

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1480

INTRODUCER: Commerce and Tourism Committee and Senator Benacquisto

SUBJECT: Microfinance

DATE: April 9, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	<b>Fav/CS</b>
2.	Pingree	Martin	ATD	<b>Favorable</b>
3.	Pingree	Kynoch	AP	<b>Pre-meeting</b>
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	_____	_____	_____	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1480 creates the Florida Microfinance Act to provide entrepreneurs and small businesses in Florida access to credit. The act consists of two programs: a loan program and a guarantee program.

Under the loan program, the Department of Economic Opportunity (DEO) will competitively award funds to no more than three eligible loan administrators who will in-turn provide a 1:1 match to make short-term, microloans of up to \$50,000 to entrepreneurs and small businesses. The borrower must participate in business training and technical assistance provided by the Florida Small Business Development Network.

Under the guarantee program, Enterprise Florida, Inc., (EFI) will utilize state funds to guarantee loans made by private lenders to entrepreneurs and small businesses in Florida. Loan guarantees may only be provided on loans between \$50,000 and \$250,000, and a guarantee cannot exceed 50 percent of the total loan amount.

Under both programs, eligibility is limited to borrowers who are entrepreneurs or small businesses with 25 or fewer employees and gross annual revenues of up to \$1.5 million.

The DEO and EFI must report annually on the programs.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) must prepare a report that analyzes, evaluates, and determines the economic benefits of the first 3 years of the programs. The OPPAGA is also required to evaluate the federal State Small Business Credit Initiative in Florida.

The bill appropriates \$10 million in nonrecurring funds from the General Revenue Fund to the DEO to implement the act, of which up to \$100,000 may be spent by the DEO and EFI to market and promote the act. The bill also authorizes 1 full-time equivalent position and provides recurring funds from state economic development trust funds to support the position for the DEO to implement the act.

## II. Present Situation:

### Small Business Access to Credit

Growing businesses of all sizes need access to resources, particularly capital and credit. While access to credit is important to all businesses, it is significantly important to entrepreneurs and small businesses due to the unique circumstances inherent in their operations.<sup>1</sup> Not only is access to credit important for business growth, studies indicate there is a correlation between a small business owner's ability to get financing and his or her ability to hire.<sup>2</sup>

Despite the recognized necessity, importance, and employment benefits of access to credit, entrepreneurs and small businesses frequently cite the lack of access to capital and credit as impediments to growth.<sup>3</sup> Although nation-wide surveys appear to indicate credit is becoming more available to small businesses,<sup>4</sup> Florida-specific studies indicate lack of access to credit remains problematic for Florida small businesses. For example, a recent report issued by the Office of Program Policy Analysis and Government Accountability (OPPAGA) indicates that economic development organizations and business associations report that access to capital was more of a barrier to small business growth than for larger businesses.<sup>5</sup> Similarly, surveys conducted by the Florida Chamber of Commerce indicate that access to capital is the top issue facing the state's small businesses.<sup>6</sup> As the survey indicated, the demand for credit by entrepreneurs and small businesses is outpacing its availability.<sup>7</sup>

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<sup>1</sup> For example, a small business owner may need a small, short-term loan of \$10,000 to cover a month's payroll while it waits for its first payment from a new, long-term client. Michelle A. Samaad, *Microloans Can Boost Loan Production Without Threatening Cap: Filene*, Credit Union Times (Sept. 24, 2013) available at <http://www.cutimes.com/2013/09/24/microloans-can-boost-loan-production-without-threa?ref=hp&t=lending> (last visited Mar. 8, 2014).

<sup>2</sup> National Small Business Association, *Small Business Access to Capital Survey*, 2 (July 2012) available at <http://www.nsba.biz/wp-content/uploads/2012/07/Access-to-Capital-Survey.pdf> (last visited Mar. 8, 2014).

<sup>3</sup> See Dave Grace, *Microloan Feasibility Study: Can Small Business Lending Become Big Business For Credit Unions*, Filene Research Institute, 15 (Sept. 6, 2013) (copy on file with the Committee on Commerce and Tourism).

