

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Davis, D. offered the following:

Amendment (with title amendment)

Between lines 764 and 765, insert:

Section 6. Section 624.5108, Florida Statutes, is created to read:

624.5108 Casualty insurance assessment offsets; definitions; provider designations; permissible investments; required reports; assessment offsets.--

(1) SHORT TITLE.--This section may be cited as the "State Economic Stimulus Plan Act."

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

(a) "Affiliate" means, with respect to any person:

1. A person who directly or indirectly:

a. Beneficially owns 10 percent or more of the outstanding voting securities or other ownership interests of the other

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27 person, whether through rights, options, convertible interests,
28 or otherwise; or

29 b. Controls or holds power to vote 10 percent or more of
30 the outstanding voting securities or other ownership interests
31 of the other person;

32 2. A person with 10 percent or more of the outstanding
33 voting securities or other ownership interests, of which are
34 directly or indirectly:

35 a. Beneficially owned by the other person, whether through
36 rights, options, convertible interest, or otherwise; or

37 b. Controlled or held with power to vote by the other
38 person;

39 3. A partnership in which the other person is a general
40 partner; or

41 4. An officer, employee, or agent of the other person or
42 an immediate family member of the officer, employee, or agent.

43 (b) "Assessments" means the assessments required pursuant
44 to s. 440.49.

45 (c) "Conversion cost" means, for each SESP provider, all
46 costs and expenses of closing its SESP fund, including, without
47 limitation, legal, accounting, rating agency, trustee and
48 placement agent fees and expenses, and any costs of defeasing
49 and insuring the obligations of the SESP provider to the
50 investing investors incurred in connection with the SESP fund or
51 any original issue discount in connection with the obligations.

52 (d) "Department" means the Office of Tourism, Trade, and
53 Economic Development, which has regulatory authority over this
54 section.

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55 (e) "Economic development project" means a project or
56 business that meets the following criteria at the time of the
57 investment:

58 1. The project or business is headquartered and its
59 principal operations are located in this state, or at least 50
60 percent of the employees are employed in this state or the
61 project or business has committed in writing to move into this
62 state as a condition of the investment;

63 2. The project or business fosters economic development in
64 this state;

65 3. There are sufficient resources or the forecast or
66 business plan for the project or business projects that the
67 project or business will have sufficient resources to meet any
68 obligations due to the SESP provider as a result of the
69 investment;

70 4. The project or business has been approved by the
71 department pursuant to this section; and

72 5. The project or business is not a business predominately
73 engaged in professional services provided by accountants or
74 lawyers.

75 (f) "Fund allocation date" means, with respect to each
76 SESP provider, the date on which such SESP provider receives the
77 investments from its investors which entitle its investors to
78 receive an allocation of the full offset amount authorized by
79 this section for such SESP provider.

80 (g) "Full offset amount" means, with respect to each SESP
81 provider, the full face amount of any permitted debt instruments
82 offered by the SESP provider, which are issued to its investors
83 and evidence such investors' investment in the SESP provider.

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84 (h) "Investor" means any insurer holding a certificate of
85 authority to transact insurance in this state with a liability
86 for assessments under s. 440.49.

87 (i) "Permissible investment" means investments that at the
88 time of initial purchase or initial investment are:

89 1. Deposits, including certificates of deposit, with a
90 financial institution that is a member of the Federal Deposit
91 Insurance Corporation;

92 2. Investment securities that are obligations of the
93 United States or its departments, agencies, or instrumentalities
94 or obligations that are guaranteed fully as to principal and
95 interest by the United States or its departments, agencies, or
96 instrumentalities;

97 3. Commercial paper rated at least A1, P1, or its
98 equivalent by at least one nationally recognized rating
99 organization with a maturity of no more than 365 days.

