportation. The council consists of the following 18 ~~17~~  
215 members: the port director, or the port director's designee, of  
216 each of the ports of Jacksonville, Port Canaveral, Port Citrus,  
217 Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee,  
218 St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key  
219 West, and Fernandina; the secretary of the Department of  
220 Transportation or his or her designee; the director of the  
221 Office of Tourism, Trade, and Economic Development or his or her  
222 designee; and the secretary of the Department of Community  
223 Affairs or his or her designee.

224 Section 6. Paragraph (c) of subsection (1) of section  
225 374.976, Florida Statutes, is amended to read:

226 374.976 Authority to address impacts of waterway  
227 development projects.—

228 (1) Each inland navigation district is empowered and  
229 authorized to undertake programs intended to alleviate the  
230 problems associated with its waterway or waterways, including,  
231 but not limited to, the following:

232 (c) The district is authorized to aid and cooperate with



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233 the Federal Government; state; member counties; nonmember  
234 counties that contain any part of the intracoastal waterway  
235 within their boundaries; navigation districts; the seaports of  
236 Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm  
237 Beach, Port Everglades, Miami, Port Manatee, St. Petersburg,  
238 Tampa, Port St. Joe, Panama City, Pensacola, Key West, and  
239 Fernandina; and local governments within the district in  
240 planning and carrying out public navigation, local and regional  
241 anchorage management, beach renourishment, public recreation,  
242 inlet management, environmental education, and boating safety  
243 projects, directly related to the waterways. The district is  
244 also authorized to enter into cooperative agreements with the  
245 United States Army Corps of Engineers, state, and member  
246 counties, and to covenant in any such cooperative agreement to  
247 pay part of the costs of acquisition, planning, development,  
248 construction, reconstruction, extension, improvement, operation,  
249 and maintenance of such projects.

250 Section 7. Subsection (9) of section 403.021, Florida  
251 Statutes, is amended to read:

252 403.021 Legislative declaration; public policy.—

253 (9) (a) The Legislature finds and declares that it is  
254 essential to preserve and maintain authorized water depth in the  
255 existing navigation channels, port harbors, turning basins, and  
256 harbor berths of this state in order to provide for the  
257 continued safe navigation of deepwater shipping commerce. The  
258 department shall recognize that maintenance of authorized water  
259 depths consistent with port master plans developed pursuant to  
260 s. 163.3178(2)(k) is an ongoing, continuous, beneficial, and  
261 necessary activity that is in the public interest; and it shall

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262 develop a regulatory process that shall enable the ports of this  
263 state to conduct such activities in an environmentally sound,  
264 safe, expeditious, and cost-efficient manner. It is the further  
265 intent of the Legislature that the permitting and enforcement of  
266 dredging, dredged-material management, and other related  
267 activities for Florida's deepwater ports pursuant to this  
268 chapter and chapters 161, 253, and 373 shall be consolidated  
269 within the department's Division of Water Resource Management  
270 and, with the concurrence of the affected deepwater port or  
271 ports, may be administered by a district office of the  
272 department or delegated to an approved local environmental  
273 program.

274 (b) The provisions of paragraph (a) apply only to the port  
275 waters, dredged-material management sites, port harbors,  
276 navigation channels, turning basins, and harbor berths used for  
277 deepwater commercial navigation in the ports of Jacksonville,  
278 Tampa, Port Everglades, Miami, Port Canaveral, Port Citrus, Ft.  
279 Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St.  
280 Petersburg, Pensacola, Fernandina, and Key West.

281 Section 8. Subsection (26) of section 403.061, Florida  
282 Statutes, is amended to read:

283 403.061 Department; powers and duties.—The department shall  
284 have the power and the duty to control and prohibit pollution of  
285 air and water in accordance with the law and rules adopted and  
286 promulgated by it and, for this purpose, to:

287 (26) (a) Develop standards and criteria for waters used for  
288 deepwater shipping which standards and criteria consider  
289 existing water quality; appropriate mixing zones and other  
290 requirements for maintenance dredging in previously constructed

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291 deepwater navigation channels, port harbors, turning basins, or  
292 harbor berths; and appropriate mixing zones for disposal of  
293 spoil material from dredging and, where necessary, develop a  
294 separate classification for such waters. Such classification,  
295 standards, and criteria shall recognize that the present  
296 dedicated use of these waters is for deepwater commercial  
297 navigation.