<sup>4</sup> See National Small Business Association, *2013 Year-End Economic Report*, 10 (Feb. 28, 2014) available at <http://www.nsba.biz/wp-content/uploads/2014/02/2013-Year-End-Economic-Report.pdf> (last visited Mar. 15, 2014).

<sup>5</sup> OPPAGA, *Status of Florida's Efforts to Address Challenges to Business Establishment and Expansion*, Report No. 14-04, 3 (Jan. 2014) available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=14-04> (last visited Mar. 7, 2014).

<sup>6</sup> Florida Chamber of Commerce, *Florida Small Business Index: 2012-2013 Quarter 4 Survey Results*, 4, [http://www.flchamber.com/wp-content/uploads/SBC-Index-Report\\_October-2013.pdf](http://www.flchamber.com/wp-content/uploads/SBC-Index-Report_October-2013.pdf) (last visited Mar. 7, 2014).

<sup>7</sup> Grace, *Microloan Feasibility Study* at 7.

This gap between the demand for credit by entrepreneurs and small businesses and the limited availability of such credit is due to the unique characteristics and challenges of entrepreneurship and small business operations, and the smaller the business the more pronounced the problems of accessing credit.<sup>8</sup> Many entrepreneurs and small businesses lack the assets necessary for a traditional bank loan, making them a riskier lending option for banks.<sup>9</sup> Additionally, entrepreneurs and small businesses generally have minimal, or in some instances no, credit history.<sup>10</sup> Lenders may also be reluctant to lend to entrepreneurs and small businesses with innovative products because it might be difficult to collect enough reliable information to correctly estimate the risk for such products.<sup>11</sup>

Two common solutions used to address the lack of access to capital and credit to entrepreneurs and small businesses are microloans and loan guarantees.

### **Microloans**

Unlike well-established medium and large businesses, early-stage entrepreneur and small business credit needs are generally met through low principal, short-term loans. These loans, frequently called “microloans” have lower principal amounts and shorter repayment terms than traditional business loans.<sup>12</sup> Such small, short-term loans are generally not profitable for lenders because of the originating, processing, and servicing costs associated with such loans. The small size of microloans means that lender fees do not provide sufficient profit to justify making these loans. Many microloan applicants also need considerable training and technical assistance to effectively manage and build the business. These ancillary costs further reduce the attractiveness of such loans to traditional lenders. Lastly, as noted above, borrowers of such loans generally have a limited amount of collateral available, which makes them riskier to lenders.<sup>13</sup>

One common solution to make credit available to entrepreneurs and small businesses is to make microloans more profitable for lenders by providing lenders with access to low-cost capital. In this situation, a lender is provided with low-cost capital and the lender in-turn mixes the low-cost capital with other sources of capital to provide the microloans. Providing low-cost capital to a lender reduces the lender’s cost to make loans and reduces its overall risk exposure which increases the likelihood that it will provide loans to entrepreneurs and small businesses that the lender would otherwise deny.

A frequent recommendation of small business development and finance experts is that successful microloan programs be tied to business development training and technical assistance.<sup>14</sup> Tying

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<sup>8</sup> *Id.*

<sup>9</sup> *Small Business Access to Capital Survey* at 2.

<sup>10</sup> Congressional Research Service, *Small Business Access to Capital and Job Creation*, 1 (Feb. 18, 2014) available at <https://www.fas.org/sgp/crs/misc/R40985.pdf> (last visited Mar. 8, 2014).

<sup>11</sup> *Id.*

<sup>12</sup> U.S. Dep’t. of Treasury, *Micro Enterprise Lending: Community Equity Investments, Inc.*, 2 (on file with the Committee on Commerce and Tourism); Grace, *Microloan Feasibility Study* at 5.

