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 and Tourism Committee

BILL: CS/SB 1168

INTRODUCER: Transportation Committee and Senator Ring

SUBJECT: Freight Mobility Development

DATE: February 15, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Buford	TR	**Fav/CS**
2.	Philo	Hrdlicka	CM	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [x] Statement of Substantial Changes

B. AMENDMENTS........................ [ ] Technical amendments were recommended

[ ] Amendments were recommended

[ ] Significant amendments were recommended

I. Summary:

CS/SB 1168 creates a new unnumbered section of the Florida Statutes entitled the "freight and logistics facility credit" which:

- Defines terms;
- Creates a tax credit, which begins on January 1, 2013, and extends through January 1, 2017. The credit can be used against the intangible personal property tax (ch. 199, F.S.), the excise document tax (ch. 201, F.S.), the sales and use tax (ch. 212, F.S.), the corporate income tax (ch. 220, F.S.), or the insurance premium tax (s. 624.509, F.S.);
- States that the tax credit is equal to:
  - **either** $3000 per "qualified full-time employee" (QFE), as defined in (1)(e), who is hired as a result of increased "qualified trade activities," as defined in (1)(f);
  - **or**, 5 percent of any "capital investment," as defined in (1)(a), made by the taxpayer to facilitate increased "qualified trade activities," as defined in (1)(f);
- States that the taxpayer must elect which tax credit to use and that both credits cannot be used for the same activities in the same calendar year;
- Qualifies that any tax credit claimed for an employee who works for less than a full 12 months must be reduced proportionally to the number of months worked;
- Caps the maximum tax credit per taxpayer at $500,000 per taxable year;

- States that the Department of Economic Opportunity (DEO) shall issue written certification of tax credits, upon approval, to taxpayers who have applied for the tax credit:
  - up to a yearly maximum of $10 million;
  - proportionately among all qualified taxpayers;
  - until January 30, 2017;
- Allows tax credits to be carried forward for up to 10-taxable years;
- Restricts the credit from being earned for a QFE under certain enumerated circumstances;
- Allows for the credit to be allocated directly to the partners, shareholders, or members in case the credit is claimed by a partnership, S corporation, or limited liability company;
- Allows for two or more affiliated companies to combine their activities in order to qualify for the credit allowed;
- Calls for the recapture of a credit amount (equal to the decrease in the amount of credit that would have been earned for the lower number of employees) should the company's number of QFEs fall below the average within the taxable year the credit was earned;
- Calls for the recapture of <u>all</u> credits should the <u>average</u> number of QFEs fall below the number employed by the taxpayer <u>before</u> claiming any tax credits within 5-taxable years after the year the credits were earned; and
- Grants DEO rulemaking authority to administer this section, including but not limited to several enumerated provisions.

This bill requests that the Division of Statutory Revision redesignate the title of ch. 311, F.S., as "Seaport Programs and Facilities."

This bill amends s. 311.07, F.S., to:

- Conform the statutes to the current funding practice for the Florida Seaport Transportation and Economic Development (FSTED) Program of $15 million (instead of $8 million), at which it has been funded since 2004;
- Require that the FSTED council develop guidelines for project funding and work with the Department of Transportation (DOT) and DEO to review projects and allocate funds as required to include them in DOT's tentative work program;
- Allow funding for updates to seaport master plans or strategic development plans, including the purchase of data;
- Remove caps on funding for each port of $7 million per year and $30 million over 5 years; and
- Make permissible, rather than require, that DOT conduct a mandatory audit of any project which receives funds under this section and any project which receives funds under s. 320.20, F.S.

This bill amends s. 311.09, F.S., to:

- Revise the criteria for evaluating port projects;
- Eliminate the requirement that the Department of Community Affairs (which no longer exists) review the list of approved projects;
- Reduce DOT oversight and evaluation of FSTED funded projects;
- Add additional oversight to DEO to determine that projects are consistent with state economic development goals and state, regional, and local plans. If DEO determines they are not, it must notify the FSTED council;

- Restrict the FSTED council from including projects found to be inconsistent by both DOT and DEO; and
- Require DOT to request $15 million for the FSTED program in its annual budget.

