

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 department rules regarding  
124 total maximum daily loads; 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 such structural components or best management practices  
 221 to 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 port  
 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

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.