<sup>13</sup> *Id.*

<sup>14</sup> Grace, *Microloan Feasibility Study* at 22-23; Office of Program Policy Analysis and Government Accountability, *Legislature Should Consider Lessons Learned If It Wishes to Create a Microenterprise Development Program*, Report No. 06-77, 3, (Dec. 2006) available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=06-77> (last visited Mar. 7, 2014).

business development training and technical assistance to microloans ensures that borrowers develop the skills necessary to successfully manage and grow their businesses. Additional suggested practices for microloan programs include requiring personal guarantees in addition to traditional collateral requirements,<sup>15</sup> developing special underwriting criteria,<sup>16</sup> and implementing proactive loan referral efforts.<sup>17</sup>

### **Loan Guarantees**

An additional solution designed to make credit available to entrepreneurs and small businesses is to provide a guarantee on all or a portion of a loan made by a third-party lender to an entrepreneur or small business. Under a guarantee, the guarantor (the entity providing the guarantee) agrees to protect the lender against all or part of the loss if a borrower defaults on the loan. Similar to microloan funding, a loan guarantee reduces the lender's overall risk exposure which increases the likelihood it will provide loans to entrepreneurs and small businesses that the lender would otherwise deny.

Funds allocated to provide guarantees may be leveraged to allow more loans to be guaranteed, which encourages greater loan-making. For example, a three to one leverage means that \$1 million of allocated funds may guarantee \$3 million in loans, which may be in one loan or multiple loans. The risk of leveraging is that an increase in the leverage ratio increases the exposure of the guarantee funds to cover defaulted loans due to the increased loan-making by lenders. However, steps can be taken to mitigate against this exposure, such as providing a leverage ceiling or requiring a set-aside of a percentage of all loan guarantees to protect against extraordinary losses.<sup>18</sup>

### **Small Business Finance Programs in Florida**

Currently, the Department of Economic Opportunity (DEO) and Enterprise Florida, Inc. (EFI) administer a number of business financing programs including the Black Business Loan Program,<sup>19</sup> Economic Gardening Business Loan Pilot Program,<sup>20</sup> Rural Community Development Revolving Loan Fund,<sup>21</sup> and Florida Export Finance Corporation.<sup>22</sup> The DEO and EFI also administer the federal State Small Business Credit Initiative (SSBCI), which provides a number of business finance tools, including a loan guarantee program, to states to stimulate small business development.<sup>23</sup> These existing state small business finance programs and the SSBCI are generally intended to provide access to credit to small businesses with established credit records

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<sup>15</sup> Grace, *Microloan Feasibility Study* at 19-20.

<sup>16</sup> Grace, *Microloan Feasibility Study* at 23-24.

<sup>17</sup> Grace, *Microloan Feasibility Study* at 25.

<sup>18</sup> U.S. Dep't. of Treasury, SSBCI Program Profile: Loan Guarantee Program, 3 (May 17, 2011) available at [http://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI Program Profile Loan Guarantee FINAL May 17.pdf](http://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI%20Program%20Profile%20Loan%20Guarantee%20FINAL%20May%2017.pdf) (last visited Mar. 15, 2014).

<sup>19</sup> Section 288.7102, F.S.

<sup>20</sup> Section 288.1081, F.S.

<sup>21</sup> Section 288.065, F.S.

<sup>22</sup> Section 288.773, F.S.

<sup>23</sup> U.S. Dep't of Treasury, State Small Business Credit Initiative (SSBCI) (Jan. 22, 2014) available at <http://www.treasury.gov/resource-center/sb-programs/Pages/ssbci.aspx> (last visited Mar. 17, 2014).

and sufficient collateral, rather than the smallest businesses and entrepreneurs for whom access to credit is an acute problem.

From 2002 to 2006, the former Department of Community Affairs administered the Florida Front Porch Microloan program, which provided microloans of up to approximately \$35,000.<sup>24</sup> This program ended in 2006 due to underutilization.<sup>25</sup>

In addition to small business finance programs, the Florida Small Business Development Center Network provides consulting and training to early-stage and small and medium-sized businesses in Florida.<sup>26</sup>

### III. Effect of Proposed Changes:

**Sections 1 and 2** create part XIV of ch. 288, F.S., entitled “Microfinance Programs” and cited as the “Florida Microfinance Act,” consisting of ss. 288.993-288.9937, F.S., created in the bill.