This bill creates s. 311.10, F.S., entitled the "Strategic Port Investment Initiative," which:
- Allocates $35 million from the State Transportation Trust Fund (STTF) to fund the initiative;
- Requires DOT and the ports on the FSTED council to annually develop, update and maintain a list of strategic investment projects;
- Creates several criteria for inclusion on the list of projects;
- Requires DOT to hold a public workshop with DEO to take comments and review the proposed projects before finalizing the list; and
- Requires DOT to include the projects on the list in its tentative work program, to the extent feasible.

This bill amends s. 311.14, F.S., to:
- Require that DOT, along with the ports on the FSTED council and other partners, develop a Statewide Seaport and Waterways System Plan; and
- Repeal the requirement for DOT and the FSTED council to develop freight-mobility and trade-corridor plans.

This bill amends ss. 311.22 and 320.20, F.S., to correct cross-references changed by this bill.

This bill substantially amends, creates, or repeals ss. 311.07, 311.09, 311.10, 311.14, 311.22, and 320.20, F.S.

II. Present Situation:

Freight and Logistics Facility Credit:
According to the Florida Ports Council, more than 500,000 Floridians are employed by the trade, logistics, and distribution industries with an average wage nearly 30 percent higher than the average for all industries in the state. Including spinoff jobs in related industries, trade and logistics support about 1.7 million jobs in Florida, nearly 22 percent of employment in the state. To date, six other southeastern states (Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia) have enacted tax incentives to businesses using the state's ports or developing property adjacent to seaports. These incentives serve to entice industries to locate or expand within the state. Florida currently does not have an incentive program targeted to the freight and logistics sectors.[1]

Ch. 311 Revisions:
Section 311.07(2), F.S., currently requires that a minimum of $8 million per year be made available from the State Transportation Trust Fund (STTF) to partially fund the FSTED Program. These funds are used to fund eligible and approved port projects as provided in s. 311.07(3), F.S. The allocation and programming of funds is determined by DOT. Additionally, there generally

[1] DEO, *Bill Analysis on House Bill #679 by Representative Ray* (Jan. 6, 2012), at 1 (on file with the Senate Committee on Commerce and Tourism).

has been an annual appropriation of $15 million from license tag fees to the FSTED Program required under s. 320.20, F.S.

The FSTED program has been consistently funded at $15 million annually since 2004. Other seaport-related DOT funding is currently limited to bond repayment, the Strategic Intermodal System program, and district discretionary funds.

Eligible projects may be funded on a 50/50 basis by FSTED and the deepwater ports. However, projects involving the rehabilitation of wharves, docks, berths, bulkheads, or similar structures require only a 25 percent match.

Program funds may also be used by the FSTED council to develop trade data information products which will assist Florida's seaports and international trade.

III. Effect of Proposed Changes:

Section 1 of this bill creates a new section of law granting a tax credit which begins on January 1, 2013, and extends through January 1, 2017. This credit can be used against the intangible personal property tax (ch. 199, F.S.), the excise document tax (ch. 201, F.S.), the sales and use tax (ch. 212, F.S.), the corporate income tax (ch. 220, F.S.), or the insurance premium tax (s. 624.509, F.S.).

The tax credit is equal to either $3000 per "qualified full-time employee" (QFE), as defined in (1)(e), who is hired as a result of increased "qualified trade activities," as defined in (1)(f); or 5 percent of any "capital investment," as defined in (1)(a), made by the taxpayer to facilitate increased "qualified trade activities," as defined in (1)(f). The taxpayer must elect which credit to take and may only take one type of credit per year for the same activity. Also, each taxpayer is eligible only up to a maximum of $500,000 per taxable year in credits and any unused credits may be carried forward for up to 10-taxable years.

DEO is required to administer the tax credit and give written certification of the credit amount to the taxpayer upon approval. The taxpayer must attach the written certification to their tax return in order to claim the credit. DEO may not issue more than $10 million in credits per year and must issue such credits proportionately among all qualified taxpayers who requested credits. Also, DEO may no longer issue credits after January 30, 2017.

The credit for an employee who works for less than 12 months must be reduced proportionally to the time the employee worked divided by 12. Also, credits may not be earned for employees:

- for whom a credit was already received under this section by a related party or a trade or business under common control (as defined in 267(b) and 52(b), respectively, of the Internal Revenue Code);
- who were previously employed in the same job function in this state by a related party or trade or business under common control;
- whose job function was previously performed at a different location in this state by an employee of the taxpayer, by a related party, or by a trade or business under common control; or

- whose job function previously qualified for a credit under this section at a different major business facility that constitutes an employing unit (as defined in s. 443.036, F.S.) on behalf of the taxpayer, by a related party or by a trade or business under common control.

