

By the Committee on Commerce; and Senator Ring

577-04347-10

20101992c1

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

28
29 Be It Enacted by the Legislature of the State of Florida:

577-04347-10

20101992c1

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

33 311.23 Florida Ports Investment Act.-

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

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

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

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

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

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

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

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

58 (f) "Qualified port project" means the ports listed in s.

577-04347-10

20101992c1

59 403.021(9)(b) or any associated business or project that uses
60 those ports for the movement of goods and people, as determined
61 by the corporation.

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

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

73 (b) The corporation:

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

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

79 3. Maintain all official records related to its activities.

80 4. Shall retain, pursuant to the provisions of s. 287.055,
81 at least one investment advisory company domiciled in the state
82 of Florida, with at least 5 years of experience in working with
83 investors seeking tax credits or other debt-driven instruments,
84 to assist the corporation in carrying out the provisions of this
85 section.

86 5. Shall timely provide the office with information about
87 its participating investors and the amount of their investments

577-04347-10

20101992c1

88 to assist the office in awarding the available tax credits, and
89 a list of certified port projects.

90 6. Shall assist the office in developing the required
91 annual report in subsection (10).

92 (c) The corporation shall be governed by a board of
93 directors comprised of:

94 1. The director of the office, who shall serve as the
95 chair.

96 2. Two members appointed by the Governor, two members
97 appointed by the President of the Senate, and two members
98 appointed by the Speaker of the House of Representatives. These
99 appointed members must have significant experience in
100 international business, transportation, law, or logistics.

101 Appointed members are subject to any restrictions on conflicts
102 of interest specified in the organizational documents of the
103 corporation and may not have any interest in any investments
104 made by the corporation pursuant to subsection (5).

105 3. The chair of the Florida Seaport Transportation and
106 Economic Development Council.

107 4. The Secretary of Transportation.

108 5. Each appointed member shall be appointed for a term of 4
109 years. A vacancy on the board shall be filled by the appointing
110 official for the member whose vacancy is to be filled or whose
111 term has expired. An appointed member may be removed by the
112 appointing official for that member, for cause. Absence from
113 three consecutive meetings shall result in automatic removal.
114 Any appointed member is eligible for reappointment.

115 6. Members of the board shall serve without compensation,
116 but may be reimbursed for all reasonable, necessary, and actual

577-04347-10

20101992c1

117 expenses as determined and approved by the board pursuant to s.
118 112.061.

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

121 (a)1. The corporation shall seek to maintain the economic
122 competitiveness of Florida's ports and their related import and
123 export industries by funding projects that increase the ports'
124 capacity to handle freight; are consistent with approved seaport
125 master plans; and improve economic productivity for the state or
126 the region in which projects are located. Also eligible for
127 investment capital under this section are on-port projects that
128 are eligible for federal financial assistance consistent with
129 criteria developed for federal freight transportation grant
130 programs, including, but not limited to, the Transportation
131 Investment Generating Economic Recovery (TIGER), Projects of
132 National and Regional Significance (PNRS), National
133 Infrastructure Investment (NII), and the National Corridor
134 Infrastructure Improvement (NCII) program.

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

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

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

145 1. Must be held in a financial institution as defined by s.

577-04347-10

20101992c1

146 655.005(1)(h) or held by a broker-dealer registered under s.
147 517.12.

148 2. Must be invested only in:

149 a. United States Treasury obligations;

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

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

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

160 (c) All investment decisions shall be made by the
161 corporation, which must certify that each project is of a
162 beneficial nature to a port listed in s. 403.021(9)(b); is ready
163 to proceed within 60 days for design, construction, and
164 permitting; and will create a lasting economic impact as
165 determined by the board. Applications for funding by qualified
166 port projects must be made to the corporation. The board, in
167 consultation with the office, may establish procedural rules for
168 the application form, application procedures, and criteria for
169 making investment decisions based upon the requirements
170 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

577-04347-10

20101992c1

175 credits purchased by the participating investor and such
176 investments may not be subject to recapture, disallowance,
177 forfeiture, or reduction.

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

182 (c) Any premium tax credits not used by participating
183 investors in any single year may be carried forward and applied
184 against the premium tax liabilities of such investors for
185 subsequent calendar years. The carryforward credit may be
186 applied against subsequent premium tax filings through calendar
187 year 2029.

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

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

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

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

203 (b) The office shall be responsible for allocating premium

577-04347-10

20101992c1

204 tax credits as provided for in this section to participating
205 investors. A participating investor must submit an application
206 to the office for the tax credit authorized in this section.