**Section 3** creates s. 288.9931, F.S., providing legislative findings regarding the lack of available credit to entrepreneurs and small businesses in this state. The bill states it is the Legislature’s intent to address this difficulty through the creation of a program that provides access to credit in conjunction with training and technical assistance to entrepreneurs and small businesses.

#### **Microfinance Loan Program**

**Section 6** creates s. 288.9934, F.S., the Microfinance Loan Program, which is established in the Department of Economic Opportunity (DEO) to make short-term, fixed-rate microloans in conjunction with business training and technical assistance to entrepreneurs and small businesses.<sup>27</sup> Participation in the loan program is intended to enable entrepreneurs and small businesses to gain access to private financing upon completing the loan program. Funds appropriated to the loan program must be reinvested and maintained as a long-term and stable source of funding for the loan program.

#### ***Loan Administrator Eligibility***

The DEO must competitively procure and contract with up to three loan administrators to administer the loan program for 3 years. A qualified loan administrator must:

- Be a corporation registered in this state;
- Not offer checking or savings accounts;

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<sup>24</sup> OPPAGA Report 06-77 at 2. The program was not codified in statute but was instead created and funded through the budget process. See Comm. on Community Affairs, the Florida Senate, *Department of Community Affairs - Review of the Front Porch Florida Initiative*, 1, 3 (Interim Report 2008-110) (Oct. 2007).

<sup>25</sup> *Id.*

<sup>26</sup> Section 288.001, F.S.

<sup>27</sup> “Entrepreneur” is defined in s. 288.9932, F.S., which is created in section 4 of the bill, as “an individual residing in this state who desires to assume the risk of organizing, managing, and operating a small business in this state.” “Small business” is likewise defined in s. 288.9932, F.S., as “a business, regardless of corporate structure, domiciled in this state which employs 25 or fewer people and generated average annual gross revenues of \$1.5 million or less per year for the preceding 2 years.”

- Demonstrate that its board of directors and managers are experienced in microlending and small business finance and development;
- Demonstrate it has the resources and expertise to analyze and evaluate entrepreneurs and small businesses applying for microloans; underwrite and service microloans; and coordinate business training and technical assistance.
- Demonstrate that it has established partnerships with public and private funding sources, economic development agencies, and workforce development and job referral networks; and
- Demonstrates that it has a plan that includes proposed microlending activities under the loan program.

To ensure that prospective loan administrators meet these qualifications, a loan administrator must submit the following information with its proposal:

- The types of entrepreneurs and small businesses it has made loans to in the past, including the average size and terms of loans;
- The microlending and small business finance and development experience of its directors and managers;
- Its underwriting and credit policies and procedures, monitoring policies and procedures, collection practices, and samples of loan documentation;
- The nonstate funding that will be used in conjunction with state funds;
- Its three most recent financial audits or, if no prior audits have been completed, its three most recent unaudited financial statements; and
- A conflict of interest statement certifying that no board member, employee, or other person affiliated with the loan administrator, or any immediate family member<sup>28</sup> thereof, will receive any compensation from an entrepreneur or small businesses that will receive state funds under the loan program.<sup>29</sup>

### ***Loan Administrator Funding Conditions***

A contracted loan administrator will receive state funds from the DEO that must be repaid at the end of the 3-year contract. The DEO may charge annual interest on the state funds of up to 80 percent of the Federal Funds Rate, and the loan administrator must provide an assignment of all notes receivable of its microloans made under the loan program as collateral to the DEO. The DEO must establish performance measures and objectives for the loan program and loan administrators to maximize state funds. The contract with the loan administrator must specify any sanctions for the loan administrator's failure to comply with the contract or the act. However, the DEO is prohibited from reviewing microloans made by a loan administrator before they are approved by the loan administrator.

State funds may only be used by a loan administrator to provide direct microloans to entrepreneurs and small businesses according to limitations and conditions described below (see *Borrower Eligibility and Conditions* below). State funds may not exceed 50 percent of any microloan made by the loan administrator, and with the exception of a one-time administrative servicing fee of 1 percent of the total award amount, funds may not be used to pay any costs

<sup>28</sup> "Immediate family" is defined in the bill as "a parent, child, or spouse, or any other relative by blood, marriage, or adoption, of a board member, employee, or agent of the loan administrator."

