HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1169 Florida Ports Investments
SPONSOR(S): Economic Development Policy committee, Ray and others
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	11 Y, 0 N, As CS	Kruse	Kruse
2)	Finance & Tax Council		Wilson	Langston
3)				
4)				
5)				

SUMMARY ANALYSIS

Florida has 14 public seaports that are considered significant economic drivers for the regions in which they are located, and for the state in general. The individual seaports receive a combination of public funding and private revenues to finance their operations and capital improvements.

As work to widen and modernize the Panama Canal begins, ports on the entire U.S. coastline are considering their options on how to best position themselves to participate in what is expected to be an economic boon in maritime transit of oil, foodstuffs, consumer goods, and other cargo. States such as California, Maryland, South Carolina, and Texas are exploring options to finance major port improvements to attract the increased international shipping activities and to handle the larger tankers and cargo ships that will be traversing the Panama Canal.

The bill creates a new section of law entitled the Florida Ports Investment Act. The bill creates an incentive for insurance companies to make investments in the entity created by the bill in exchange of future insurance premium tax credits. The entity will make subsequent investments in port projects upon application by ports. An insurance company which makes an investment will earn a vested credit against premium tax liability equal to one-hundred percent of the face amount of the credits purchased by the participating investor. The insurance company is entitled to use no more than 10 percent of the credit, including any carryforward credits, per year beginning with premium tax filings for calendar year 2012. The total amount of tax credits which may be allocated may not exceed $100 million. Participating insurance companies may use no more than $10 million annually.

Based on a 2010 Revenue Estimating Conference estimate of a prior version of the bill, staff estimates that the bill will have no cash impact on state or local government revenues in FY 2010-2011 and an annualized -$10 million impact on state General Revenue when the provisions of the bill are fully implemented.

This bill shall take effect July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Ports

Florida has 14 public seaports:[1] 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[2] 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 "return on investment" 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.[3] Of that, 19 million tons were exports, 50.3 million tons were imports, and 51.9 million tons were domestic shipments.[4] Florida's top five international trading partners, in terms of cargo value, are: Brazil, Japan, Germany, Venezuela, and China.[5] 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.[6]

[1] Listed in s. 403.021(9)(b), F.S. Interactive locator map is available at: http://www.flaports.org/index.htm. Last visited March 10, 2010.
[2] Available at http://www.flaports.org/docs/2010%20economic%20action%20plan%20for%20florida%20-%20january%202010(2).pdf. Last visited March 10, 2010.
[3] Available at http://www.dot.state.fl.us/planning/trends/tc-report/Seaport032509.pdf. Last visited March 10, 2010.
[4] Ibid, page 2.
[5] Florida Ports Council Statistics Report, available at http://www.flaports.org/statistics.htm. Page 6. Last visited March 11, 2010.
[6] Supra FN 3, page 5.

Florida seaports are eligible, per s. 311.07, F.S., for a minimum of $8 million a year[7] 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 a FSTED project. In order to be approved, a project must be consistent with the seaport's comprehensive master plan and the applicable local government's comprehensive plan, and comply with water-quality standards and requirements specified in ch. 403, F.S.

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 include berth and terminal construction at Port Canaveral; purchases of cranes for Port Everglades; construction of cold storage warehouses at Port Manatee; and dredging at Port of Miami.

The FSTED port projects also are part of FDOT's 5-Year Work Program, which is submitted to the Legislature for approval. If FDOT and FSTED decide to shift funding among approved seaport projects within a given fiscal year, it must seek approval from the Legislative Budget Commission, pursuant to s. 216.181, F.S., with a budget amendment.

Panama Canal Project[8]

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.

[7] Since FY 2005-2006, FDOT by agreement with FSTED has earmarked at least $15 million for FSTED projects.

[8] 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.

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. Also under re-evaluation nationwide are intermodal transportation plans, related to financing and location of rail and highway infrastructure improvements.

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% of total annuity premiums, and 1.75% of premiums on all other lines of business in the state. Premium taxes are paid on or before March 1 or each year, to the Department of Revenue (DOR), and distributed (after deductions and credits) to the General Revenue Fund. Insurance companies are permitted to reduce their premium tax liability with a variety of tax credits which are provided for in statute. For instance, Section 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 who revitalize areas located within a designated enterprise zone. Other statutory premium tax credit options are available to insurance companies, including: 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 Chapter 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, FS, 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 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% 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 --levels 5 or 6 --, insurers may invest only 1.5% of assets. According to the Department of Insurance, the 1995 nationwide admitted assets for insurance companies selling property, casualty, life and health insurance in Florida was $2.72 trillion. 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 Department of Insurance.