207 (8) TRANSFER OF TAX CREDITS.—

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

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

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

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

223 (a) Audit authority.—The Department of Revenue may conduct
224 examinations and audits as provided in s. 213.34 to verify that
225 tax credits under this section are received, transferred, and
226 applied according to the requirements of this section. If the
227 Department of Revenue determines that tax credits are not
228 received, transferred, or applied as required by this section,
229 it may, in addition to the remedies provided in this subsection,
230 pursue recovery of such funds pursuant to the laws and rules
231 governing the assessment of taxes.

232 (b) Revocation of tax credits.—The office may revoke or

577-04347-10

20101992c1

233 modify any written decision qualifying, certifying, or otherwise
234 granting eligibility for tax credits under this section if it is
235 discovered that the tax credit applicant submitted any false
236 statement, representation, or certification in any application,
237 record, report, plan, or other document filed in an attempt to
238 receive tax credits under this section. The office shall
239 immediately notify the Department of Revenue of any revoked or
240 modified orders affecting previously granted tax credits.
241 Additionally, the applicant must notify the Department of
242 Revenue of any change in its tax credit claimed.

243 (c) Forfeiture of tax credits.—A determination by the
244 Department of Revenue, as a result of an audit or examination by
245 the Department of Revenue or from information received from the
246 office, that an applicant received tax credits pursuant to this
247 section to which the applicant was not entitled is grounds for
248 forfeiture of previously claimed and received tax credits. The
249 applicant is responsible for returning forfeited tax credits to
250 the Department of Revenue, and such funds shall be paid into the
251 General Revenue Fund of the state. Tax credits purchased in good
252 faith are not subject to forfeiture unless the transferee
253 submitted fraudulent information in the purchase or otherwise
254 failed to meet the requirements of this section.

255 (d) Fraudulent claims.—Any applicant that submits
256 fraudulent information under this section is liable for
257 reimbursement of the reasonable costs and fees associated with
258 the review, processing, investigation, and prosecution of the
259 fraudulent claim. An applicant that obtains a credit payment
260 under this section through a claim that is fraudulent is liable
261 for reimbursement of the credit amount plus a penalty in an

577-04347-10

20101992c1

262 amount double the credit amount. The penalty is in addition to
263 any criminal penalty to which the applicant is liable for the
264 same acts. The applicant is also liable for costs and fees
265 incurred by the state in investigating and prosecuting the
266 fraudulent claim.

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

271 (a) The total dollar amount received by the corporation
272 from all participating investors and any other investor, the
273 identity of the participating investors, and the total amount of
274 premium tax credit used by each participating investor for the
275 previous calendar year.

276 (b) The total dollar amount invested by the corporation in
277 qualified port projects, the identity and location of those
278 projects, the amount invested in each qualified port project,
279 and the total number of permanent, full-time jobs created or
280 retained by each qualified port project.

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

283 1. Investments have contributed to employment growth.

284 2. The wage level of businesses in which the corporation
285 has invested exceeds the average wage for the county in which
286 the jobs are located.

287 3. The investments of the corporation in qualified port
288 projects have contributed to expanding or diversifying the
289 economic base of the state.

290 (11) FEES.—The corporation may charge reasonable fees for

577-04347-10

20101992c1

291 administering and processing applications by qualified port
292 projects for funding pursuant to paragraph (5) (c), and the
293 office may charge reasonable fees for administering and
294 processing applications by participating investors for tax
295 credits pursuant to subsection (7). Any fee charged by the
296 corporation or office under this subsection for an application
297 may not exceed the actual cost incurred by the corporation or
298 office in administering and processing any application for
299 funding or a tax credit.

300 (12) RULEMAKING AUTHORITY.-

301 (a) The Department of Revenue may adopt rules pursuant to
302 ss. 120.536(1) and 120.54 to administer this section, including,
303 but not limited to, rules governing the examination and audit
304 procedures required to administer this section and the manner
305 and form of documentation required to claim tax credits awarded
306 or transferred under this section.

307 (b) The office may adopt rules pursuant to ss. 120.536(1)
308 and 120.54 and develop procedures to administer this section,
309 including, but not limited to, rules specifying requirements for
310 the application and approval process, records required for
311 substantiation for tax credits, and the manner and form of
312 documentation required to claim tax credits awarded or
313 transferred under this section.

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

316 213.053 Confidentiality and information sharing.-

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

319 (z) Information relating to tax credits taken under s.

577-04347-10

20101992c1

320 624.509 to the Office of Tourism, Trade, and Economic
321 Development.

322

323 Disclosure of information under this subsection shall be
324 pursuant to a written agreement between the executive director
325 and the agency. Such agencies, governmental or nongovernmental,
326 shall be bound by the same requirements of confidentiality as
327 the Department of Revenue. Breach of confidentiality is a
328 misdemeanor of the first degree, punishable as provided by s.
329 775.082 or s. 775.083.

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