



467874

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2010	.	
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The Committee on Environmental Preservation and Conservation (Dockery) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

161.055 Concurrent processing of permits.—

(1) If ~~When~~ an activity for which a permit is required under this chapter also requires a permit, authorization, or approval described in paragraph (2) (b), or a port conceptual permit under s. 373.4133, the department may, by rule, provide that the activity may be undertaken only upon receipt of a



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13 single permit from the department called a "joint coastal
14 permit," as provided in this section.

15 Section 2. Subsection (2) of section 253.002, Florida
16 Statutes, is amended to read:

17 253.002 Department of Environmental Protection, water
18 management districts, Fish and Wildlife Conservation Commission,
19 and Department of Agriculture and Consumer Services; duties with
20 respect to state lands.—

21 (2) Delegations to the department, or a water management
22 district, or the Department of Agriculture and Consumer Services
23 of authority to take final agency action on applications for
24 authorization to use submerged lands owned by the Board of
25 Trustees of the Internal Improvement Trust Fund, without any
26 action on behalf of the board ~~of trustees~~, shall be by rule;
27 however, delegations related to conceptual permits must be in
28 accordance with s. 373.4133. Until rules adopted pursuant to
29 this subsection become effective, existing delegations by the
30 board ~~of trustees shall~~ remain in full force and effect.

31 However, the board ~~of trustees~~ is not limited or prohibited from
32 amending these delegations. The board ~~of trustees~~ shall adopt by
33 rule any delegations of its authority to take final agency
34 action without action by the board ~~of trustees~~ on applications
35 for authorization to use board of trustees-owned submerged
36 lands. Any final agency action, without action by the board ~~of~~
37 ~~trustees~~, taken by the department, or a water management
38 district, or the Department of Agriculture and Consumer Services
39 on applications to use board of trustees-owned submerged lands
40 is shall be subject to ~~the provisions of~~ s. 373.4275.

41 Notwithstanding any other provision of this subsection, the



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42 board of trustees, the Department of Legal Affairs, and the
43 department retain ~~the~~ concurrent authority to assert or defend
44 title to submerged lands owned by the board ~~of trustees~~.

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

47 311.09 Florida Seaport Transportation and Economic
48 Development Council.—

49 (10) The Department of Transportation shall include in its
50 annual legislative budget request a Florida Seaport
51 Transportation and Economic Development grant program for
52 expenditure of funds of not less than \$8 million per year. The
53 ~~Such~~ budget request must shall include funding for projects
54 approved by the council which have been determined by each
55 agency to be consistent and which have been determined by the
56 Office of Tourism, Trade, and Economic Development to be
57 economically beneficial.

58 (a) The department shall include a list of the approved
59 seaport projects from the tentative work program developed
60 pursuant to s. 339.135(4) which are to be funded during the next
61 fiscal year. The department shall also include the total amount
62 of funding under s. 311.07 to be allocated to seaport projects
63 during the successive 4 fiscal years of the tentative work
64 program.

65 (b) The council may submit to the department a list of
66 approved projects that could be made production-ready within the
67 next 2 years. The list shall be submitted as part of the needs
68 and project list prepared pursuant to s. 339.135(2)(b) 339.135.
69 Upon the written request of the council, the department shall
70 submit work program amendments pursuant to s. 339.135(7) to the



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71 Governor within 10 days after the date the request is received
72 by the department, or the effective date of the amendment,
73 termination, or closure of the applicable funding agreement
74 between the department and the seaport required to release the
75 funds from the existing commitment, whichever occurs later.

76 Section 4. Subsection (10) of section 373.403, Florida
77 Statutes, is amended to read:

78 373.403 Definitions.—When appearing in this part or in any
79 rule, regulation, or order adopted pursuant thereto, the
80 following terms mean:

81 (10) "Stormwater management system" means a system that
82 ~~which~~ is designed and constructed or implemented to control
83 discharges that ~~which~~ are caused ~~necessitated~~ by rainfall
84 events, incorporating methods to collect, convey, store, absorb,
85 inhibit, treat, use, or reuse water to prevent or reduce
86 flooding, overdrainage, environmental degradation, and water
87 pollution or otherwise affect the quantity and quality of
88 discharges from the system. Overwater piers, docks, and similar
89 structures located in a port listed in s. 311.09(1) are not part
90 of a stormwater management system and are not considered
91 impervious surfaces under this chapter or chapter 403 if the
92 port has a stormwater pollution prevention plan developed
93 pursuant to the National Pollution Discharge Elimination System.

