

## CHAPTER 2010-201

### Council Substitute for Council Substitute for Committee Substitute for House Bill No. 963

An act relating to seaports; creating s. 373.4133, F.S.; providing legislative findings; providing for port conceptual permits; providing which ports may apply for a port conceptual permit; authorizing a private entity that has adjacent property to apply for a permit; specifying the length of time for which permit may be issued; providing that a permit is a conceptual certification of compliance with state water quality standards and a conceptual determination of consistency with the state coastal zone management program; providing for permit applications and application requirements; requiring the Department of Environmental Protection to effect a certain balance between the benefits of the facility and the environment; providing that a permit provides certain assurances with respect to construction permits if certain requirements are met; providing for advance mitigation; providing that approval of certain submerged lands authorization by the Board of Trustees of the Internal Improvement Trust Fund constitutes the delegation of authority to the department for final agency action; providing an exception; providing procedures for the approval or denial of an application; providing for administrative challenges; authorizing the department and the board to issue certain permits and authorizations before certain actions are taken under the Endangered Species Act; authorizing certain alternative stormwater treatment and design criteria; providing requirements for proposing such criteria; authorizing the department and the board to adopt rules; providing for implementation; amending s. 311.07, F.S.; revising matching-fund requirements for projects to rehabilitate wharves, docks, berths, bulkheads, or similar structures; amending s. 311.09, F.S.; requiring the Department of Transportation to include certain projects' funding allocations in its legislative budget request and to submit specified work program amendments within a certain timeframe; providing for the transfer of unexpended budget between seaport projects; amending s. 403.061, F.S.; removing the requirement to enter into a memorandum of agreement with the Florida Ports Council from the authority granted to the Department of Environmental Protection to provide supplemental permitting processes for the issuance of certain permits; amending s. 403.813, F.S.; revising requirements relating to maintenance dredging at seaports; expanding the parameters for mixing zones and return-water discharges; prohibiting mixing zones from entering wetland communities; increasing the time allowance for maintenance dredging following a storm event; amending ss. 161.055 and 253.002, F.S.; conforming provisions to changes made by the act; authorizing seaports to enter into public-private agreements for port-related public infrastructure projects; providing effective dates.

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

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

373.4133 Port conceptual permits.—

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

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

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

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

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

(a) There are no changes in the rules governing the conditions of issuance of permits for future phases of the project and the port conceptual permit is not inconsistent with any total maximum daily load or basin management action plan adopted for the waterbody into which the system discharges or is located pursuant to s. 403.067(7) and department rules regarding total maximum daily loads; and

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

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

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

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

(a) Applications for a port conceptual permit, including any request for the conceptual approval of the use of sovereignty submerged lands, shall be processed in accordance with the provisions of ss. 373.427 and 120.60. However, if the applicant believes that any request for additional information is not authorized by law or agency rule, the applicant may request an informal hearing pursuant to s. 120.57(2) before the Secretary of Environmental Protection to determine whether the application is complete.

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

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

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

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

(10) In lieu of meeting the generally applicable stormwater design standards in rules adopted under this part, which create a presumption that stormwater discharged from the system will meet the applicable state water quality standards in the receiving waters, any port listed in s. 311.09(1) may propose alternative stormwater treatment and design criteria for the construction, operation, and maintenance of stormwater management systems serving overwater piers. The proposal shall include such structural components or best management practices to address the stormwater

discharge from the pier, including consideration of activities conducted on the pier, as are necessary to provide reasonable assurance that stormwater discharged from the system will meet the applicable state water quality standards in the receiving waters.

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

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

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

311.07 Florida seaport transportation and economic development funding.—

(3)(a) Program funds shall be used to fund approved projects on a 50-50 matching basis with any of the deepwater ports, as listed in s. 403.021(9)(b), which is governed by a public body or any other deepwater port which is governed by a public body and which complies with the water quality provisions of s. 403.061, the comprehensive master plan requirements of s. 163.3178(2)(k), and the local financial management and reporting provisions of part III of chapter 218. However, program funds used to fund projects that involve the rehabilitation of wharves, docks, berths, bulkheads, or similar structures shall require a 25-percent match of funds. Program funds also may be used by the Seaport Transportation and Economic Development Council to develop with the Florida Trade Data Center such trade data information products which will assist Florida’s seaports and international trade.