<sup>29</sup> The department may waive this requirement for good cause shown.

associated with providing microloans, business training, or technical assistance. The loan administrator may not recoup this fee, or charge any other fees or costs to borrowers except those expressly provided in the act. The loan administrator must also reserve 10 percent of the state funds to provide microloans to certain ultra-small entrepreneurs and businesses that employ less than six people and generate annual gross revenues of less than \$250,000.

Additionally, within 30 days of executing its contract with the DEO, the loan administrator must enter into a memorandum of understanding with the Florida Small Business Development Network (SBDN) that requires the SBDN to provide business management and development training and technical assistance to entrepreneurs and small businesses receiving microloans under the loan program, and to promote the loan program to underserved entrepreneurs and small businesses. By September 1, 2014, the DEO must review industry best practices and determine the minimum business training and technical assistance that must be provided by the SBDN.

### ***Borrower Eligibility and Conditions***

To be eligible for a microloan, an entrepreneur or small business must be located in this state and submit an application along with an application fee of up to \$50 to a contracted loan administrator. Microloans may be up to \$50,000 and up to 1 year in duration with interest rates up to the prime rate published in the Wall Street Journal, plus 1000 basis points.<sup>30</sup> A borrower may receive a maximum of \$75,000 in total microloans per year and may receive a maximum of two microloans per year and five microloans in a 3-year period.

Proceeds from a microloan can only be used for startup costs, working capital, and to purchase materials, supplies, furniture, fixtures, and equipment. Microloans may not be made if the microloan proceeds will be used to:

- Pay off creditors;
- Provide funds, directly or indirectly, for payment, distribution, or as a microloan to owners, partners, or shareholders of the business, except as ordinary compensation for services rendered;
- Finance the purchase, construction, or improvement of real property held for sale or investment;
- Pay for lobbying activities; or
- Replenish funds used for any of the above purposes.

As a condition of receiving a microloan, the borrower must personally guarantee the microloan, participate in business training and technical assistance, and provide information regarding job creation and financial data to the loan administrator. The loan administrator may collect late payment fees that are consistent with standard business lending practices and may recover costs and fees incurred for any collection efforts due to the borrower's default.

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<sup>30</sup> 1 basis point equals 0.01 percent. As of March 10, 2014, the Wall Street Journal prime rate was 3.25. The Wall Street Journal, *Market Media Center* (Mar. 7, 2014) available at [http://online.wsj.com/mdc/public/page/2\\_3020-moneyrate.html?mod=topnav\\_2\\_3010](http://online.wsj.com/mdc/public/page/2_3020-moneyrate.html?mod=topnav_2_3010) (last visited Mar. 10, 2014).

### ***Funding and Implementation by the DEO***

A loan administrator must meet the requirements of the act, the terms of its contract with the DEO, and any other applicable laws to be eligible to receive funds. If the loan program is appropriated funding, the DEO must distribute funds to the loan administrators within 30 days of the execution of the contracts with the loan administrators. The total amount of funding awarded to loan administrators in a fiscal year may not exceed the amount appropriated for that fiscal year. If the funds appropriated to the loan program exceed the amount of funds awarded to the loan administrators, the excess funds will revert back to the General Revenue Fund.

With the exception of funds appropriated to the loan program, the credit of the state may not be pledged. The state is not liable or obligated for claims on the loan program or against a loan administrator or the DEO.

In implementing the loan program, the DEO must be guided by the 5-year statewide strategic plan adopted pursuant to s. 20.60(5), F.S. The DEO must also promote and advertise the loan program by cooperating with public and private organizations to organize, host, or participate in events for entrepreneur and small business development.

The DEO must implement a study by December 31, 2014, to identify best practices to increase access to credit to entrepreneurs and small businesses in this state. The study must explore the ability and limitations of Florida nonprofit organizations and private financial institutions to expand access to credit to entrepreneurs and small businesses in this state.