Any tax credit which is attributable to a partnership, S corporation, or limited liability company should be allocated directly to the partners, shareholders, or members, respectively. Also, two or more affiliated companies may elect to aggregate their credit generating activities in order to qualify for the credit allowed.

Recapture of the credit is required should the QFEs of the taxpayer receiving the credit ever fall below the average number of QFEs during the taxable year. This recapture should occur by an increase in the tax, over the 5 taxable years after the year the credit was earned, equal to the decrease in the amount of credit that would have been earned for the lower number of employees. Also, recapture of all earned credits is necessary if the average number of QFEs falls below the total number of QFEs employed before the taxpayer claimed any credits within 5-taxable years after the credits were first earned. Credits may not be recaptured twice.

DEO is granted rulemaking authority to implement this section.

Section 2 of this bill requests the Division of Statutory Revision to redesignate the title of ch. 311, F.S., as "Seaport Programs and Facilities."

Section 3 of this bill amends s. 311.07, F.S., to:
- Increase the funding for the Florida Seaport Transportation and Economic Development (FSTED) Program from $8 million to $15 million;
- Require that the FSTED council develop guidelines for project funding and work with the Florida Department of Transportation (DOT) and DEO to review projects and allocate funds as required to include them in DOT's tentative work program;
- Allow funding for updates to seaport master plans or strategic development plans, including the purchase of data;
- Remove caps on funding for each port of $7 million per year and $30 million over 5 years; and
- Make permissible, rather than require, that DOT conduct a mandatory audit of any project which receives funds under this section and any project which receives funds under s. 320.20, F.S.

Section 4 of this bill amends s. 311.09, F.S., to:
- Revise the criteria for evaluating port projects;
- Eliminate the requirement that the Department of Community Affairs review the list of approved projects;
- Reduce DOT oversight and evaluation of FSTED funded projects;
- Add additional oversight to DEO to determine that projects are consistent with state economic development goals and state, regional, and local plans. If DEO determines they are not, it must notify the FSTED council;
- Restrict the FSTED council from including projects found to be inconsistent by both DOT and DEO; and

- Require DOT to request $15 million for the FSTED program in its annual budget.

Section 5 of this bill creates s. 311.10, F.S., entitled the "Strategic Port Investment Initiative," which:

- Allocates $35 million annually from the State Transportation Trust Fund (STTF) to fund the initiative;
- Requires DOT and the ports on the FSTED council to annually develop, update and maintain a list of strategic investment projects;
- Creates several criteria for inclusion on the list of projects;
- Requires DOT to hold a public workshop with DEO to take comments and review the proposed projects before finalizing the list; and
- Requires DOT to include the projects on the list in its tentative work program, to the extent feasible.

Section 6 of this bill amends s. 311.14, F.S., to:

- Require that DOT, along with the ports on the FSTED council and other partners, develop a Statewide Seaport and Waterways System Plan; and
- Repeal the requirement for DOT and the FSTED council to develop freight-mobility and trade-corridor plans.

Sections 7 and 8 of this bill correct cross-references.

Section 9 of this bill establishes an effective date of July 1, 2012.

Department of Revenue Concerns:
DOR submits that it is unclear how the tax credit generated by this bill would be applied toward some of the enumerated taxes in (2)(a) of section 1. DOR also lists several other difficulties in implementation of the tax credit, such as adding the tax credits to various sections of the Florida Statutes which typically hold information about how to use and claim such credits. Also, DOR requests rulemaking authority in order to administer the credit against taxes which they administer.[2]

Other Concerns:
The language of section 1 of this bill gives rise to several possible outcomes which may or may not be intended:

- First, it is unclear whether or not, by casting a wide-net for potential abuses of the new QFE based tax credit, the provisions in paragraph (d) will disincentivize the rehiring of already trained employees, such as those who may have been laid off due to a slow in business.
  - This concern may be alleviated by clarifying the language in paragraph (d) and possibly adding a time certain for which an employee must off the job to become eligible for a credit as a rehire.
- Second, paragraph (f) raises some concerns about possible tax plays due to the lack of specificity with which companies may aggregate their tax credits.

