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1 A bill to be entitled  
 2 An act relating to seaports; creating s. 373.4133, F.S.;  
 3 providing legislative findings; providing for a 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 conceptual permit is the state's water  
 9 quality compliance certification and conceptual  
 10 determination of consistency with the state's coastal zone  
 11 management program; providing for permit applications and  
 12 application requirements; requiring the department to  
 13 effect a certain balance between the benefits of the  
 14 facility and the environment; providing that a permit  
 15 provides certain assurances with respect to construction  
 16 permits if certain requirements are met; providing for  
 17 advance mitigation; providing certain action may not be  
 18 delegated by the Board of Trustees of the Board of  
 19 Trustees of the Internal Improvement Trust Fund; providing  
 20 an exception for sovereignty submerged lands; providing  
 21 procedures for the approval or denial of an application;  
 22 providing for administrative challenges; authorizing the  
 23 department and the board to issue certain permits and  
 24 authorizations before certain actions are taken under the  
 25 Endangered Species Act; authorizing the department to  
 26 adopt rules; authorizing alternative stormwater treatment  
 27 and design criteria; providing requirements for the  
 28 proposal; amending s. 311.09, F.S.; requiring the

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29 Department of Transportation to include certain projects  
 30 and funding related to the Florida Seaport and Economic  
 31 Development Grant Program in its legislative budget  
 32 request; requiring the department to submit specified work  
 33 program amendments requested by the Florida Seaport  
 34 Transportation and Economic Development Council within a  
 35 certain time frame; amending s. 403.061, F.S.; removing  
 36 the requirement for the Department of Environmental  
 37 Protection to enter into memoranda of agreement relating  
 38 to the issuance of joint coastal permits with the Florida  
 39 Ports Council; amending s. 403.813, F.S.; revising  
 40 requirements relating to maintenance dredging at seaports;  
 41 revising the mixing zone and a requirement relating to the  
 42 discharge of return water; increasing the time allowance  
 43 for maintenance dredging following a storm event; amending  
 44 s. 161.055, F.S. and s. 253.002, F.S.; conforming  
 45 provisions to changes made by the act; providing an  
 46 effective date.

47  
 48 Be It Enacted by the Legislature of the State of Florida:

49  
 50 Section 1. Section 373.4133, Florida Statutes, is created  
 51 to read:

52 373.4133 Port Conceptual Permits.—

53 (1) The Legislature finds that seaport facilities are  
 54 critical infrastructure facilities that significantly support  
 55 the economic development of the state. The Legislature further  
 56 finds that it is necessary to provide a method of priority

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57 permit review that allows seaports in this state to become  
 58 internationally competitive.

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

77 (3) A port conceptual permit application shall contain  
 78 sufficient information to provide reasonable assurance that the  
 79 engineering and environmental concepts upon which the designs  
 80 are based are likely to meet applicable rule criteria for  
 81 issuance of construction permits for subsequent phases of the  
 82 project. At a minimum a port conceptual permit application  
 83 should include identifying proposed construction areas; areas  
 84 where construction will not occur; estimated or maximum

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

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

105 (5) A port conceptual approval permit provides the permit  
 106 holder with assurance, during the duration of the permit that  
 107 the engineering and environmental concepts upon which the  
 108 designs are based are likely to meet applicable rule criteria  
 109 for issuance of construction permits for subsequent phases of  
 110 the project, provided:

111 (a) There are no changes in the rules governing the  
 112 conditions of issuance of permits for future phases of the

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113 project and the conceptual approval permit is not inconsistent  
 114 with any Total Maximum Daily Load or Basin Management Action  
 115 Plan adopted for the waterbody into which the system discharges  
 116 or is located pursuant to Section 403.067(7), F.S., and Chapter  
 117 62-304, F.A.C.; and

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

134 (6) Notwithstanding any other provision of law, a port  
 135 conceptual permit or associated construction permit, including  
 136 any applicable sovereignty submerged lands authorization, may  
 137 authorize advance mitigation for impacts expected as a result of  
 138 the activities described in the port conceptual permit. Such  
 139 advance mitigation shall be credited to offset the impacts of

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140 such activities when undertaken, to the extent that the advance  
 141 mitigation is successful.

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

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

160 (a) Applications for a port conceptual permit, including  
 161 any request for the conceptual approval of the use of sovereign  
 162 submerged lands, shall be processed in accordance with the  
 163 provisions of s. 373.427 and s. 120.60. However, if the  
 164 applicant believes any request for additional information is not  
 165 authorized by law or agency rule, the applicant may request an  
 166 informal hearing pursuant to s. 120.57(2) before the secretary

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167 of the Department to determine whether the application is  
 168 complete.

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

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

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

191 (9) Notwithstanding any other provision of law, the  
 192 department and the Board of Trustees of the Internal Improvement  
 193 Trust Fund are authorized to issue permits and authorizations  
 194 pursuant to this section in advance of the issuance of take

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

207 (10) The department and the Board of Trustees of the  
 208 Internal Improvement Trust Fund may adopt rules to implement the  
 209 provisions of this section under the joint coastal permit  
 210 provisions of ch. 161, the sovereign lands provisions of ch.  
 211 253, and the environmental resource permit provisions of part IV  
 212 of ch. 373. Adoption of rules is not subject to any special rule  
 213 making requirements related to small business. Notwithstanding  
 214 this grant of rulemaking authority, this section is intended to  
 215 be available for use upon becoming law, and its implementation  
 216 shall not be delayed by any rulemaking.

217 (11) In lieu of meeting the generally applicable stormwater  
 218 design standards in rules adopted under this part, which create  
 219 a presumption that stormwater discharged from the system will  
 220 meet the applicable state water quality standards in the  
 221 receiving waters, any port listed in s. 311.09(1) may propose  
 222 alternative stormwater treatment and design criteria for the

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223 construction, operation, and maintenance of stormwater  
 224 management systems serving overwater piers. The proposal shall  
 225 include such structural components or best management practices  
 226 to address the stormwater discharge from the pier, including  
 227 consideration of activities conducted on the pier, as are  
 228 necessary to provide reasonable assurance that stormwater  
 229 discharged from the system will meet the applicable state water  
 230 quality standards in the receiving waters.

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

233 311.09 Florida Seaport Transportation and Economic  
 234 Development Council.—

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

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

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

264 403.061 Department; powers and duties.—The department  
 265 shall have the power and the duty to control and prohibit  
 266 pollution of air and water in accordance with the law and rules  
 267 adopted and promulgated by it and, for this purpose, to:

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

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

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

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

297 403.813 Permits issued at district centers; exceptions.—

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

303 (a) A mixing zone for turbidity is granted within a 150  
 304 ~~100~~-meter radius from the point of dredging while dredging is  
 305 ongoing, except that the mixing zone may ~~does~~ not extend into

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306 areas supporting wetland communities, submerged aquatic  
 307 vegetation or hardbottom communities.

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

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

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

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

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

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

347 161.055 Concurrent processing of permits.—

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

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

357 253.002 Department of Environmental Protection, water  
 358 management districts, Fish and Wildlife Conservation Commission,  
 359 and Department of Agriculture and Consumer Services; duties with  
 360 respect to state lands.—

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

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

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

385 Section 7. This act shall take effect July 1, 2010.