

1                   A bill to be entitled  
2       An act relating to Florida ports investments; creating s.  
3       311.23, F.S.; providing a short title; providing a  
4       purpose; providing definitions; creating the Florida Ports  
5       Investment Corporation; subjecting the corporation to  
6       certain public meetings and public records requirements;  
7       providing authority and requirements for the corporation;  
8       providing for a board of directors; providing for  
9       appointment of board members; providing for investments by  
10      the corporation in certain port projects; specifying  
11      allocations of certain funds for certain port activities,  
12      investments, and education; providing requirements for  
13      capital allocation and investments; providing requirements  
14      for certain uninvested capital; providing requirements for  
15      investments; providing for a premium tax credit; providing  
16      for carryforward of the credit; providing limitations on  
17      the credit; providing limitations on the amount of tax  
18      credits; providing investment requirements; providing  
19      procedures, requirements, and limitations for transfers of  
20      unused credits; authorizing the corporation and the office  
21      to charge certain fees; providing reporting requirements;  
22      authorizing the Department of Revenue and the office to  
23      adopt rules; amending s. 213.053, F.S.; authorizing the  
24      Department of Revenue to provide certain information to  
25      the office; providing an effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:  
28

CS/HB 1169

2010

29 Section 1. Section 311.23, Florida Statutes, is created to  
30 read:

31 311.23 Florida Ports Investment Act.-

32 (1) SHORT TITLE.-This section may be cited as the "Florida  
33 Ports Investment Act."

34 (2) PURPOSE.-The primary purpose of this section is to  
35 stimulate a substantial increase in the state's port  
36 infrastructure by providing an incentive for insurance companies  
37 to invest in port activities in this state which, in turn, will  
38 generate investments in new port projects or in expanding port  
39 projects. The increase in investment capital flowing into new or  
40 expanding port activities and businesses is intended to  
41 contribute to employment growth, create jobs that exceed the  
42 average wage for the county in which the jobs are created, and  
43 expand or diversify the economic base of this state.

44 (3) DEFINITIONS.-As used in this section, the term:

45 (a) "Corporation" means the Florida Ports Investment  
46 Corporation created under subsection (4).

47 (b) "Investment capital" means an investment of cash by a  
48 participating investor in the corporation in exchange for the  
49 tax credits provided in this section.

50 (c) "Office" means the Office of Tourism, Trade, and  
51 Economic Development.

52 (d) "Participating investor" means any insurance company  
53 subject to premium tax liability under s. 624.509 that  
54 contributes investment capital pursuant to this section.

55 (e) "Premium tax liability" means any liability incurred  
56 by an insurance company under s. 624.509.

57 (f) "Qualified port project" means the ports listed in s.  
 58 403.021(9) (b) or any associated business or project that uses  
 59 those ports for the movement of goods and people, as determined  
 60 by the corporation.

61 (4) FLORIDA PORTS INVESTMENT CORPORATION; CREATION;  
 62 AUTHORITY; BOARD OF DIRECTORS.-

63 (a) The Florida Ports Investment Corporation is created as  
 64 a corporation not for profit, to be incorporated under the  
 65 provisions of chapter 617 and approved by the Department of  
 66 State, and is not a unit or entity of state government. However,  
 67 the Legislature determines that public policy dictates that the  
 68 corporation operate in the most open and accessible manner  
 69 consistent with its public purpose. Therefore, the Legislature  
 70 specifically declares that the corporation and its advisory  
 71 company are subject to the public records and meetings  
 72 requirements of chapters 119 and 286. The corporation:

73 1. May receive, hold, invest, and administer funds and  
 74 make expenditures consistent with the purposes of this section.

75 2. May make purchases, sales, exchanges, investments, and  
 76 reinvestments for and on behalf of the funds received pursuant  
 77 to this section.

78 3. Shall retain at least one investment advisory company  
 79 to assist the corporation in carrying out the provisions of this  
 80 section. Any such company must be retained pursuant to the  
 81 provisions of s. 287.055 and must have a minimum of 5 years'  
 82 experience raising investment capital from similar investors,  
 83 with not less than \$100 million actually raised from insurance  
 84 companies seeking a tax credit similar to that provided by this

85 section.

86 (b) The corporation shall be governed by a board of  
87 directors comprised of:

88 1. The director of the office.

89 2. Two members appointed by the Governor, two members  
90 appointed by the President of the Senate, and two members  
91 appointed by the Speaker of the House of Representatives.  
92 Appointed members must have significant experience in  
93 international business, transportation, law, or logistics.  
94 Appointed members are subject to any restrictions on conflicts  
95 of interest specified in the organizational documents of the  
96 corporation and may not have any interest in any investments  
97 made by the corporation pursuant to subsection (5). Each  
98 appointed member shall be appointed for a term of 4 years. A  
99 vacancy on the board shall be filled by the appointing official  
100 for the member whose vacancy is to be filled or whose term has  
101 expired. An appointed member may be removed by the appointing  
102 official for that member, for cause. Absence from three  
103 consecutive meetings shall result in automatic removal. Any  
104 member is eligible for reappointment.