Effect of Proposed Changes

The bill creates a ports infrastructure funding mechanism by authorizing insurance companies to provide capital to the not-for-profit corporation created by the bill in exchange for the issuance of insurance premium tax credits. The purpose of the bill is to stimulate a substantial increase in the state's port infrastructure by providing an incentive to insurance companies to invest in port activities. The bill provides that it will be administered by two agencies, Department of Revenue, and the Office of Tourism, Trade, and Economic Development.

Corporation
The Florida Ports Investment Corporation is created by the bill. The corporation has the power to: receive, hold, invest, and administer funds and make expenditures; and make purchases, sales, exchanges, investments, and reinvestments. The corporation and its investment company are subject to open records laws.

Board of Directors
The corporation is governed by a board of directors consisting of the director of the Governor's Office of Tourism, Trade, and Economic Development (OTTED), two members appointed by the Governor, two members appointed by the President of the Senate, and two members appointed by the Speaker of the House of Representatives. The chair of the Florida Seaport Transportation and Economic Development Council serves as an ex officio director of the board. The Secretary of the Department of Transportation or designee is an ex officio, non-voting member of the board. Appointed members must have significant experience in international business, transportation, law, or logistics. Appointed members are also subject to any restrictions on conflicts of interest specified in the organizational documents of the corporation and may not have any interest in any investments made by the corporation. Each appointed member is appointed for a term of 4 years. A vacancy on the board is filled by the appointing official for the member whose vacancy is to be filled or whose term has expired. An appointed member may be removed by the appointing official for that member, for cause. Any member is eligible for reappointment. Members of the board serve without compensation, but may be reimbursed for all reasonable, necessary, and actual expenses as determined and approved by the board pursuant to s. 112.061.

Investments
The board must retain at least one investment advisory company to assist the corporation in carrying out the corporation's investments. Any such company must be retained pursuant to the provisions of s. 287.055, F.S., which is the Consultants' Competitive Negotiation Act, and must have a minimum of 5 years' experience raising investment capital from similar investors, with not less than $100 million actually raised from insurance companies seeking a tax credit similar to that provided by the bill. Funding for any projects must be made on a matching basis, as determined by the board, except that at least 25 percent of total project funds must come from port funds, local funds, private funds, or federal dollars.

The corporation is required to:

- Allocate at least sixty-five percent of the capital received to on-port activities or infrastructure as described in s. 315.02(6).[9]
- Allocate at least 25 percent of the capital received to off-port activities or infrastructure that improve the movement and intermodal transportation of cargo or passengers in commerce and trade and that will support the interests, purposes, and requirements of ports specified in s. 403.021(9).[10]

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[9] Section 315.02(6), F.S. The term "port facilities" shall mean and shall include harbor, shipping, and port facilities, and improvements of every kind, nature, and description, including, but without limitation, channels, turning basins, jetties, breakwaters, public landings, wharves, docks, markets, parks, recreational facilities, structures, buildings, piers, storage facilities, including facilities that may be used for warehouse, storage, and distribution of cargo transported or to be transported through an airport or port facility, security measures identified pursuant to s. 311.12, public buildings and plazas, anchorages, utilities, bridges, tunnels, roads, causeways, and any and all property and facilities necessary or useful in connection with the foregoing, and any one or more or any combination thereof and any extension, addition, betterment, or improvement of any thereof.

[10] Section 403.021(9), F.S. The Legislature finds and declares that it is essential to preserve and maintain authorized water depth in the existing navigation channels, port harbors, turning basins, and harbor berths of this state in order to provide for the continued safe navigation of deepwater shipping commerce. The department shall recognize that maintenance of authorized water depths consistent with port master plans developed pursuant to s. 163.3178(2)(k) is an ongoing, continuous, beneficial, and necessary activity that is in the public interest; and it shall develop a regulatory process that shall enable the ports of this state to conduct such activities in an environmentally sound, safe, expeditious, and cost-efficient manner. It is the further intent of the Legislature that the permitting and enforcement of dredging, dredged-material management, and other related activities for Florida's deepwater ports pursuant to this chapter and chapters 161, 253, and 373 shall be consolidated within the department's Division of Water Resource Management and, with the concurrence of the affected deepwater port or ports, may be administered by a district office of the department or delegated to an approved local environmental program.
(b) The provisions of paragraph (a) apply only to the port waters, dredged-material management sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation in the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.

- Allocate at least 5 percent of the remaining capital to education related to ports and port-related studies under the New Florida Initiative developed by the Florida Board of Governors of the State University System.

