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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 (with title amendment)

Delete everything after the enacting clause
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 insurance companies
to invest in port activities in this state which, in turn, will



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

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

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

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

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

28 (d) "Participating investor" means any insurance company
29 that is subject to premium tax liability under s. 624.509 and
30 that contributes investment capital pursuant to this section.

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

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

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

39 (a) The Florida Ports Investment Corporation is created as
40 a corporation not for profit, to be incorporated under the
41 provisions of chapter 617 and approved by the Department of
42 State, and is not a unit or entity of state government. However,



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43 the Legislature determines that public policy dictates that the
44 corporation operate in the most open and accessible manner
45 consistent with its public purpose. Therefore, the Legislature
46 specifically declares that the corporation and its advisory
47 company are subject to the public records and meetings
48 requirements of chapters 119 and 286. The corporation:

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

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

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

62 (b) The corporation shall be governed by a board of
63 directors comprised of:

64 1. The director of the office.

65 2. Two members appointed by the Governor, two members
66 appointed by the President of the Senate, and two members
67 appointed by the Speaker of the House of Representatives.

68 Appointed members must have significant experience in
69 international business, transportation, law, or logistics.

70 Appointed members are subject to any restrictions on conflicts
71 of interest specified in the organizational documents of the



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72 corporation and may not have any interest in any investments
73 made by the corporation pursuant to subsection (5). Each
74 appointed member shall be appointed for a term of 4 years. A
75 vacancy on the board shall be filled by the appointing official
76 for the member whose vacancy is to be filled or whose term has
77 expired. An appointed member may be removed by the appointing
78 official for that member, for cause. Absence from three
79 consecutive meetings shall result in automatic removal. Any
80 member is eligible for reappointment.

81 3. The chair of the Florida Seaport Transportation and
82 Economic Development Council shall serve as an ex officio co-
83 director of the board.

84 4. The Secretary of Transportation or his or her designee
85 shall serve as an ex officio, nonvoting co-director of the
86 board.

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

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

93 (a)1. The corporation shall seek to maintain the state's
94 advantage in ports and related industries. In order to maintain
95 that advantage, the corporation shall fund freight mobility
96 projects that improve throughput or provide long-term congestion
97 relief for freight movement for a part of the state's
98 transportation network and improve economic productivity for the
99 state or the region in which projects are located. Freight
100 mobility projects include on-port projects that meet the



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101 Department of Transportation's Strategic Intermodal System
102 criteria and regionally significant freight projects that are
103 eligible for federal financial assistance consistent with
104 criteria developed for federal freight transportation grant
105 programs, including, but not limited to, the Transportation
106 Investment Generating Economic Recovery (TIGER), Projects of
107 National and Regional Significance (PNRS), National
108 Infrastructure Investment (NII), and the National Corridor
109 Infrastructure Improvement (NCII) program.

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

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

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

120 1. Must be held in a financial institution as defined by s.
121 655.005(1)(h) or held by a broker-dealer registered under s.
122 517.12.

123 2. Must be invested only in:

124 a. United States Treasury obligations;

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

129 c. Marketable obligations, maturing within 5 years or less



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130 after the acquisition of such obligations, which are rated "A"
131 or better by any nationally recognized credit rating agency; or

132 d. Interests in money market funds, the portfolio of which
133 is limited to cash and obligations described in sub-
134 subparagraphs a.-c.

135 (c) All investment decisions shall be made by the
136 corporation, which must certify that each project is of a
137 beneficial nature to a port listed in s. 403.021(9)(b), is ready
138 to proceed within 60 days for design, construction, and
139 permitting, and will create a lasting economic impact as
140 determined by the board. Applications for funding by qualified
141 port projects must be made to the corporation. The board may
142 establish procedural rules for the application form, application
143 procedures, and criteria for making investment decisions based
144 upon the requirements 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. Participating investors shall be
152 entitled to use no more than 10 percentage points of the vested
153 premium tax credit, including any carryforward credits under
154 this section, per year beginning with premium tax filings for
155 calendar year 2012. Any premium tax credits not used by
156 participating investors in any single year may be carried
157 forward and applied against the premium tax liabilities of such
158 investors for subsequent calendar years. The carryforward credit



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159 may be applied against subsequent premium tax filings through
160 calendar year 2029.

