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 Transportation Committee

BILL: SB 1168

INTRODUCER: Senator Ring

SUBJECT: Freight Mobility Development

DATE: January 11, 2012 REVISED:

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

I. Summary:

This bill 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% 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 all credits should the average number of QFEs fall below the number employed by the taxpayer before claiming any tax credits within 5 taxable years after the year the credits were earned.
- Grants DEO rulemaking authority to administer this section, including but not limited to several enumerated provisions.

This bill retitles 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 Florida Department of Transportation (FDOT) and DEO to review projects and allocate funds as required to include them in FDOT'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.
- Make permissible, rather than require, that FDOT 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 FDOT 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 FDOT and DEO.
- Require FDOT 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 FDOT 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 FDOT to hold a public workshop with DEO to take comments and review the proposed projects before finalizing the list.
- Require FDOT 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 FDOT, along with the ports on the FSTED council and other partners, develop a Statewide Seaport and Waterways System Plan.
- Repeal the requirement for FDOT and the FSTED council to develop freight-mobility and trade-corridor plans.

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

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

II. Present Situation:

Freight and Logistics Facility Credit:

Currently, there are no tax credits earned by hiring new employees or completing capital investment projects such as those that would be granted by this bill.

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 in addition to the annual appropriation of $15M in license tag fees to the FSTED Program required under s 320.20, F.S.)* 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 FDOT.

The program has been consistently funded at $15 million annually since 2004. Other seaport-related FDOT 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% 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. (*Previously,*

such data would have been developed with the Florida Trade Data Center. However, the authorizing language for the center was repealed in 2010.)

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% 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 five 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 retitles 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 (FDOT) and DEO to review projects and allocate funds as required to include them in FDOT'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.
- Make permissible, rather than require, that FDOT 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 FDOT 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 FDOT and DEO.
- Require FDOT 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 FDOT 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 FDOT to hold a public workshop with DEO to take comments and review the proposed projects before finalizing the list.
- Require FDOT 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 FDOT, along with the ports on the FSTED council and other partners, develop a Statewide Seaport and Waterways System Plan.
- Repeal the requirement for FDOT 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.

Other Potential Implications:

Department of Revenue Concerns:

According to the Department of Revenue (DOR), it is unclear how the tax credit generated by this bill would be applied towards some of the enumerated taxes (2)(a) of section 1. Second, DOR 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. [1]

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 in 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.
  - 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.

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[1] Bill Analysis of SB 1168: "Freight Mobility Development", the Department of Revenue, on file with the Senate Transportation Committee.

- Third, the language about tax-credit recapture is somewhat unclear as well. For example, some of the language states:

> "[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:

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.

The revenue estimating conference has not met on this bill.

B. Private Sector Impact:

Companies claiming credits under section 1 of this bill could see a benefit of up to $500,000 per year in tax credits between January 1, 2013 and January 1, 2017.

C. Government Sector Impact:

Section 1 will generate a one-time cost of $50,200 in order to implement the provisions in this bill.[2] This section may have an indeterminate, but positive impact on Florida's ports. Also, this section may generate additional revenue by incentivizing the hiring of new employees and increased capital investment on the part of private taxpayers.

Section 3 has a face-value cost of $7 million but no actual cost. Though this section increases statutory funding for FSTED from $8 million to $15 million, FSTED has been funded at $15 million since 2004 and, as such, this section is only codifying existing practice, however it limits the legislature from funding FSTED at the lower level, should it see cause to.

Section 5 will generate an annual reoccurring cost of $35 million allocated from the State Transportation Trust Fund.

VI. Technical Deficiencies:

- Lines 349 and 350 should read "strategic plan development" not "strategic development plan"
- The citation on line 512 should read "s. 311.07" not "s. 377.07"

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.)

None.

B. Amendments:

None.

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

[2] Id.