94 Section 5. Section 373.4133, Florida Statutes, is created
95 to read:

96 373.4133 Port conceptual permits.—

97 (1) The Legislature finds that seaport facilities are
98 critical infrastructure facilities that significantly support
99 the economic development of the state. The Legislature further



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100 finds that it is necessary to provide a method of permit review
101 that allows seaports in this state to become internationally
102 competitive.

103 (2) Any port listed in s. 311.09(1) may apply to the
104 department for a port conceptual permit, which may include
105 authorization to use sovereignty submerged lands under chapter
106 253 under a joint coastal permit issued pursuant to s. 161.055
107 or an environmental resource permit issued pursuant to this part
108 for all or a portion of the area within the geographic
109 boundaries of the port. A private entity that has a controlling
110 interest in property used for private industrial marine
111 activities in the immediate vicinity of such port may also apply
112 under this section. A port conceptual permit may be issued for
113 up to 20 years and extended once for 10 additional years. A port
114 conceptual permit constitutes the state's conceptual water
115 quality compliance certification for purposes of s. 401 of the
116 Clean Water Act, and the state's conceptual determination that
117 the activities contained in the permit are consistent with the
118 state's federally approved coastal zone management program.

119 (3) A port conceptual permit application must include
120 sufficient information to provide reasonable assurance that the
121 engineering and environmental concepts upon which the designs
122 are based are likely to meet applicable rule criteria for the
123 issuance of construction permits for subsequent phases of the
124 project. At a minimum, the application should include
125 projections of costs, revenue, and job creation for proposed
126 development; proposed construction areas and areas where
127 construction will not occur; estimated or maximum anticipated
128 impacts to wetlands and other surface waters, and any proposed



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129 mitigation for those impacts; estimated or maximum amount of
130 anticipated impervious surface and the nature of the stormwater
131 treatment system for those areas; and the general location and
132 types of activities on sovereignty submerged lands. Except where
133 construction approval is requested as part of the application,
134 the application is not expected to include final design
135 specifications and drawings. The department shall specify any
136 additional information that must be submitted as part of a
137 request for a subsequent construction permit or authorization in
138 the port conceptual permit.

139 (4) In determining whether a port conceptual permit
140 application should be approved in whole, with modifications or
141 conditions, or denied, the department shall effect a reasonable
142 balance between the potential benefits of the facility and the
143 impacts upon water quality, fish and wildlife, water resources,
144 and other natural resources of the state resulting from the
145 construction and operation of the facility.

146 (5) A port conceptual approval permit provides the
147 permitholder with assurance during the duration of the permit
148 that the engineering and environmental concepts upon which the
149 designs are based are likely to meet applicable rule criteria
150 for the issuance of construction permits for subsequent phases
151 of the project if:

152 (a) There are no changes in the rules governing the
153 conditions of issuance of permits for future phases of the
154 project and the conceptual approval permit is not inconsistent
155 with any total maximum daily load or basin management action
156 plan adopted for the water body into which the system discharges
157 or is located pursuant to s. 403.067(7) and rule 62-304, Florida



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158 Administrative Code; and

159 (b) Applications for proposed future phase activities under
160 the permit are consistent with the design and conditions of the
161 permit. Primary areas for consistency comparisons include the
162 size, location, and extent of the system; type of activity;
163 percent imperviousness; allowable discharge and points of
164 discharge; location and extent of wetland and other surface
165 water impacts and proposed mitigation plan, if required; control
166 elevations; extent of stormwater reuse; and detention-retention
167 volumes. If an application for subsequent phase activity is not
168 consistent with the terms and conditions of the approved permit,
169 the applicant may request a modification of the permit to
170 resolve the inconsistency or may request that the application be
171 processed independently of the permit.

172 (6) Notwithstanding any other provision of law, a port
173 conceptual permit or associated construction permit, including
174 any applicable sovereignty submerged lands authorization, may
175 authorize advance mitigation for impacts expected as a result of
176 the activities described in the port conceptual permit. Such
177 advance mitigation shall be credited to offset the impacts of
178 the activities when undertaken to the extent that the advance
179 mitigation is successful.

180 (7) Final agency action on a port conceptual sovereignty
181 submerged lands authorization associated with a port conceptual
182 permit may not be delegated by the Board of Trustees of the
183 Internal Improvement Trust Fund. However, approval of the
184 authorization by the board delegates to the department authority
185 to take final agency action on behalf of the board on any
186 sovereignty submerged lands authorization necessary to construct



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187 facilities included in the authorization, unless a member of the
188 board specifically requests that final agency action be brought
189 before the board. Any delegation to the department concerning a
190 private project does not exempt the private project from
191 applicable board rules, including lease and easement fees.

