

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 1992

INTRODUCER: Commerce Committee and Senator Ring

SUBJECT: Florida Ports Investment

DATE: April 7, 2010                      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Pugh    | Cooper         | CM        | <b>Fav/CS</b> |
| 2. |         |                | BI        |               |
| 3. |         |                | TR        |               |
| 4. |         |                | FT        |               |
| 5. |         |                | WPSC      |               |
| 6. |         |                |           |               |

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Florida has 14 public seaports that are considered significant economic drivers for Florida. The individual seaports receive a combination of public funding and private revenues to finance their operations and capital improvements. However, Florida seaport officials say they are at a financial disadvantage, compared to other states' ports, in making massive infrastructure improvements needed to participate in new international business opportunities arising from the resurgence of the Panama Canal.

CS/SB 1992 creates the "Florida Ports Investment Act," which incentivizes private investors who invest in seaport infrastructure projects by offering \$100 million in insurance premium tax credits. The tax credits will be awarded to individual investors in an amount equal to their investments. This return is in addition to any interest earnings the investors make on profitable investments in seaport projects.

Basically, CS/SB 1992:

- Creates an incentive for any person or entity subject to the U.S. Internal Revenue Code to invest with the new 9-member Florida Ports Investment Corporation (corporation).

- The corporation, in turn, will invest in projects that are consistent with their host seaport's master plan; are consistent with various federal criteria; can provide a minimum 25 percent match to these investment funds; and meet other requirements.
- The Governor's Office of Tourism, Trade, and Economic Development (OTTED) will allocate up to \$100 million in state premium tax credits to investors over the life of the program.
- An investor (or transferee) that is an insurance company is entitled to claim against its insurance premium tax liabilities no more than 10 percentage points of its total credits annually, including any carryforward credits, beginning in calendar year 2013. Credits may be carried forward and applied against tax liability until 2029.
- The tax credits also may be transferred, one time only, to a third party.
- The Florida Department of Revenue (DOR) has the authority to audit individual tax claims, and enforce provisions to protect against fraudulent claiming of credits.
- OTTED is required to submit an annual report on the seaports investment program to the Governor, the President of the Senate, and the Speaker of the House of Representatives, beginning February 1, 2013.

CS/SB 1992 creates s. 311.23, F.S.

## II. Present Situation:

### Seaport Issues

#### *Background on Florida's seaports*

Florida has 14 public seaports:<sup>1</sup> Port of Fernandina, Port of Fort Pierce, Jacksonville (JaxPort), Port of Key West, Port of Miami, Port of Palm Beach, Port Panama City, Port of Pensacola, Port Canaveral, Port Everglades, Port Manatee, Port St. Joe, Port of St. Petersburg, and Port of Tampa.

These seaports are considered significant economic drivers. A recent economic analysis<sup>2</sup> prepared for the Florida Ports Council indicated that:

- In 2008, the maritime cargo activities at Florida seaports were responsible for generating more than 550,000 direct and indirect jobs and \$66 billion in total economic value.
- In 2008, the maritime cargo activities at Florida seaports contributed \$1.7 billion in state and local tax revenues.
- The average annual wage of seaport-related jobs is \$54,400, more than double the average annual state wage for all other non-advanced degree workers (\$26,933) and over \$15,000 more than the average annual state wage for all occupations (\$38,470).
- The ROI for seaport projects is an estimated \$6.90 to \$1.

Florida's public seaports handled more than 121 million tons of cargo in FY 2006-2007, the most recent information available.<sup>3</sup> Of that, 19 million tons were exports, 50.3 million tons were

<sup>1</sup> Listed in s. 403.021(9)(b), F.S. Interactive locator map is available at: <http://www.flaports.org/index.htm>. Last visited March 1, 2010.

<sup>2</sup> Available at [http://www.flaports.org/docs/2010%20economic%20action%20plan%20for%20florida%20-%20january%202010\(2\).pdf](http://www.flaports.org/docs/2010%20economic%20action%20plan%20for%20florida%20-%20january%202010(2).pdf). Last visited March 1, 2010.