### ***Loan Administrator Repayment of Award Funds***

After collecting interest and permitted fees or costs in satisfaction of all microloans, a loan administrator must remit to the DEO the microloan principal collected from all microloans made by the loan administrator with state funds. Repayment of microloan principal may be deferred up to 6 months; however, the loan administrator may not provide a microloan after its contract with the DEO expires.

If a loan administrator is unable to make repayments to the DEO in accordance with its contract, the DEO may accelerate maturity of the state funds and demand repayment in full. In this event, or if a loan administrator violates the act or the terms of its contract, the loan administrator must surrender possession of all collateral to the DEO. Any loss or deficiency greater than the value of the collateral may be recovered by the DEO from the loan administrator. In the event of a loan administrator's default, termination of the contract, or violation of the act, the state may, in addition to any other remedy provided by law, bring suit to enforce its interest. Additionally, a microloan borrower's default does not relieve a loan administrator of its obligation to repay any state funds to the DEO.

### ***Contract Termination***

A loan administrator's contract with the DEO may be terminated upon a finding by the DEO that the loan administrator:

- Has, within the previous five years, participated in a state-funded economic development program in any state and failed to comply with the requirements of that program;



- Is currently in material noncompliance with any statute, rule, or program administered by the DEO;
- Has members of its board, officers, partners, managers, or shareholders that have pled no contest or been found guilty of any crime involving fraud, misrepresentation, or dishonesty;
- Failed to meet or agree to the terms of its contract with the DEO or failed to comply with the act; or
- Provided fraudulent or misleading information to the DEO.

If the contract is terminated for any of the above reasons, the loan administrator must immediately return all state funds, including any interest, costs, and fees it would otherwise be entitled to retain.

The loan administrator's contract may be terminated at any time for any reason upon 30 days' notice by the DEO. In such case, the loan administrator must return all state funds to the DEO within 60 days of the termination. However, the loan administrator may retain any interest, costs, and fees it has collected. The loan administrator's contract may also be terminated by the loan administrator at any time for any reason upon 30 days' notice by the loan administrator. In such case, the loan administrator must return all state funds to the DEO, including any interest, costs, and fees it has retained or would otherwise be entitled to retain, within 30 days of the termination.

### ***Loan Administrator Auditing***

A loan administrator must submit quarterly reports to the DEO (see *Loan Administrator Quarterly Reports* below) and must also make its books and records related to the loan program available to the DEO or its designee for inspection upon reasonable notice. Additionally, a loan administrator must submit an annual financial audit performed by an independent certified public accountant and an operational performance audit for the most recently completed fiscal year to the DEO. Both audits must indicate whether any material weakness or instances of material noncompliance are found.

### ***Loan Administrator Quarterly Reports***

Loan administrators must submit reports on at least a quarterly basis that include the number of microloan applications received, the number of microloans made, the amount and interest rate of each microloan made, the amount of technical assistance or business training provided, the number of full-time equivalent jobs created as a result of the microloans, the amount of wages paid to employees in the newly created jobs, industry data regarding the borrower's business, and the borrower's locations (Section 8, creating s. 288.9936, F.S.).

### ***Annual Report of the Microfinance Loan Program***

**Section 8** creates s. 288.9936, F.S., requiring the DEO to provide a detailed report of the Microfinance Loan Program in the department's annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include:

- A description of the loan program, including an evaluation of application and funding activities, recommendations for change, and identification of any overlapping state programs;
- The financial institutions, organizations, and individuals participating in the loan program;

- An assessment of the availability of and access to credit for entrepreneurs and small businesses in this state;
- A summary of the financial and employment results of the entities receiving microloans;
- The number of full-time equivalent jobs created as a result of the microloans and the amount of wages paid to employees in the newly created jobs;
- The number and location of prospective loan administrators that responded to the DEO's request for proposals;
- The amount of state funds awarded to loan administrators;
- The number of microloan applications received by loan administrators;
- The number, duration, and location of microloans made by loan administrators;
- The number and amount of microloans outstanding, with payments overdue, or in default, if any;
- The repayment history of the microloans made;
- The repayment history and performance of funding awards;
- An evaluation of the loan program's ability to meet the financial performance measures and objectives established by the DEO; and
- A description and evaluation of the technical assistance and business training provided by the SBDN.

