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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/07/2010	.	
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The Committee on Commerce (Sobel) recommended the following:

**Senate Amendment to Amendment (614978)**

Delete lines 5 - 240

and insert:

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

311.23 Florida Ports Investment Act.-

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

(2) PURPOSE.-The primary purpose of this section is to stimulate a substantial increase in the state's port infrastructure by providing an incentive for investment in new or expanding port and port-related projects. The increase in



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14 investment capital flowing into new or expanding port activities  
15 and businesses is intended to contribute to employment growth,  
16 create jobs that exceed the average wage for the county in which  
17 the jobs are located, and expand or diversify the economic base  
18 of this state.

19 (3) DEFINITIONS.—As used in this section, the term:

20 (a) "Corporation" means the Florida Ports Investment  
21 Corporation created under subsection (4).

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

25 (c) "Office" means the Office of Tourism, Trade, and  
26 Economic Development.

27 (d) "Participating investor" means any qualified investor  
28 subject to the Internal Revenue Code and that contributes  
29 investment capital pursuant to this section.

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

32 (f) "Qualified port project" means the ports listed in s.  
33 403.021(9)(b) or any associated business or project that uses  
34 those ports for the movement of goods and people, as determined  
35 by the corporation.

36 (4) FLORIDA PORTS INVESTMENT CORPORATION; CREATION;  
37 AUTHORITY; BOARD OF DIRECTORS.—

38 (a) The Florida Ports Investment Corporation is created as  
39 a corporation not for profit, to be incorporated under the  
40 provisions of chapter 617, and registered with the Department of  
41 State as a Florida entity. The Legislature determines that  
42 public policy dictates that the corporation operate in the most



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43 open and accessible manner consistent with its public purpose.  
44 Therefore, the Legislature specifically declares that the  
45 corporation and its advisory company are subject to the public  
46 records and meetings requirements of chapters 119 and 286.

47 (b) The corporation:

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

50 2. May make purchases, sales, exchanges, investments, and  
51 reinvestments for and on behalf of the funds received pursuant  
52 to this section.

53 3. Maintain all official records related to its activities;

54 4. Shall retain, pursuant to the provisions of s. 287.055,  
55 at least one investment advisory company domiciled in the state  
56 of Florida with at least 5 years experience in working with  
57 investors seeking tax credits or other debt-driven instruments,  
58 to assist the corporation in carrying out the provisions of this  
59 section.

60 5. Timely provide the office with information about its  
61 participating investors and the amount of their investments to  
62 assist the office in awarding the available tax credits, and a  
63 list of certified port projects.

64 6. Assist the office in developing the required annual  
65 report in subsection (10).

66 (c) The corporation shall be governed by a board of  
67 directors comprised of:

68 1. The director of the office, who shall serve as the  
69 chair.

70 2. Two members appointed by the Governor, two members  
71 appointed by the President of the Senate, and two members



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72 appointed by the Speaker of the House of Representatives. These  
73 appointed members must have significant experience in  
74 international business, transportation, law, or logistics.  
75 Appointed members are subject to any restrictions on conflicts  
76 of interest specified in the organizational documents of the  
77 corporation and may not have any interest in any investments  
78 made by the corporation pursuant to subsection (5).

79 3. The chair of the Florida Seaport Transportation and  
80 Economic Development Council.

81 4. The Secretary of Transportation.

82 5. Each appointed member shall be appointed for a term of 4  
83 years. A vacancy on the board shall be filled by the appointing  
84 official for the member whose vacancy is to be filled or whose  
85 term has expired. An appointed member may be removed by the  
86 appointing official for that member, for cause. Absence from  
87 three consecutive meetings shall result in automatic removal.  
88 Any appointed member is eligible for reappointment.

89 6. Members of the board shall serve without compensation,  
90 but may be reimbursed for all reasonable, necessary, and actual  
91 expenses as determined and approved by the board pursuant to s.  
92 112.061.

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

95 (a)1. The corporation shall seek to maintain the economic  
96 competitiveness of Florida's ports and their related import and  
97 export industries by funding projects that increase the ports'  
98 capacity to handle freight; are consistent with approved seaport  
99 master plans; and improve economic productivity for the state or  
100 the region in which projects are located. Also eligible for



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101 investment capital under this section are on-port projects that  
102 are eligible for federal financial assistance consistent with  
103 criteria developed for federal freight transportation grant  
104 programs, including, but not limited to, the Transportation  
105 Investment Generating Economic Recovery (TIGER), Projects of  
106 National and Regional Significance (PNRS), National  
107 Infrastructure Investment (NII), and the National Corridor  
108 Infrastructure Improvement (NCII) program.