105 3. The chair of the Florida Seaport Transportation and  
106 Economic Development Council shall serve as an ex officio co-  
107 director of the board.

108 4. The Secretary of Transportation or his or her designee  
109 shall serve as an ex officio, nonvoting co-director of the  
110 board.

111 5. Members of the board shall serve without compensation,  
112 but may be reimbursed for all reasonable, necessary, and actual

113 expenses as determined and approved by the board pursuant to s.  
114 112.061.

115 (5) INVESTMENTS BY THE CORPORATION IN PORT PROJECTS AND  
116 PORT-RELATED ACTIVITIES.—

117 (a)1. The corporation shall seek to maintain the state's  
118 advantage in ports and related industries. In order to maintain  
119 that advantage, the corporation shall:

120 a. Allocate at least 65 percent of the capital received  
121 under this section to on-port activities or infrastructure as  
122 described in s. 315.02(6).

123 b. Allocate at least 25 percent of the capital received  
124 under this section to off-port activities or infrastructure that  
125 improve the movement and intermodal transportation of cargo or  
126 passengers in commerce and trade and that will support the  
127 interests, purposes, and requirements of ports specified in s.  
128 403.021(9).

129 c. Allocate at least 5 percent of the remaining capital  
130 received under this section to education related to ports and  
131 port-related studies under the New Florida Initiative developed  
132 by the Florida Board of Governors of the State University  
133 System.

134 2. The capital received under this section shall be  
135 allocated by July 1, 2012, or held in accordance with paragraph  
136 (b).

137 3. Funding for such projects shall be on a matching basis  
138 as determined by the corporation, except that at least 25  
139 percent of total project funds must come from port funds, local  
140 funds, private funds, or federal funds.

CS/HB 1169

2010

141 4. An individual port project may not consume more than 15  
142 percent of the total revenues of the corporation's intake.

143 (b) The corporation shall hold all capital received under  
144 this section that is not invested in qualified port projects and  
145 such capital:

146 1. Must be held in a financial institution as defined by  
147 s. 655.005(1)(h) or held by a broker-dealer registered under s.  
148 517.12.

149 2. Must be invested only in:

150 a. United States Treasury obligations;

151 b. Certificates of deposit or other obligations, maturing  
152 within 3 years after acquisition of such certificates or  
153 obligations, issued by any financial institution or trust  
154 company incorporated under the laws of the United States;

155 c. Marketable obligations, maturing within 5 years or less  
156 after the acquisition of such obligations, which are rated "A"  
157 or better by any nationally recognized credit rating agency; or

158 d. Interests in money market funds, the portfolio of which  
159 is limited to cash and obligations described in sub-  
160 paragraphs a.-c.

161 (c) All investment decisions shall be made by the  
162 corporation, which must certify that each project is of a  
163 beneficial nature to a port listed in s. 403.021(9)(b), is ready  
164 to proceed within 60 days for design, construction, and  
165 permitting, and will create a lasting economic impact as  
166 determined by the board. Applications for funding by qualified  
167 port projects must be made to the corporation. The board may  
168 establish procedural rules for the application form, application

169 procedures, and criteria for making investment decisions based  
170 upon the requirements established in this paragraph.

171 (6) PREMIUM TAX CREDIT; AMOUNT; LIMITATIONS.—

172 (a) Any participating investor who makes an investment of  
173 investment capital shall earn a vested credit against premium  
174 tax liability equal to 100 percent of the face amount of the  
175 credits purchased by the participating investor and such  
176 investments may not be subject to recapture, disallowance,  
177 forfeiture, or reduction. Participating investors shall be  
178 entitled to use no more than 10 percentage points of the vested  
179 premium tax credit, including any carryforward credits under  
180 this section, per year beginning with premium tax filings for  
181 calendar year 2012. Any premium tax credits not used by  
182 participating investors in any single year may be carried  
183 forward and applied against the premium tax liabilities of such  
184 investors for subsequent calendar years. The carryforward credit  
185 may be applied against subsequent premium tax filings through  
186 calendar year 2029.

187 (b) The credit to be applied against premium tax liability  
188 in any single year may not exceed the premium tax liability of  
189 the participating investor for that taxable year.

190 (c) A participating investor claiming a credit against  
191 premium tax liability earned through an investment in the  
192 corporation is not required to pay any additional retaliatory  
193 tax levied pursuant to s. 624.5091 as a result of claiming such  
194 credit. Because credits under this section are available to a  
195 participating investor, s. 624.5091 does not limit such credit  
196 in any manner.