<sup>3</sup> Available at <http://www.dot.state.fl.us/planning/trends/tc-report/Seaport032509.pdf>. Last visited March 1, 2010.

imports, and 51.9 million tons were domestic shipments.<sup>4</sup> Florida's top five international trading partners, in terms of cargo value, are: Brazil, Japan, Germany, Venezuela, and China.<sup>5</sup> The cruise business also is a significant segment of Florida's seaport activity; in 2007, more than 14 million passengers embarked and disembarked from the nine ports with cruise operations, and an estimated 17.7 million passengers are predicted for FY 2010-2011.<sup>6</sup>

Florida seaports are eligible, per s. 311.07, F.S., for a minimum of \$8 million a year<sup>7</sup> in grants from the State Transportation Trust Fund for projects to improve the "movement and intermodal transportation" of cargo and passengers. The projects are recommended annually by the Florida Seaport Transportation and Economic Development (FSTED) Council and approved by the Florida Department of Transportation. Most years, the Legislature appropriates more than \$8 million to the seaports; for FY 2009-2010, for example, FDOT was directed to spend \$21.9 million on seaport grants.

The ports also benefit from an additional \$25 million in debt service paid with motor vehicle license fees from the State Transportation Trust Fund for 1996 and 1999 bond issues, per ch. 315, F.S., which financed major port projects. Pursuant to s. 311.07, F.S., the state grant funds cannot exceed 50 percent of the total cost of an FSTED project.

Eligible projects per the statute include:

- Dredging or otherwise deepening channels, harbors, and turning basins;
- Construction or rehabilitation of wharves, docks, piers, and related structures;
- Transportation facilities, such as roads or rail lines, located within a port; and
- Acquisition of land for port purposes.

Projects on the current FSTED 5-year work program (FY 07-08 through FY 11-12) total \$1.4 billion, half of which could be paid by the state pursuant to s. 311.07, F.S. Each of Florida's 14 public seaports has projects on the list.<sup>8</sup> The first-priority projects for each of the seaports are:

- Dredging and dike repairs for Port Manatee;
- Container yard modifications for the Port of Fernandina;
- Land acquisition for expansion at JaxPort;
- Crane purchase for Port Panama City;
- Warehouse protection upgrades and berth upgrades for the Port of Pensacola;
- A new berth for the Port of Port St. Joe;
- Dredging at Port Everglades;
- Dredging at the Port of Fort Pierce;
- Channel modification to handle larger vessels and improve navigation safety for the Port of Palm Beach;
- Intermodal roadway improvements for Port Canaveral;

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<sup>4</sup> Ibid, page 2.

<sup>5</sup> Florida Ports Council Statistics Report, available at <http://www.flaports.org/statistics.htm>. Page 6. Last visited March 1, 2010.

<sup>6</sup> Supra FN 3, page 5.

<sup>7</sup> Since FY 2005-2006, FDOT by agreement with FSTED has earmarked at least \$15 million for FSTED projects.

<sup>8</sup> Information in an email from Nancy Leikauf, executive vice president of the Florida Ports Council, dated February 28, 2010. On file with the Senate Commerce Committee.

- Wharf replacement at the Port of Key West;
- Infrastructure improvements at the Port of Miami;
- Wharf repairs and site preparation for a research and development center at the Port of St. Petersburg; and
- The East Port industrial park for the Port of Tampa.

### *Panama Canal Project*<sup>9</sup>

Built by the United States and opened in 1914, the Panama Canal is a 48-mile-long ship canal in the narrow Central American isthmus that joins the Atlantic and Pacific oceans. On December 31, 1999, ownership and control of the canal transferred from the United States to Panama. Today, the Panama Canal Authority (ACP) manages the canal.

The ACP has undertaken a \$5.2 billion modernization and expansion of the canal, which includes a third lock to move the new larger ships through the isthmus. Private investors and bank loans will finance some of the cost, and ACP is hoping that increased toll revenues from increased usage will generate enough money to pay for the rest of the project, which is expected to be completed by 2014.

For decades the Panama Canal has been a significant shipping lane for international maritime trade. Annual traffic has risen from about 1,000 ships in the canal's early days to 14,702 vessels in 2008. While the canal was built to handle the largest ships of its era, modern tankers and container vessels are bigger. As a result, these larger ships either take a different route or their owners don't use them in the Western Hemisphere, or, more commonly, goods are dropped off at seaports on the U.S. west and east coasts – depending on the final destination of the goods – and then hauled by truck or rail across the continent, where they may be loaded onto outbound ships. Some cargo stays in the United States, and some is further transported on land to points north or south.