The capital received must be allocated by July 1, 2012, or held in a financial institution, held by a broker-dealer, or invested in the following:

- United States Treasury obligations;
- Certificates of deposit or other obligations, maturing within 3 years after acquisition of such certificates or obligations, issued by any financial institution or trust company incorporated under the laws of the United States;
- Marketable obligations, maturing within 5 years or less after the acquisition of such obligations, which are rated "A" or better by any nationally recognized credit rating agency; or
- Interests in money market funds, the portfolio of which is limited to cash and obligations.

All investment decisions are made by the corporation. The corporation must certify that each project is of a beneficial nature to a port listed in s. 403.021(9)(b), is ready to proceed within 60 days for design, construction, and permitting, and will create a lasting economic impact as determined by the board.

Applications for funding by qualified port projects must be made to the corporation. The board may establish procedural rules for the application form, application procedures, and criteria for making investment decisions.

Insurance Premium Tax Credit

The bill provides that an insurance company which makes an investment will earn a vested credit against premium tax liability equal to one-hundred percent of the face amount of the credits purchased by the participating investor. Such investments may not be subject to recapture, disallowance, forfeiture, or reduction. Participating investors are entitled to use no more than 10 percentage points of the vested premium tax credit, including any carryforward credits under this section, per year beginning with premium tax filings for calendar year 2012. Any premium tax credits not used by participating investors in any single year may be carried forward and applied against the premium tax liabilities of such investors for subsequent calendar years. The carryforward credit may be applied against subsequent premium tax filings through calendar year 2029.

Although the bill does not create a CAPCO program, it does utilize the same investment mechanism and almost identical language for insurance companies to receive premium tax credits that was used in the state's previous CAPCO program.[11] However, the CAPCO program made investments in venture capital businesses chosen by a CAPCO. The bill has all investment made in the corporation created by the bill and then the corporation makes investments upon application by the ports.

The credit to be applied against premium tax liability in any single year may not exceed the premium tax liability of the participating investor for that taxable year. A participating investor claiming a credit against premium tax liability earned through an investment in the corporation is not required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Because credits under this section are available to a participating investor, s. 624.5091 does not limit such credit in any manner. The amount of tax credits vested under this section may not be considered in ratemaking proceedings involving a participating investor.

The total amount of tax credits that may be allocated by the Office of Tourism, Trade, and Economic Development to insurers cannot exceed $100 million. The total amount of tax credits that may be used by insurers (participating investors) is $10 million annually. The tax credits may be transferred one-time to one transferee, which must occur in the same taxable year.

[11] See s. 288.99, F.S., Certified Capital Company Act.

Fees
The corporation may charge reasonable fees for administering and processing applications by qualified port projects for funding and the office may charge reasonable fees for administering and processing applications by participating investors for tax credits. Any fee charged by the corporation or office for an application may not exceed the actual cost incurred by the corporation or office in administering and processing any application for funding or a tax credit.

Annual Report
Annually, by February 1, the Office of Tourism, Trade, and Economic Development shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives certain information about the program. The information will include the total amount of premium tax credit used by each participating investor for the previous calendar year.

Rulemaking
The Department of Revenue (DOR) and the Office of Tourism, Trade, and Economic Development (OTTED) may adopt rules to administer the bill's provisions. DOR is authorized to share information with OTTED.

The bill provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1. Creates s. 311.23, F.S., the Florida Ports Investment Act.

Section 2. Amends subsection (8) of section 213.053, F.S., to authorize the Department of Revenue to share information with the Office of Tourism, Trade, and Economic Development.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Based on a 2010 Revenue Estimating Conference estimate of a prior version of the bill, staff estimates that the bill will have no cash impact on state government revenues in FY 2010-2011 and an annualized -$10 million impact on state General Revenue when the provisions of the bill are fully implemented.

2. Expenditures:

   The Department of Revenue has stated that the cost to the Department of implementing the bill will be approximately $49,200 to make changes to their Suntax system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If insurance companies make investments in the corporation created by the bill, and subsequent investments are made in the state's ports, additional economic growth could be induced from the passage of this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the Department of Revenue and the Governor's Office of Tourism, Trade, and Economic Development to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Economic Development Policy Committee adopted a strike-all amendment, which:

- Revised how the vested credit against premium insurance tax liability is determined.
- Revised how the Florida Ports Investment Corporation is created, and provides that it and its advisory company are subject to open records laws.
- Added to the corporation's board the Secretary of the Department of Transportation as an ex officio, non-voting member of the board.
- Requiring that funding for any projects must be made on a matching basis.
- Reduced the total amount of tax credits which may be allocated from $500 million to $100 million, and reduced the amount of tax credits that may be used from $50 million to $10 million annually.
- Revised the transfer of tax credits provisions to authorize only a one-time transfer.
- Allowing the Department of Revenue to share tax credit information with the Office of Tourism, Trade, and Economic Development.

The bill was reported favorably and the analysis has been updated to reflect the committee substitute.