197        (d) The amount of tax credits vested under this section  
 198 may not be considered in ratemaking proceedings involving a  
 199 participating investor.

200        (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT.—

201        (a) The total amount of tax credits which may be allocated  
 202 by the office may not exceed \$100 million. The total amount of  
 203 tax credits which may be used by participating investors under  
 204 this section may not exceed \$10 million annually.

205        (b) The office shall be responsible for allocating premium  
 206 tax credits as provided for in this section to participating  
 207 investors. A participating investor must submit an application  
 208 to the office for the tax credit authorized in this section.

209        (8) TRANSFER OF TAX CREDITS.—

210        (a) Upon application to and approval by the office, a  
 211 participating investor may elect to transfer, in whole or in  
 212 part, any unused credit amount granted under this section. The  
 213 office shall notify the Department of Revenue of the election  
 214 and transfer.

215        (b) A participating investor that elects to apply a credit  
 216 amount against taxes remitted under s. 624.509 is permitted a  
 217 one-time transfer of unused credits to one transferee, and such  
 218 transfer must occur in the same taxable year.

219        (c) The transferee is subject to the same rights and  
 220 limitations as the participating investor awarded the tax  
 221 credit, except that the transferee may not sell or otherwise  
 222 transfer the tax credit.

223        (9) FEES.—The corporation may charge reasonable fees for  
 224 administering and processing applications by qualified port

225 projects for funding pursuant to paragraph (5)(c), and the  
 226 office may charge reasonable fees for administering and  
 227 processing applications by participating investors for tax  
 228 credits pursuant to subsection (7). Any fee charged by the  
 229 corporation or office under this subsection for an application  
 230 may not exceed the actual cost incurred by the corporation or  
 231 office in administering and processing any application for  
 232 funding or a tax credit.

233 (10) REPORTING REQUIREMENTS.—The office shall report on an  
 234 annual basis to the Governor, the President of the Senate, and  
 235 the Speaker of the House of Representatives on or before  
 236 February 1:

237 (a) The total dollar amount received by the corporation  
 238 from all participating investors and any other investor, the  
 239 identity of the participating investors, and the total amount of  
 240 premium tax credit used by each participating investor for the  
 241 previous calendar year.

242 (b) The total dollar amount invested by the corporation in  
 243 qualified port projects, the identity and location of those  
 244 projects, the amount invested in each qualified port project,  
 245 and the total number of permanent, full-time jobs created or  
 246 retained by each qualified port project.

247 (c) The return for the state as a result of the  
 248 investments in qualified port projects, including the extent to  
 249 which:

- 250 1. Investments have contributed to employment growth.
- 251 2. The wage level of businesses in which the corporation
- 252 has invested exceeds the average wage for the county in which

253 | the jobs are located.

254 |       3. The investments of the corporation in qualified port  
 255 | projects have contributed to expanding or diversifying the  
 256 | economic base of the state.

257 |       (11) RULEMAKING AUTHORITY.—

258 |       (a) The Department of Revenue may adopt rules pursuant to  
 259 | ss. 120.536(1) and 120.54 to administer this section, including,  
 260 | but not limited to, rules governing the examination and audit  
 261 | procedures required to administer this section and the manner  
 262 | and form of documentation required to claim tax credits awarded  
 263 | or transferred under this section.

264 |       (b) The office may adopt rules pursuant to ss. 120.536(1)  
 265 | and 120.54 and develop procedures to administer this section,  
 266 | including, but not limited to, rules specifying requirements for  
 267 | the application and approval process, records required for  
 268 | substantiation for tax credits, and the manner and form of  
 269 | documentation required to claim tax credits awarded or  
 270 | transferred under this section.

271 |       Section 2. Paragraph (z) is added to subsection (8) of  
 272 | section 213.053, Florida Statutes, to read:

273 |       213.053 Confidentiality and information sharing.—

274 |       (8) Notwithstanding any other provision of this section,  
 275 | the department may provide:

276 |       (z) Information relating to tax credits taken under s.  
 277 | 624.509 to the Office of Tourism, Trade, and Economic  
 278 | Development.

279 |

280 | Disclosure of information under this subsection shall be

CS/HB 1169

2010

281 pursuant to a written agreement between the executive director  
282 and the agency. Such agencies, governmental or nongovernmental,  
283 shall be bound by the same requirements of confidentiality as  
284 the Department of Revenue. Breach of confidentiality is a  
285 misdemeanor of the first degree, punishable as provided by s.  
286 775.082 or s. 775.083.

287 Section 3. This act shall take effect July 1, 2010.