Supporters of the Panama Canal expansion contend the improved shipping will significantly reduce shipping costs, and even transit time.

The economic implications of the expansion have led several states, such as California, Maryland, South Carolina, and Texas, to reevaluate their long-term port planning and financing strategies, in order to take advantage of the anticipated greater volume of cargo transported by much larger vessels through the Panama Canal. Also under re-evaluation nationwide are intermodal transportation plans, related to financing and location of rail and highway infrastructure improvements, to move that imported cargo quicker and more efficiently throughout the United States.

### Florida's use of tax credits as venture capital incentives

The State of Florida offers direct tax credits for the premium insurance tax through the Certified Capital Company Act (CAPCO), pursuant to Part XII of ch. 288, F.S., and through its New Markets Development Program (New Markets), pursuant to Part XIII of ch. 288, F.S.

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<sup>9</sup> Numerous sources are available for information about the Panama Canal expansion project, but a basic primer is found here: [http://en.wikipedia.org/wiki/Panama\\_Canal\\_expansion\\_project](http://en.wikipedia.org/wiki/Panama_Canal_expansion_project).

*CAPCO Program*

Enacted in 1998 by the Florida Legislature, CAPCO encourages private investment in venture capital by providing tax credits for investment in qualified businesses. The stated purpose of this act is to stimulate a substantial increase in venture capital investments in Florida by providing an incentive for insurance companies to invest in state-certified capital companies (CAPCOs) which, in turn, will invest in new or expanding businesses.<sup>10</sup> Eligible insurance companies are granted insurance premium tax credits in amounts equal to investments in CAPCOs. The increase in investment capital is intended to contribute to employment growth, create high-paying jobs, and expand or diversify Florida's economy. The three CAPCOs are: Advantage Capital; BOCF, LLC; and Wilshire Partners.

According to information in OTTED's most recent report on the program, the CAPCOs have invested \$117.68 million in 72 qualified businesses as of December 31, 2009.<sup>11</sup> Additionally, \$229 million in private investment has been made, over the last 10 years, into 28 of the 72 qualified businesses.

Only 11 qualified businesses responded to OTTED's 2009 request for information about their job numbers; they listed 509 total jobs, paying an average annual wage of \$69,672.<sup>12</sup>

Examples of industries represented by the qualified businesses are: electronic fingerprint imaging, medical technology, catamaran manufacturing, credit card payment processing, vehicle fleet management systems, an internet portal for fishermen, a bacteriological research company, a cookie manufacturer, three landscaping companies, and a children's day-care center.

By far the most successful of the companies that received CAPCO investments is AuthenTec, Inc., which creates "authentication sensors" for computers, phones, and other electronic devices based on individual fingerprints.<sup>13</sup> It received a total of \$9.4 million in CAPCO investments, and has attracted more than \$60 million in outside investments, according to the latest CAPCO report; it has not responded to OTTED requests for information since 2007, at which time it reported 87 employees earning an average annual wage of \$104,443.

According to its website, AuthenTec has headquarters in Melbourne, FL, and in Shanghai, China; in November 2009, passed the 50 million mark in sensors sold; and reported \$63.9 million in revenue for the year ended January 2, 2009. About 97 percent of its sales are made outside of the United States.

The insurance industry has invested \$150 million in three state-certified CAPCOs, and insurance companies may claim insurance premium tax credits totaling \$15 million each year for 10 years.

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<sup>10</sup> Section 288.99(2), F.S. Among the qualifications for eligible businesses are that they are involved in manufacturing, processing or assembling products, conducting R&D, or providing services.

<sup>11</sup> Section 288.99(12), F.S., requires OTTED to report annually on the performance of the CAPCO program. The above information was reported in the 2009 annual report issued in March 2010 by OTTED. The report is on file with the Senate Commerce Committee.

<sup>12</sup> Ibid, page 5.

<sup>13</sup> Company website is <http://authentec.com/>. Last visited April 3, 2010.