298 (b) The provisions of paragraph (a) apply only to the port  
299 waters, spoil disposal sites, port harbors, navigation channels,  
300 turning basins, and harbor berths used for deepwater commercial  
301 navigation in the ports of Jacksonville, Tampa, Port Everglades,  
302 Miami, Port Canaveral, Port Citrus, Ft. Pierce, Palm Beach, Port  
303 Manatee, Port St. Joe, Panama City, St. Petersburg, Port Bartow,  
304 Florida Power Corporation's Crystal River Canal, Boca Grande,  
305 Green Cove Springs, and Pensacola.

306  
307 The department shall implement such programs in conjunction with  
308 its other powers and duties and shall place special emphasis on  
309 reducing and eliminating contamination that presents a threat to  
310 humans, animals or plants, or to the environment.

311 Section 9. Subsection (3) of section 403.813, Florida  
312 Statutes, is amended to read:

313 403.813 Permits issued at district centers; exceptions.—

314 (3) For maintenance dredging conducted under this section  
315 by the seaports of Jacksonville, Port Canaveral, Port Citrus,  
316 Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee,  
317 St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key  
318 West, and Fernandina or by inland navigation districts:

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

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320 meter radius from the point of dredging while dredging is  
321 ongoing, except that the mixing zone may not extend into areas  
322 supporting wetland communities, submerged aquatic vegetation, or  
323 hardbottom communities.

324 (b) The discharge of the return water from the site used  
325 for the disposal of dredged material shall be allowed only if  
326 such discharge does not result in a violation of water quality  
327 standards in the receiving waters. The return-water discharge  
328 into receiving waters shall be granted a mixing zone for  
329 turbidity within a 150-meter radius from the point of discharge  
330 during and immediately after the dredging, except that the  
331 mixing zone may not extend into areas supporting wetland  
332 communities, submerged aquatic vegetation, or hardbottom  
333 communities.

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

337 (d) The use of flocculants at the site used for disposal of  
338 the dredged material is allowed if the use, including supporting  
339 documentation, is coordinated in advance with the department and  
340 the department has determined that the use is not harmful to  
341 water resources.

342 (e) This subsection does not prohibit maintenance dredging  
343 of areas where the loss of original design function and  
344 constructed configuration has been caused by a storm event,  
345 provided that the dredging is performed as soon as practical  
346 after the storm event. Maintenance dredging that commences  
347 within 3 years after the storm event shall be presumed to  
348 satisfy this provision. If more than 3 years are needed to

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349 commence the maintenance dredging after the storm event, a  
350 request for a specific time extension to perform the maintenance  
351 dredging shall be submitted to the department, prior to the end  
352 of the 3-year period, accompanied by a statement, including  
353 supporting documentation, demonstrating that contractors are not  
354 available or that additional time is needed to obtain  
355 authorization for the maintenance dredging from the United  
356 States Army Corps of Engineers.

357 Section 10. Section 403.816, Florida Statutes, is amended  
358 to read:

359 403.816 Permits for maintenance dredging of deepwater ports  
360 and beach restoration projects.—

361 (1) The department shall establish a permit system under  
362 this chapter and chapter 253 which provides for the performance,  
363 for up to 25 years from the issuance of the original permit, of  
364 maintenance dredging of permitted navigation channels, port  
365 harbors, turning basins, harbor berths, and beach restoration  
366 projects approved pursuant to chapter 161. However, permits  
367 issued for dredging river channels which are not a part of a  
368 deepwater port shall be valid for no more than five years. No  
369 charge shall be exacted by the state for material removed during  
370 such maintenance dredging by a public port authority.

371 (2) The provisions of s. 253.77 do not apply to a permit  
372 for maintenance dredging and spoil site approval when there is  
373 no change in the size or location of the spoil disposal site and  
374 when the applicant provides documentation to the department that  
375 the appropriate lease, easement, or consent of use for the  
376 project site issued pursuant to chapter 253 is recorded in the  
377 county where the project is located.

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378           (3) The provisions of this section relating to ports apply  
379 only to the port waters, spoil disposal sites, port harbors,  
380 navigation channels, turning basins, and harbor berths used for  
381 deepwater commercial navigation in the ports of Jacksonville,  
382 Tampa, Port Everglades, Miami, Port Canaveral, Port Citrus, Ft.  
383 Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St.  
384 Petersburg, Port Bartow, Florida Power Corporation's Crystal  
385 River Canal, Boca Grande, Green Cove Springs, and Pensacola.

386           Section 11. This act shall take effect July 1, 2011.