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[2] DOR, *Bill Analysis of CS/SB 1168: Freight Mobility Development*, at 3 (Feb. 3, 2012) (on file with the Senate Committee on Commerce and Tourism).

  - This concern may be alleviated by adding more specific language to paragraph (f), such as language about proportionality of tax credit division, or through the rulemaking authority granted to DEO.
- Third, the language about tax-credit recapture is somewhat unclear as well. For example, some of the language provides that "[i]f the average number of [QFE]s employed at a freight and logistics facility falls below the number employed by the taxpayer before claiming any credits under this section…all credits…must be recaptured." A reading of this language raises the question of exactly how the number of employees "employed by the taxpayer before claiming any credits" is determined. Is it the number of employees employed immediately before claiming the credit, or, possibly, the average of the number of employees employed by the taxpayer over the time in business before claiming the credit?
  - This concern may be alleviated through more specific language in the bill, or through the rulemaking authority granted to DEO.

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:

The Revenue Estimating Conference has not determined the impact of this bill.

This bill creates a new tax credit which may have an annual cost to general revenue of up to $10 million per year for 4 years, between January 1, 2013, and January 1, 2017, and which may impact revenue for up to 10 additional years due to the carry over provisions.

B. Private Sector Impact:

Companies claiming credits could see a benefit of up to $500,000 per year in tax credits between January 1, 2013, and January 1, 2017. DEO submits that the location of new businesses and the growth of current ones will generate new jobs and ancillary economic benefit to the area.[3]

[3] DEO Bill Analysis, at 5.

C. Government Sector Impact:

The freight and logistics facility tax credit will generate a one-time cost of $50,200 in order to implement the provisions in this bill (i.e., to add credit lines to the online Sales and Use Tax Return and accommodate the necessary modifications to the SUNTAX system).[4] DEO suggests that the incentives may serve to attract new businesses and jobs to the state, thus creating new growth and economic development. DEO further submits that it could probably initiate the program with current staff but, if it is successful, an additional full-time employee may be necessary.[5] DOT offers that additional impact on revenue is indeterminate because it is not known what amount of credits will be applied for and which tax the recipient will choose to apply them to. The total amount of credits is capped at $15 million per year.[6]

The bill increases from $8 million to $15 million the minimum yearly amount that shall be made available from the State Transportation Trust Fund to fund the FSTED Program—a face-value cost of $7 million. But DOT advises that it has funded the program at $15 million for the past several years, and is continuing that level of funding in the current tentative work program.[7] Based on existing practice, this does not present any additional actual cost.

The bill creates the Strategic Port Investment Initiative within DOT and establishes a minimum annual funding threshold of $35 million. Total funding for port projects currently proposed in the 5-year work program meet this requirement, with the exception of projects in FY 2015-16. DOT anticipates identifying additional projects for that fiscal year during its annual development of the tentative work program. Should the bill become law, DOT will reevaluate and reprioritize projects to meet the objectives of the initiative. The impact of the work program is indeterminate, but DOT will be better able to assess impacts at the time of development.[8]

The bill also establishes selection criteria for funding in the work program. It may be the case that some of the existing port projects meet the criteria and others may not. However, DOT will review the projects and provide an opportunity for existing project stakeholders to submit additional information which may be needed to support the review process.[9]

DOT anticipates preparing the Statewide Seaport and Waterways System within existing resources.[10]

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[4] DOR, *Fiscal Impact Analysis for CS/SB 1168, Freight Mobility Development* (Jan. 30, 2012), at 1-2 (on file with the Senate Committee on Commerce and Tourism).
[5] DEO Bill Analysis, at 4.
[6] DOT, *Bill Analysis on SB 1168—Freight Mobility Development* (Jan. 17, 2012), at 2 (on file with the Senate Committee on Commerce and Tourism).
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.* at 2-3.

VI. Technical Deficiencies:

Line 380 of the bill states that there are 18 members of the Florida Seaport Transportation and Economic Development Council, but then proceeds to list only 17. The reference to 18 thus needs to be changed to 17.

VII. Related Issues:

None.

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 Transportation on January 19, 2012:
The CS corrects two technical deficiencies by:

- Amending line 350 so the sentence reads "strategic plan development" instead of "strategic development plan"; and
- Correcting the statutory citation in line 512 to "s. 311.07" instead of "s. 377.07."

B. Amendments:

None.

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