192 (8) Except as otherwise provided in this subsection, the
193 following procedures apply to the approval or denial of an
194 application for a port conceptual permit, or a final permit or
195 authorization:

196 (a) Applications for a port conceptual permit, including
197 any request for the conceptual approval of the use of sovereign
198 submerged lands, must be processed in accordance with ss.
199 373.427 and 120.60. However, if the applicant believes a request
200 for additional information is not authorized by law or agency
201 rule, the applicant may request an informal hearing pursuant to
202 s. 120.57(2) before the secretary of the department to determine
203 whether the application is complete.

204 (b) Upon issuance of the department's notice of intent to
205 issue or deny a port conceptual permit, the applicant shall
206 publish a one-time notice of such intent, prepared by the
207 department, in the newspaper having the largest general
208 circulation in the county or counties where the port is located.

209 (c) Final agency action on a port conceptual permit is
210 subject to challenge under ss. 120.569 and 120.57. However,
211 final agency action to authorize subsequent construction of
212 facilities contained in a port conceptual permit may be
213 challenged only by a third party for consistency with the port
214 conceptual permit.

215 (d) A person who will be substantially affected by a final



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216 agency action described in paragraph (c) must initiate
217 administrative proceedings pursuant to ss. 120.569 and 120.57
218 within 21 days after the publication of the notice of the
219 proposed action. If administrative proceedings are requested,
220 the proceedings are subject to the summary hearing provisions of
221 s. 120.574. However, if the decision of the administrative law
222 judge will be a recommended order, rather than a final order, a
223 summary proceeding must be conducted within 90 days after a
224 party files a motion for summary hearing regardless of whether
225 the parties agree to the summary proceeding.

226 (9) Notwithstanding any other provision of law, the
227 department and the Board of Trustees of the Internal Improvement
228 Trust Fund may issue permits and authorizations pursuant to this
229 section in advance of the issuance of a take authorization as
230 provided in the federal Endangered Species Act and its
231 implementing regulations. However, the permits and
232 authorizations must include a condition requiring that
233 authorized activities may not commence until such take
234 authorization is issued and is consistent with such
235 authorization. The department shall unilaterally modify any
236 permit or authorization issued pursuant to this section to make
237 the permit or authorization consistent with any subsequently
238 issued incidental take authorization. Such unilateral
239 modification does not create a point of entry for any
240 substantially affected person to request administrative
241 proceedings under ss. 120.569 and 120.57.

242 (10) The department and the Board of Trustees of the
243 Internal Improvement Trust Fund may adopt rules to administer
244 this section under the joint coastal permit provisions of



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245 chapter 161, the sovereign lands provisions of chapter 253, and
246 the environmental resource permit provisions of this part IV.
247 Adoption of such rules is not subject to any special rulemaking
248 requirements related to small business. Notwithstanding this
249 grant of rulemaking authority, this section is intended to be
250 available for effective July 1, 2010, and its implementation may
251 not be delayed pending the adoption of rules.

252 Section 6. Subsections (37) and (38) of section 403.061,
253 Florida Statutes, are amended to read:

254 403.061 Department; powers and duties.—The department shall
255 have the power and the duty to control and prohibit pollution of
256 air and water in accordance with the law and rules adopted and
257 promulgated by it and, for this purpose, to:

258 (37) Provide ~~Enter into a memorandum of agreement with the~~
259 ~~Florida Ports Council which provides~~ a supplemental permitting
260 process for the issuance of a joint coastal permit pursuant to
261 s. 161.055 or environmental resource permit pursuant to part IV
262 of chapter 373, to a port listed in s. 311.09(1), for
263 maintenance dredging and the management of dredged materials
264 from maintenance dredging of all navigation channels, port
265 harbors, turning basins, and harbor berths. Such permit shall be
266 issued for ~~a period of~~ 5 years and shall be annually extended
267 for an additional year if the port is in compliance with all
268 permit conditions at the time of extension. The department may
269 ~~is authorized to~~ adopt rules to administer ~~implement~~ this
270 subsection.