As of Dec. 31, 2009, the insurance company investors have claimed \$119.5 million in credits against their premium tax owed, according to the report.<sup>14</sup>

While several states have created CAPCOs, this type of program is increasingly viewed by researchers as the more “problematic” of the Venture Capital Funds (VCF) programs, in terms of:

“...its high cost, poor design and target-inefficiency. Unlike any other VCF program, the CAPCO program provides a 100% premium tax credit to insurance company investors. In effect, the government underwrites the entire investment risk.”<sup>15</sup>

The CAPCO program is repealed December 31, 2010.

#### *New Markets tax credits*

Florida’s New Markets program is based in large part on the federal New Markets Tax Credit program, sharing many of the definitions, requirements, and basic investment processes for receiving and investing investor credits. This program, created by the Legislature in 2009, allows investors to earn credits against their Florida corporate or insurance premium tax liabilities of up to 39 percent over a period of years. The tax credits cannot be claimed until 2 years after the investments are made, so the earliest that any investor could claim them is FY 11-12.

Briefly, Florida’s New Markets works this way:<sup>16</sup>

- One or more qualified community development entities (CDEs) will attract private investors, typically insurance companies or large banks, to invest in qualified proposed business development projects in low-income communities.
- The CDEs then will apply to OTTED for its approval to make qualified investments in eligible businesses within low-income communities, using the funds raised in exchange for the corporate income or insurance premium tax credits.
- Once notified by OTTED, the state Department of Revenue will begin tracking tax credit claims from the CDE investors.
- Credits may not be claimed until 2 years after the qualified investments were made. So, in the third year of the program, up to \$17.5 million in tax credits may be claimed, and in each of the subsequent 4 years, \$20 million in new credits may be claimed against taxes owed.

OTTED has approved six CDE applications and awarded the CDEs \$72.486 million in New Markets tax credits.<sup>17</sup> The CDEs have proposed total qualified investments in the amount of \$162.4 million. Specific information is in the chart below.

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<sup>14</sup> Ibid, page 2.

<sup>15</sup> Statement of Professor Daniel Sandler, University of Western Ontario, London; senior research fellow of the Taxation Law and Policy Research Institute, Melbourne; associated with Minden Gross Grafstein & Greenstein LLP, Toronto. See Daniel Sandler, *Venture Capital and Tax Incentives: A Comparative Study of Canada and the United States* (Toronto: Canadian Tax Foundation, 2004).

<sup>16</sup> A detailed explanation of the Florida New Markets Development Program is in the 2009 bill analysis of CS/CS/SB 1502, available at <http://www.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s1502.wpsc.pdf>. Last visited March 8, 2010.

| Applicant   | Qualified Investment Proposed | Tax Credits Approved by OTTED |
|---|-------------------------------|-------------------------------|
| Capital Trust Agency Community Development Entity | \$10 million                  | \$3.9 million                 |
| BizCapital BIDCO II                               | \$12.4 million                | \$4.836 million               |
| Florida Community Development I                   | \$50 million                  | \$19.5 million                |
| Florida Community Development II                  | \$15 million                  | \$5.85 million                |
| Stonehenge Community Development                  | \$25 million                  | \$9.75 million                |
| Stonehenge Community Development                  | \$50 million                  | \$19.5 million                |
| <b>Total</b>                                      | <b>\$162.4 million</b>        | <b>\$63.336 million</b>       |

According to OTTED, the New Markets CDEs are continuing their fund-raising and evaluation efforts, and have made no investments in qualified businesses to date. About \$34.2 million in New Markets credits remain to be awarded by OTTED over the life of the program.

Except for the tax credit carryforward provisions, the New Markets program is repealed December 31, 2022.

Insurance tax and investment issues

*Insurance Company Premium Tax*

Pursuant to s. 624.509, F.S., insurance companies doing business in Florida are required to pay a tax on premiums written in the state in the preceding calendar year, equal to 1 percent of total annuity premiums, and 1.75 percent of premiums on all other lines of business in the state.

Premium taxes are paid on or before March 1 of each year, to DOR and distributed, after deductions and credits, to the state’s General Revenue Fund. Insurance companies are permitted to reduce their premium tax liability with a variety of tax credits that are provided for in statute. For instance, s. 624.5105, F.S., authorizes insurance companies to receive a 50-percent credit against their premium tax obligations when they contribute to local redevelopment organizations that revitalize areas located within a designated enterprise zone. Other statutory premium tax credit options are available to insurance companies, including the: corporate income tax credit (s. 624.509(4), F.S.); Florida employee’s salaries (s. 624.509(5), F.S.); intangibles tax credit (s. 624.509(4), F.S.); Municipal Firefighter’s Pension Fund (s. 175.141, F.S.); and the Municipal Police Officer’s Retirement Fund (s. 185.12, F.S.).