### **Microfinance Guarantee Program**

**Section 7** creates s. 288.9935, F.S., the Microfinance Guarantee Program, which is established in the DEO to provide targeted guarantees for loans made to entrepreneurs and small businesses. Funds appropriated to the guarantee program must be reinvested and maintained as a long-term and stable source of funding for the guarantee program.

#### ***Loan Guarantee Administration***

The DEO must enter into a contract with Enterprise Florida, Inc., (EFI) to administer the guarantee program. In administering the guarantee program, EFI must:

- Establish lender<sup>31</sup> and borrower eligibility requirements in addition to those provided in the bill;
- Determine a reasonable leverage ratio of loan amounts guaranteed to state funds; the leverage ratio may not exceed three to one;
- Establish reasonable fees and interest;
- Promote the guarantee program to financial institutions that provide loans to entrepreneurs and small businesses;
- Enter into a memorandum of understanding with the SBDN to promote the guarantee program;
- Establish limits on the total amount of loan guarantees a single lender can receive;
- Establish an average loan guarantee amount;
- Establish a risk-sharing strategy to be used in the event of a loan failure; and
- Establish financial performance measures and objectives for the guarantee program.

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<sup>31</sup> A "lender" for purposes of the guarantee program is defined in section 7 of the bill as "a financial institution defined in s. 655.005."

EFI may not use state funds to cover the costs of administering the guarantee program.

### ***Loan Guarantee Eligibility and Limitations***

To be eligible to receive a loan guarantee, a borrower must be an entrepreneur or small business located in this state, employ 25 or fewer people, generate average annual gross revenues up to \$1.5 million per year for the last 2 years, and meet any other requirements established by EFI.

Loan guarantees may only be provided on loans between \$50,000 and \$250,000 and may not exceed 50 percent of the total loan amount. EFI may not guarantee a loan if the loan proceeds will be used to:

- Pay off the borrower's creditors;
- Provide funds, directly or indirectly, for payment, distribution, or as a loan to owners, partners, or shareholders of the borrower, except as ordinary compensation for services rendered;
- Finance the purchase, construction, or improvement, of real property held for sale or investment;
- Pay for lobbying activities; or
- Replenish funds used for any of the above purposes.

The credit of the state or EFI, may not be pledged except for funds appropriated to the guarantee program. The state is not liable or obligated for claims on the guarantee program or against EFI or the DEO.

### ***EFI Annual Loan Guarantee Report***

By October 1 of each year, EFI must submit an annual report to the DEO for inclusion in the department's annual report. EFI's report must include:

- A description of the guarantee program, including an evaluation of its application and guarantee activities, recommendations for change, and identification of any overlapping state programs;
- An assessment of the current availability of and access to credit for entrepreneurs and small businesses in this state;
- A summary of the financial and employment results of the entrepreneurs and small businesses receiving loan guarantees;
- Industry data about the borrowers;
- The name and location of lenders receiving loan guarantees;
- The amount of state funds received by EFI;
- The number of loan guarantee applications received;
- The number, duration, location, and amount of guarantees made;
- The number and amount of guaranteed loans outstanding, with payments overdue, and in default, if any;
- The repayment history of the guaranteed loans made; and
- An evaluation of the guarantee program's ability to meet the financial performance measures and objectives established by EFI.

## **OPPAGA Evaluation of the Microfinance Loan and Microfinance Guarantee Programs**

**Section 9** creates s. 288.9937, F.S., requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) prepare a report that analyzes, evaluates, and determines the economic benefits<sup>32</sup> of the first 3 years of the Microfinance Loan Program and the Microfinance Guarantee Program. The analysis must also evaluate the number of jobs created, the effect on personal income, and the impact on state gross domestic product from the state's investment in the programs. The analysis must also identify any inefficiencies in the programs and provide recommendations for changes. The report must be provided to the President of the Senate and the Speaker of the House of Representatives by January 1, 2018. This section expires January 31, 2018.