109 2. The capital received under this section shall be  
110 allocated to eligible projects commencing by July 1, 2012, or  
111 held in accordance with paragraph (b).

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

116 (b) The corporation shall hold all capital that is received  
117 under this section and that is not invested in qualified port  
118 projects, and such capital:

119 1. Must be held in a financial institution as defined by s.  
120 655.005(1)(h) or held by a broker-dealer registered under s.  
121 517.12.

122 2. Must be invested only in:

123 a. United States Treasury obligations;

124 b. Certificates of deposit or other obligations, maturing  
125 within 3 years after acquisition of such certificates or  
126 obligations, issued by any financial institution or trust  
127 company incorporated under the laws of the United States;

128 c. Marketable obligations, maturing within 5 years or less  
129 after the acquisition of such obligations, which are rated "A"



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130 or better by any nationally recognized credit rating agency; or  
131 d. Interests in money market funds, the portfolio of which  
132 is limited to cash and obligations described in sub-  
133 subparagraphs a.-c.

134 (c) All investment decisions shall be made by the  
135 corporation, which must certify that each project is of a  
136 beneficial nature to a port listed in s. 403.021(9)(b); is ready  
137 to proceed within 60 days for design, construction, and  
138 permitting; and will create a lasting economic impact as  
139 determined by the board. Applications for funding by qualified  
140 port projects must be made to the corporation. The board, in  
141 consultation with the office, may establish procedural rules for  
142 the application form, application procedures, and criteria for  
143 making investment decisions based upon the requirements  
144 established in this paragraph.

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

146 (a) Any participating investor who makes an investment of  
147 investment capital shall earn a vested credit against premium  
148 tax liability equal to 100 percent of the face amount of the  
149 credits purchased by the participating investor and such  
150 investments may not be subject to recapture, disallowance,  
151 forfeiture, or reduction.

152 (b) Participating investors shall be entitled to use no  
153 more than 10 percentage points of the vested premium tax credit,  
154 including any carryforward credits under this section, per year  
155 beginning with premium tax filings for calendar year 2013.

156 (c) Any premium tax credits not used by participating  
157 investors in any single year may be carried forward and applied  
158 against the premium tax liabilities of such investors for



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159 subsequent calendar years. The carryforward credit may be  
160 applied against subsequent premium tax filings through calendar  
161 year 2029.

162 (d) The credit to be applied against premium tax liability  
163 in any single year may not exceed the premium tax liability of  
164 the participating investor for that taxable year.

165 (e) A participating investor claiming a credit against  
166 premium tax liability earned through an investment in the  
167 corporation, or a transferee, is not required to pay any  
168 additional retaliatory tax levied pursuant to s. 624.5091 as a  
169 result of claiming such credit. Because credits under this  
170 section are available to a participating investor, s. 624.5091  
171 does not limit such credit in any manner.

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

173 (a) The total amount of tax credits which may be allocated  
174 by the office may not exceed \$100 million. The total amount of  
175 tax credits which may be used by participating investors under  
176 this section may not exceed \$10 million annually.

177 (b) The office shall be responsible for allocating premium  
178 tax credits as provided for in this section to participating  
179 investors. A participating investor must submit an application  
180 to the office for the tax credit authorized in this section.

181 (8) TRANSFER OF TAX CREDITS.—

182 (a) Upon application to and approval by the office, a  
183 participating investor may elect to transfer, in whole or in  
184 part, any unused credit amount granted under this section. The  
185 office shall notify the Department of Revenue of the election  
186 and transfer.

187 (b) A participating investor that elects to apply a credit



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188 amount against taxes remitted under s. 624.509 is permitted a  
189 one-time transfer of unused credits to one transferee, and such  
190 transfer must occur in the same taxable year.

191 (c) The transferee is subject to the same rights and  
192 limitations as the participating investor awarded the tax  
193 credit, except that the transferee may not sell or otherwise  
194 transfer the tax credit.