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

311.09 Florida Seaport Transportation and Economic Development Council.—

(10) The Department of Transportation shall include in its annual legislative budget request a Florida Seaport Transportation and Economic Development grant program for expenditure of funds of not less than \$8 million per year. Such budget shall include funding for projects approved by the council which have been determined by each agency to be consistent and which have been determined by the Office of Tourism, Trade, and Economic Development to be economically beneficial. The department shall include the specific approved seaport projects to be funded under this section during the ensuing fiscal year in the tentative work program developed pursuant to s.

339.135(4). The total amount of funding to be allocated to seaport projects under s. 311.07 during the successive 4 fiscal years shall also be included in the tentative work program developed pursuant to s. 339.135(4). The council may submit to the department a list of approved projects that could be made production-ready within the next 2 years. The list shall be submitted by the department as part of the needs and project list prepared pursuant to s. 339.135(2)(b) s. 339.135. However, the department shall, upon written request of the Florida Seaport Transportation and Economic Development Council, submit work program amendments pursuant to s. 339.135(7) to the Governor within 10 days after the later of the date the request is received by the department or the effective date of the amendment, termination, or closure of the applicable funding agreement between the department and the affected seaport, as required to release the funds from the existing commitment. Notwithstanding s. 339.135(7)(c), any work program amendment to transfer prior year funds from one approved seaport project to another seaport project is subject to the procedures in s. 339.135(7)(d). Notwithstanding any provision of law to the contrary, the department may transfer unexpended budget between the seaport projects as identified in the approved work program amendments.

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

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

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

(38) ~~Provide Enter into a memorandum of agreement with the Florida Ports Council which provides a supplemental permitting process for the issuance of a conceptual joint coastal permit pursuant to s. 161.055 or environmental resource permit pursuant to part IV of chapter 373, to a port listed in s. 311.09(1), for dredging and the management of materials from dredging and for other related activities necessary for development, including the expansion of navigation channels, port harbors, turning basins, harbor berths, and associated facilities. Such permit shall be issued for a period of up to 15 years. The department is authorized to adopt rules to implement this subsection.~~

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

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

403.813 Permits issued at district centers; exceptions.—

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

(a) A mixing zone for turbidity is granted within a 150-meter ~~100-meter~~ radius from the point of dredging while dredging is ongoing, except that the mixing zone may ~~does~~ not extend into areas supporting wetland communities, submerged aquatic vegetation, or hardbottom communities.

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

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

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

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

department, prior to the end of the 3-year 2-year period, accompanied by a statement, including supporting documentation, demonstrating that contractors are not available or that additional time is needed to obtain authorization for the maintenance dredging from the United States Army Corps of Engineers.

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

161.055 Concurrent processing of permits.—

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

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

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

(2) Delegations to the department, or a water management district, or the Department of Agriculture and Consumer Services of authority to take final agency action on applications for authorization to use submerged lands owned by the board of trustees, without any action on behalf of the board of trustees, shall be by rule, provided that delegations related to port conceptual permits shall be in accordance with s. 373.4133. Until rules adopted pursuant to this subsection become effective, existing delegations by the board of trustees shall remain in full force and effect. However, the board of trustees is not limited or prohibited from amending these delegations. The board of trustees shall adopt by rule any delegations of its authority to take final agency action without action by the board of trustees on applications for authorization to use board of trustees-owned submerged lands. Any final agency action, without action by the board of trustees, taken by the department, or a water management district, or the Department of Agriculture and Consumer Services on applications to use board of trustees-owned submerged lands shall be subject to the provisions of s. 373.4275. Notwithstanding any other provision of this subsection, the board of trustees, the Department of Legal Affairs, and the department retain the concurrent authority to assert or defend title to submerged lands owned by the board of trustees.

Section 8. A seaport listed in s. 311.09(1), Florida Statutes, may receive or solicit proposals from and enter into a public-private infrastructure project agreement with a private entity, or a consortium of private entities, to build,

operate, manage, maintain, or finance a port-related public infrastructure project.

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

Approved by the Governor June 3, 2010.

Filed in Office Secretary of State June 3, 2010.