*Regulation of Insurance Company Investments*

Part II of ch. 625, F.S., restricts the investment and lending activities in which insurance companies may engage using company assets. Section 625.302(1), F.S., specifies that insurers may invest or lend funds only in “eligible investments...” Pursuant to s. 625.303, F.S., eligible investments must be interest-bearing and not in default; are entitled to accrue dividends; and, in general, must be sold at or below market value. Section 625.304, F.S., restricts the authority of insurers to “make any investment or loan, other than a policy loan or annuity contract loan of a

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<sup>17</sup> Based on January 15, 2010, email from, and subsequent conversations with, OTTED staff. On file with the Commerce Committee.

life insurer, unless the same is authorized or approved by the insurer's board of directors or by a committee authorized by such board and charged with the supervision or making of such investment or loan." Section 625.305, F.S., requires that insurance company investments be diversified according to criteria in the law. Insurers' investments in stock are limited to 15 percent of assets.

Investments in debt instruments are limited according to the grade of the investment, as determined by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC). For investments rated by the NAIC in the lowest grades – level 5 or 6 – insurers may invest only 1.5 percent of their assets. According to the state Office of Insurance Regulation, the admitted total assets for insurance companies selling property, casualty, life and health insurance in Florida was \$2.72 trillion in 1995. Section 625.324, F.S., authorizes insurers to invest in the stock of corporations if the stock is listed and traded on a national securities exchange, or approved by the Office of Insurance Regulation.

### **III. Effect of Proposed Changes:**

CS/SB 1992 creates a mechanism by which any person subject to the U.S. Internal Revenue Code may invest in seaport infrastructure projects, in exchange for up to \$100 million in transferable tax credits against state insurance premium tax liability. The total amount that participating investors (or transferees) can claim against their tax liability in the aggregate is \$10 million annually.

The investments are placed with the new Florida Ports Investment Corporation (corporation), and the credits are allocated by OTTED to investors, presumably after it receives investor information from the corporation.

Section 1 creates s. 311.23, F.S., relating to the Florida Ports Investment Act. It expresses the act's primary purpose of stimulating an increase in investment in port infrastructure by creating a tax credit incentive program for potential investors. Greater investment in ports is intended to spur creation of high-wage jobs and expand or diversify Florida's economic base.

#### *Definitions*

CS/SB 1992 defines a number of terms used in this section, such as:

- "Investment capital" means an investment of cash by a participating investor to the corporation in exchange for the tax credits provided under the program.
- "Participating investor" means any qualified investor subject to the U.S. Internal Revenue Code and which has invested in the corporation.
- "Qualified port project" means each of the 14 public seaports listed in s. 403.021(9)(b), F.S., or any associated business or project that uses those ports for the movement of goods and people, as determined by the corporation.

#### *Composition and duties of the corporation*

The new corporation is comprised of the following voting members:

- The director of OTTED, serving as the chair;
- Two members each appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives;

- The chair of FSTED; and
- The secretary of the Florida Department of Transportation.

The six appointed members will serve 4-year terms, and must have “significant experience” in international business, transportation, law, or logistics. They are subject to restrictions related to conflicts of interest specified in the organizational documents of the corporation, and may not have any interest in any seaport investments made by the corporation. They may be removed, for cause, by the appointing authority; absence from three consecutive meetings shall result in automatic removal from the board.

All board members serve without compensation related to their corporation tasks, but may be reimbursed for reasonable, necessary, and actual travel expenses approved by the board, pursuant to s. 112.061, F.S.

The corporation is structured as a not-for-profit corporation under the provisions of ch. 617, F.S., and registered with the Department of State as a Florida entity. The corporation is subject to ch. 119, F.S., Florida’s public records law, and ch. 286, F.S., related to public meetings.