Additionally, the OPPAGA is directed to evaluate the effectiveness and return on investment of the State Small Business Credit Initiative<sup>33</sup> operated in this state (Section 8, creating s. 288.9936, F.S.). The report must be provided to the President of the Senate and the Speaker of the House of Representatives by January 1, 2015.

**Section 4** creates s. 288.9932, F.S., to define terms used in the act.

**Section 5** authorizes the DEO to adopt rules to implement the act.

**Section 10** permits the DEO to adopt emergency rules in order to implement the act until October 1, 2015. Emergency rules will remain in effect for 6 months and may be renewed until permanent rules addressing the subject of the emergency rules are adopted.

**Section 11** provides a nonrecurring appropriation of \$10 million for Fiscal Year 2014-2015 from the General Revenue Fund to the DEO to implement the act, of which up to \$100,000 may be spent by the DEO and EFI to market and promote the act. The bill also authorizes 1 full-time equivalent position, provides salary rate of 55,000, and a total of \$84,696 from state economic development trust funds to the DEO to implement the act (*See Section V. for additional information*).

**Section 12** provides an effective date of July 1, 2014.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

<sup>32</sup> "Economic benefits" are defined in s. 288.005, F.S., as "the direct, indirect, and induced gains in state revenues as a percentage of the state's investment."

<sup>33</sup> 12 U.S.C. ss. 5701 et seq.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Approximately 300,000 businesses in Florida employ 25 or fewer employees and generate less than \$1.5 million in gross annual revenues. The microloan and loan guarantee programs created in CS/SB 1480 may benefit these businesses.

C. Government Sector Impact:

According to the Department of Economic Opportunity (DEO), it will need at least one additional full-time equivalent (FTE) position to administer the programs.<sup>34</sup> The bill includes the following funding to implement the act in Fiscal Year 2014-2015:

- \$10,000,000 of nonrecurring funds from the General Revenue Fund for the Microfinance Loan Program and Microfinance Guarantee Program created in the bill. Of this amount, the DEO and EFI may spend up to \$100,000 to market and promote the programs.
- One FTE position and 55,000 of salary rate and a total of \$84,696 to support the position, as follows:
  - \$67,777 from the State Economic Enhancement and Development Trust Fund, of which \$3,018 is nonrecurring revenue;
  - \$13,535 from the Tourism Promotional Trust Fund, of which \$604 is nonrecurring revenue; and
  - \$3,384 from the Florida International Trade and Promotion Trust Fund, of which \$151 is nonrecurring revenue.

The bill specifically provides that Enterprise Florida, Inc. may not use funds appropriated from the state for costs associated with administering the guarantee program.

The bill requires that microloan borrowers participate in business management training, business development training, and technical assistance as determined by the loan administrator in the microloan agreement. The bill specifically provides that state funds may not be used to pay administrative costs, underwriting costs, servicing costs, or any other costs associated with providing microloans, business management training, business development training, or technical assistance.

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<sup>34</sup> DEO, *Agency Analysis: SB 1480*, 6 (on file with the Committee on Commerce and Tourism).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill authorizes the Department of Economic Opportunity (DEO) to adopt rules to implement the act. The bill also grants the DEO emergency rulemaking authority.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 288.993, 288.9931, 288.9932, 288.9933, 288.9934, 288.9935, 288.9936, and 288.9937.

**IX. 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 and Tourism Committee on March 24, 2014:**

Related to the loan program, the committee substitute:

- Clarifies that the interest rate charged by the DEO to a loan administrator is an annual interest rate.
- Clarifies that loan administrators may retain the interest they charge on microloans.
- Clarifies under what conditions a loan administrator is required to return interest, fees, and costs to the DEO.
- Updates the conflict of interest policy required by a loan administrator to include the immediate family of a board member, employee, or agent.
- Requires the loan program to be evergreen.
- Clarifies what information a loan administrator must provide in its quarterly report to the DEO.

Related to the guarantee program, the committee substitute prohibits EFI from using appropriated funds to pay for administrative costs.

The committee substitute also provides an appropriation of \$10 million to fund the programs, of which \$100,000 is for marketing, and provides 1 FTE and \$84,696 from state economic development trust funds for the DEO to implement the bill.

- B. **Amendments:**

None.