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

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

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

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

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

180 (8) TRANSFER OF TAX CREDITS.—

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

186 (b) A participating investor that elects to apply a credit
187 amount against taxes remitted under s. 624.509 is permitted a



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188 one-time transfer of unused credits to one transferee, and such
189 transfer must occur in the same taxable year.

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

194 (9) FEES.—The corporation may charge reasonable fees for
195 administering and processing applications by qualified port
196 projects for funding pursuant to paragraph (5) (c), and the
197 office may charge reasonable fees for administering and
198 processing applications by participating investors for tax
199 credits pursuant to subsection (7). Any fee charged by the
200 corporation or office under this subsection for an application
201 may not exceed the actual cost incurred by the corporation or
202 office in administering and processing any application for
203 funding or a tax credit.

204 (10) REPORTING REQUIREMENTS.—The office shall report on an
205 annual basis to the Governor, the President of the Senate, and
206 the Speaker of the House of Representatives on or before
207 February 1:

208 (a) The total dollar amount received by the corporation
209 from all participating investors and any other investor, the
210 identity of the participating investors, and the total amount of
211 premium tax credit used by each participating investor for the
212 previous calendar year.

213 (b) The total dollar amount invested by the corporation in
214 qualified port projects, the identity and location of those
215 projects, the amount invested in each qualified port project,
216 and the total number of permanent, full-time jobs created or



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217 retained by each qualified port project.

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

220 1. Investments have contributed to employment growth.

221 2. The wage level of businesses in which the corporation
222 has invested exceeds the average wage for the county in which
223 the jobs are located.

224 3. The investments of the corporation in qualified port
225 projects have contributed to expanding or diversifying the
226 economic base of the state.

227 (11) RULEMAKING AUTHORITY.-

228 (a) The Department of Revenue may adopt rules pursuant to
229 ss. 120.536(1) and 120.54 to administer this section, including,
230 but not limited to, rules governing the examination and audit
231 procedures required to administer this section and the manner
232 and form of documentation required to claim tax credits awarded
233 or transferred under this section.

234 (b) The office may adopt rules pursuant to ss. 120.536(1)
235 and 120.54 and develop procedures to administer this section,
236 including, but not limited to, rules specifying requirements for
237 the application and approval process, records required for
238 substantiation for tax credits, and the manner and form of
239 documentation required to claim tax credits awarded or
240 transferred under this section.

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

243 213.053 Confidentiality and information sharing.-

244 (8) Notwithstanding any other provision of this section,
245 the department may provide:



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246 (z) Information relating to tax credits taken under s.
247 624.509 to the Office of Tourism, Trade, and Economic
248 Development.

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250 Disclosure of information under this subsection shall be
251 pursuant to a written agreement between the executive director
252 and the agency. Such agencies, governmental or nongovernmental,
253 shall be bound by the same requirements of confidentiality as
254 the Department of Revenue. Breach of confidentiality is a
255 misdemeanor of the first degree, punishable as provided by s.
256 775.082 or s. 775.083.

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

258
259 ===== T I T L E A M E N D M E N T =====

260 And the title is amended as follows:

261 Delete everything before the enacting clause
262 and insert:

263 A bill to be entitled
264 An act relating to Florida ports investments; creating
265 s. 311.23, F.S.; providing a short title; providing a
266 purpose; providing definitions; creating the Florida
267 Ports Investment Corporation; subjecting the
268 corporation to certain public-meetings and public-
269 records requirements; providing authority and
270 requirements for the corporation; providing for a
271 board of directors; providing for appointment of board
272 members; providing for investments by the corporation
273 in certain port projects; providing port project
274 funding criteria; providing requirements for capital



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275 allocation and investments; providing requirements for
276 certain uninvested capital; providing requirements for
277 investments; providing for a premium tax credit;
278 providing for carryforward of the credit; providing
279 limitations on the credit; providing limitations on
280 the amount of tax credits; providing investment
281 requirements; providing procedures, requirements, and
282 limitations for transfers of unused credits;
283 authorizing the corporation and the Office of Tourism,
284 Trade, and Economic Development to charge certain
285 fees; providing reporting requirements; authorizing
286 the Department of Revenue and the office to adopt
287 rules; amending s. 213.053, F.S.; authorizing the
288 Department of Revenue to provide certain information
289 to the office; providing an effective date.