CS/SB 1992 specifies only a few powers and responsibilities of the corporation:

- To select and certify seaport projects for receipt of investments;
- To receive, hold, invest, administer, and expend funds consistent with the purposes of the investment program;
- To make purchases, sales, exchanges, investments and reinvestments using, or on behalf of, the investments it receives;
- To maintain all official records related to its activities;
- To retain the services of at least one investment advisory company domiciled in Florida, and with at least 5 years’ experience in working with investors interested in tax credits or other debt-driven financial instruments. The board must follow the provisions of s. 287.055, F.S., related to competitive selection of and negotiation for consultant services;
- To provide to OTTED on a timely basis information about its investors, the amount of their investments, and a list of the certified port projects; and
- To assist OTTED in preparing the required annual report to the Governor and the Legislature.

#### *Criteria for certifying seaport projects*

As drafted, CS/SB 1992 gives the corporation sole responsibility in deciding which seaport projects will receive investments. Among the criteria the corporation will use in certifying seaport projects are:

- Is one of the 14 public seaports listed in s. 403.021(9)(b), F.S.;
- Increases a seaport’s capacity to handle freight;
- Is consistent with the seaport’s approved master plan;
- Is eligible for financial assistance from various federal programs;
- Must be able to provide at least a 25-percent match of the private investment, using funds from the individual port, local government, private sources, or federal funds;
- Is ready to proceed within 60 days of receiving the investment with design, permitting, and construction; and

- Will create a “lasting economic impact” as determined by the corporation.

Investments will be made in seaport projects commencing by July 1, 2012.

The corporation, in consultation with OTTED, may develop procedural rules for the application forms and procedures, and for criteria to be used in making the investment decisions.

Any investments not invested in seaport projects will be held by the corporation in U.S. Treasury obligations, certificates of deposit or similar instruments, certain marketable obligations, or certain money market funds.

#### *OTTED's responsibilities*

OTTED appears to have two responsibilities in implementing CS/SB 1992: to allocate the insurance premium tax credits and to submit an annual report, beginning February 1, 2013, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The maximum amount of premium insurance tax credits that OTTED may allocate over the life of the program is \$100 million. A participating investor must submit an application to OTTED seeking its share of the tax credits. CS/SB 1992 is silent about the specific mechanics of this allocation, but does give OTTED authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer its responsibilities as well as the application and approval process, the type of documentation required to substantiate credit-allocation requests, and the manner and form of claiming the credits.

OTTED's annual report must include the following information:

- The total dollar amount received by the corporation from all participating investors and any other investor; the identity of each participating investor; and the total amount of premium insurance tax credits claimed by each participating investor (or transferee) in the previous calendar year.
- The total dollar amount invested by the corporation in certified port projects; the identity and location of those projects; the amount invested in each certified port project; and the total number of permanent, full-time jobs created or retained by each certified port project.
- The return for the state as a result of the investments in certified port projects, including the extent to which:
  - Investments have contributed to employment growth;
  - The wage level of businesses in which the corporation has invested exceeds the average wage for the county in which the jobs are located; and
  - The investments of the corporation in certified port projects have contributed to expanding or diversifying Florida's economic base.

#### *Use of the tax credits by participating investors*

A participating investor can earn a vested credit against its premium tax liability equal to 100 percent of its certified investment, but can claim no more than 10 percentage points of the credit each calendar year beginning in January 2013.

Under no circumstance may the tax credits claimed by the certified investor in any tax year exceed its tax liability that year. However, the tax credits may be carried forward until 2029.

A certified investor may transfer its unused tax credits, one time only, to a third party, and the credits must be used in the same tax year.

The participating investor or transferee is not subject to paying additional retaliatory taxes levied pursuant to s. 624.5091, F.S.

CS/SB 1992 includes boilerplate provisions explaining how a participating investor claims tax credits on tax returns, pays any tax owed because of forfeited or fraudulently obtained tax credits, and files required paperwork with DOR.

Meanwhile, DOR is given specific rulemaking authority related to examination and audit procedures for tax credit claims and to develop necessary forms.

Section 2 amends s. 213.053, F.S., to give OTTED access to confidential taxpayer information, held by DOR, related to the tax credit claims by investors or transferees.

Section 3 specifies an effective date of July 1, 2010.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

CS/SB 1992 provides authority for a transferable tax credit against insurance premium tax liability equal to 100 percent of investments in the new Florida Ports Investment Corporation, of up to \$100 million over the life of the program. No more than \$10 million in tax credits can be claimed annually, beginning in January 2013.