271 (38) Provide ~~Enter into a memorandum of agreement with the~~
272 ~~Florida Ports Council which provides~~ a supplemental permitting
273 process for the issuance of a conceptual joint coastal permit



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274 pursuant to s. 161.055 or environmental resource permit pursuant
275 to part IV of chapter 373, to a port listed in s. 311.09(1), for
276 dredging and the management of materials from dredging and for
277 other related activities necessary for development, including
278 the expansion of navigation channels, port harbors, turning
279 basins, harbor berths, and associated facilities. Such permit
280 shall be issued for ~~a period of~~ up to 15 years. The department
281 ~~may is authorized to~~ adopt rules to administer ~~implement~~ this
282 subsection.

283

284 The department shall implement such programs in conjunction with
285 its other powers and duties and shall place special emphasis on
286 reducing and eliminating contamination that presents a threat to
287 humans, animals or plants, or to the environment.

288 Section 7. Subsection (3) of section 403.813, Florida
289 Statutes, is amended to read:

290 403.813 Permits issued at district centers; exceptions.—

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

296 (a) A mixing zone for turbidity is granted within a 100-
297 meter radius from the point of dredging while dredging is
298 ongoing, except that the mixing zone may ~~does~~ not extend into
299 areas supporting wetland communities, submerged aquatic
300 vegetation, or hardbottom communities.

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



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

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

318 (d) The use of flocculants at the site used for disposal of
319 the dredged material is allowed if the use, including supporting
320 documentation, is coordinated in advance with the department and
321 the department has determined that the use is not harmful to
322 water resources.

323 (e) This subsection does not prohibit maintenance dredging
324 of areas where the loss of original design function and
325 constructed configuration has been caused by a storm event if,
326 ~~provided that~~ the dredging is performed as soon as practical
327 after the storm event. Maintenance dredging that commences
328 within 3 2 years after the storm event is shall be presumed to
329 satisfy this provision. If more than 3 2 years are needed to
330 commence the maintenance dredging after the storm event, a
331 request for a specific time extension to perform the maintenance



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332 dredging must ~~shall~~ be submitted to the department before, ~~prior~~
333 ~~to~~ the end of the 3-year ~~2-year~~ period, accompanied by a
334 statement, including supporting documentation, demonstrating
335 that contractors are not available or that additional time is
336 needed to obtain authorization for the maintenance dredging from
337 the United States Army Corps of Engineers.

338 Section 8. This act shall take effect July 1, 2010.

339
340 ===== T I T L E A M E N D M E N T =====

341 And the title is amended as follows:

342 Delete everything before the enacting clause
343 and insert:

344 A bill to be entitled
345 An act relating to ports; amending ss. 161.055 and
346 253.002, F.S.; conforming provisions to changes made
347 by the act; amending s. 311.09, F.S.; requiring the
348 Department of Transportation to include certain
349 seaport projects and funding related to the Florida
350 Seaport Transportation and Economic Development grant
351 program in its legislative budget request; requiring
352 the department to submit work program amendments
353 requested by the Florida Seaport Transportation and
354 Economic Development Council within a certain
355 timeframe; amending s. 373.403, F.S.; revising the
356 definition for "stormwater management system" to
357 exempt certain structures from regulation; creating s.
358 373.4133, F.S.; providing legislative findings;
359 providing for port conceptual permits; providing which
360 ports may apply for a port conceptual permit;



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361 authorizing a private entity that has adjacent
362 property to apply for a permit; specifying the length
363 of time for which permit may be issued; providing that
364 a conceptual permit is the state's water quality
365 compliance certification and conceptual determination
366 of consistency with the state's coastal zone
367 management program; providing for permit applications
368 and application requirements; requiring the department
369 to effect a certain balance between the benefits of
370 the facility and the environment; providing that a
371 permit provides certain assurances with respect to
372 construction permits if certain requirements are met;
373 providing for advance mitigation; providing that
374 certain actions may not be delegated by the Board of
375 Trustees of the Internal Improvement Trust Fund;
376 providing an exception for sovereignty submerged
377 lands; providing procedures for the approval or denial
378 of an application; providing for administrative
379 challenges; authorizing the department and the board
380 to issue certain permits and authorizations before
381 certain actions are taken under the Endangered Species
382 Act; authorizing the department and the board to adopt
383 rules; amending s. 403.061, F.S.; removing the
384 requirement for the Department of Environmental
385 Protection to enter into memoranda of agreement
386 relating to the issuance of certain joint coastal
387 permits or other permits with the Florida Ports
388 Council; amending s. 403.813, F.S.; revising
389 requirements relating to maintenance dredging at



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390 seaports; revising the mixing zone and a requirement
391 relating to the discharge of return water; increasing
392 the time allowance for maintenance dredging after a
393 storm event; providing an effective date.