195 (9) AUDIT AUTHORITY; REVOCATION AND FORFEITURE OF TAX  
196 CREDITS; FRAUDULENT CLAIMS.—

197 (a) Audit authority.—The Department of Revenue may conduct  
198 examinations and audits as provided in s. 213.34 to verify that  
199 tax credits under this section are received, transferred, and  
200 applied according to the requirements of this section. If the  
201 Department of Revenue determines that tax credits are not  
202 received, transferred, or applied as required by this section,  
203 it may, in addition to the remedies provided in this subsection,  
204 pursue recovery of such funds pursuant to the laws and rules  
205 governing the assessment of taxes.

206 (b) Revocation of tax credits.—The office may revoke or  
207 modify any written decision qualifying, certifying, or otherwise  
208 granting eligibility for tax credits under this section if it is  
209 discovered that the tax credit applicant submitted any false  
210 statement, representation, or certification in any application,  
211 record, report, plan, or other document filed in an attempt to  
212 receive tax credits under this section. The office shall  
213 immediately notify the Department of Revenue of any revoked or  
214 modified orders affecting previously granted tax credits.  
215 Additionally, the applicant must notify the Department of  
216 Revenue of any change in its tax credit claimed.





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217       (c) Forfeiture of tax credits.—A determination by the  
218 Department of Revenue, as a result of an audit or examination by  
219 the Department of Revenue or from information received from the  
220 office, that an applicant received tax credits pursuant to this  
221 section to which the applicant was not entitled is grounds for  
222 forfeiture of previously claimed and received tax credits. The  
223 applicant is responsible for returning forfeited tax credits to  
224 the Department of Revenue, and such funds shall be paid into the  
225 General Revenue Fund of the state. Tax credits purchased in good  
226 faith are not subject to forfeiture unless the transferee  
227 submitted fraudulent information in the purchase or otherwise  
228 failed to meet the requirements of this section.

229       (d) Fraudulent claims.—Any applicant that submits  
230 fraudulent information under this section is liable for  
231 reimbursement of the reasonable costs and fees associated with  
232 the review, processing, investigation, and prosecution of the  
233 fraudulent claim. An applicant that obtains a credit payment  
234 under this section through a claim that is fraudulent is liable  
235 for reimbursement of the credit amount plus a penalty in an  
236 amount double the credit amount. The penalty is in addition to  
237 any criminal penalty to which the applicant is liable for the  
238 same acts. The applicant is also liable for costs and fees  
239 incurred by the state in investigating and prosecuting the  
240 fraudulent claim.

241       (10) REPORTING REQUIREMENTS.— Beginning February 1, 2013,  
242 and every year thereafter, the office shall report on an annual  
243 basis to the Governor, the President of the Senate, and the  
244 Speaker of the House of Representatives:

245       (a) The total dollar amount received by the corporation



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246 from all participating investors and any other investor, the  
247 identity of the participating investors, and the total amount of  
248 premium tax credit used by each participating investor for the  
249 previous calendar year.

250 (b) The total dollar amount invested by the corporation in  
251 qualified port projects, the identity and location of those  
252 projects, the amount invested in each qualified port project,  
253 and the total number of permanent, full-time jobs created or  
254 retained by each qualified port project.

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

257 1. Investments have contributed to employment growth.

258 2. The wage level of businesses in which the corporation  
259 has invested exceeds the average wage for the county in which  
260 the jobs are located.

261 3. The investments of the corporation in qualified port  
262 projects have contributed to expanding or diversifying the  
263 economic base of the state.

264 (11) FEES.—The corporation may charge reasonable fees for  
265 administering and processing applications by qualified port  
266 projects for funding pursuant to paragraph (5) (c), and the  
267 office may charge reasonable fees for administering and  
268 processing applications by participating investors for tax  
269 credits pursuant to subsection (7). Any fee charged by the  
270 corporation or office under this subsection for an application  
271 may not exceed the actual cost incurred by the corporation or  
272 office in administering and processing any application for  
273 funding or a tax credit.

274 (12) RULEMAKING AUTHORITY.—



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275           (a) The Department of Revenue may adopt rules pursuant to  
276 ss. 120.536(1) and 120.54 to administer this section, including,  
277 but not limited to, rules governing the examination and audit  
278 procedures required to administer this section and the manner  
279 and form of documentation required to claim tax credits awarded  
280 or transferred under this section.

281           (b) The office may adopt rules pursuant to ss. 120.536(1)  
282 and 120.54 and develop procedures to administer this section,  
283 including, but not limited to, rules specifying requirements for  
284 the application and approval process, records required for  
285 substantiation for tax credits, and the manner and form of  
286 documentation required to claim tax credits awarded or  
287 transferred under this section.  
288