To the extent these tax credits are claimed, there will be a corresponding negative impact on the state's General Revenue Fund.

The Revenue Estimating Conference has not met to evaluate the provisions of CS/SB 1992.

There is no impact on local revenue sources, because the premium tax is a state tax.

**B. Private Sector Impact:**

CS/SB 1992 provides authority for a transferable credit against insurance premium tax liability equal to 100 percent of an investor's investments in certified seaport projects, up to \$100 million over the life of the program.

Participating investors (or the purchasers of the transferred tax credits) that are insurance companies may claim up to 10 percent of their investment in tax credits per year, beginning in January 2013.

In addition to the benefit of the 100-percent tax credit, to the extent that the investments are successful, the investors will receive a corresponding positive return on their investments.

To the extent that this incentive induces investments in Florida's 14 public seaports, there may be an indeterminate, positive impact on port-related businesses and to the economy, generally, of the region in which they are located.

**C. Government Sector Impact:**

To the extent that this incentive induces investments in Florida's 14 public seaports, there will be an indeterminate, but potentially positive impact on these ports.

**VI. Technical Deficiencies:**

CS/SB 1992 is very different from the bill as filed, and the process of redrafting has created some inconsistencies in terminology, gaps in the process of implementing some of the provisions, and structural questions.

For example:

- The CS does not address whether the corporation is a private, public, or quasi-governmental entity, although it is subject to Florida's open records and public meetings laws.
- The corporation variously "certifies" or "qualifies" seaport projects for the investments, so for consistency, one term should be chosen. The timing of when seaports must apply for the investment funds is not addressed, nor whether the corporation will award all of the investments in the first year, or in tranches to support future seaport projects or those with emergency needs.
- DOR may have suggestions on some of timing issues related to claiming of the tax credits, the length of the carryforward, and the process of transferring them to non-investor insurance companies.

## VII. Related Issues:

CS/SB 1992 specifies that the corporation will be subject to chs. 119 and 286, F.S., Florida's "Sunshine Law" provisions, which specify the types of official documents that are public records and the types of meetings that are open to the public. The corporation is likely to have in its possession several types of documents with personal identifying information about the private investors and the amount of their investments, as well as potentially confidential proprietary business information about private businesses involved in, or benefiting from, seaport infrastructure projects.

Section 288.075, F.S., exempts from public scrutiny certain documents considered to be confidential proprietary business information (including "business plans, intentions, and interests") held by specified economic development entities. The corporation created in CS/SB 1992 does not appear to be an "economic development entity" as defined in that section.

If additional review of the CS indicates that it raises some public records/public meetings issues, then the sponsor may want to consider filing legislation to create a unique exemption for the corporation or amending s. 288.075, F.S., to include the corporation as an economic development entity.

## VIII. Additional Information:

### A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Commerce Committee on April 7, 2010:**

- Reduces the total amount of tax credits which may be allocated by OTTED from \$500 million to \$100 million, and reduces the amount of tax credits that investors may claim from \$25 million to \$10 million annually.
- Credits can be claimed against tax liability beginning in January 2013, instead of January 2012.
- Removes all of the references to "Certified Capital Companies," regulated by the Department of Financial Services, as the private investing entities.
- Creates instead a 9-member Florida Ports Investment Corporation to place the investments in eligible seaports projects, and provides for its governance, authority, limitations, and subjects its actions (and its investment advisor) to Florida's public records and open meeting laws.
- The corporation will begin investing in port projects by July 1, 2012.
- Removes requirement that investors must be insurance companies subject to Florida's insurance premium tax; instead, an investor may be any entity subject to the U.S. Internal Revenue Code.
- Requires that funding for any projects must be made on a matching basis, of at least 25 percent.
- Revises the transfer of tax credits provisions to authorize only a one-time transfer, with the credits taken in the year of transfer by the third party.

- Adds accountability provisions to enable DOR to audit and to “clawback” taxes if the tax credits were fraudulently obtained.
- Clarifies OTTED’s duties, including requiring an annual report to the Governor and Legislature. OTTED will not select the eligible seaport projects.
- Allows DOR to share tax credit information with OTTED.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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