100 4. Debt instruments rated at the time of the investment at
101 least AA or its equivalent by a nationally recognized rating
102 organization, or issued by, or guaranteed with respect to
103 payment by, an entity whose unsecured indebtedness is rated at
104 the time of the investment at least AA or its equivalent by a
105 nationally recognized credit rating organization and is not
106 subordinated to other unsecured indebtedness of the issuer or
107 the guarantor;

108 5. Obligations of this state or any political subdivision
109 thereof;

110 6. Interests in money market funds or other mutual funds,
111 the portfolios of which are limited to cash and permissible
112 investments; or

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113 7. Any other investments approved in advance and in
114 writing by the department.

115 (j) "Permitted debt instrument" means a debt instrument
116 issued by the SESP provider to one or more investors that do not
117 own any voting equity interest in the SESP provider which:

118 1. Is issued in exchange for the investment by the
119 investors of cash in the SESP provider and for no other
120 consideration;

121 2. Is issued at a discount by the SESP provider;

122 3. Is repayable by the SESP provider, with interest, only
123 by the availability of offsets to the investor earned as a
124 result of the investor's investment in the SESP provider;

125 4. Does not entitle the investor to any consideration or
126 compensation based upon the profits, income, or other operation
127 of the SESP provider; and

128 5. May not be prepaid by the SESP provider without the
129 investor's consent.

130 (k) "Person" means any natural person, corporation,
131 limited liability company, partnership, joint venture, trust,
132 incorporated or unincorporated association, joint stock company,
133 government, or agency or political subdivision thereof, or other
134 entity of any kind.

135 (l) "Principal" means:

136 1. A senior officer or director of a corporation;

137 2. An individual manager of a limited liability company or
138 a principal of any entity manager;

139 3. An individual general partner of a partnership or
140 limited partnership or a principal of any entity that serves as
141 a general partner; or

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142 4. An individual in a position of similar authority in an
143 entity not specifically named in this subsection.

144 (m) "SESP" means the state economic stimulus plan.

145 (n) "SESP costs" means:

146 1. The bona fide costs and expenses of managing and
147 operating the SESP provider, including, without limitation, an
148 annual management fee that is not to exceed 2.5 percent of the
149 full offset amount plus professional fees; and

150 2. Distributions to direct or indirect parent entities of
151 the SESP provider, if the SESP is taxed as partnership, equal to
152 any projected increase in federal or state income taxes of such
153 entities, including any related penalties or interest, resulting
154 from the earnings of the SESP provider, without regard to any
155 revenues or expenses from other operations of affiliates of the
156 SESP provider, to the extent that the increase is related to the
157 ownership, management, or operations of the SESP provider.

158 (o) "SESP fund" means, for each SESP provider, its full
159 offset amount less its conversion costs.

160 (p) "SESP provider" means an entity designated under this
161 section to receive investments from investors and invest its
162 SESP fund in economic development projects.

163 (3) SESP PROVIDER APPLICATION.--

164 (a) To seek a designation as a SESP provider to the state,
165 a SESP provider applicant shall submit to the department an
166 application by November 1, 2003.

167 (b) Each SESP provider applicant shall demonstrate in its
168 application that it meets the following criteria:

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169 1. No principal of the SESP provider applicant shall have
170 been found guilty of a crime involving fraud, theft,
171 embezzlement, or moral turpitude;

172 2. The SESP provider applicant shall include with its
173 application copies of executed written commitments from
174 potential investors committing to invest cash sufficient to
175 acquire permitted debt instruments with a face value equal to at
176 least 10 percent of the maximum full offset amount being
177 allocated pursuant to subparagraph (5)(a)1.;

178 3. The SESP provider applicant, together with the members
179 of its control group, as defined in Treasury Regulation
180 1.414(c)-2, shall have raised at least \$50 million, in the
181 aggregate, for investment in small and emerging businesses
182 within the past 5 calendar years;

183 4. The SESP provider applicant, together with its
184 affiliates, shall have raised at least \$200 million for
185 investment purposes within the past 5 calendar years;

186 5. The SESP provider shall be a bankruptcy-remote, special
187 purpose entity that has no purpose other than participation
188 under this act and all related activities; and

189 6. No investor or affiliate of an investor shall own any
190 equity securities in the SESP provider or any affiliate of the
191 SESP provider.

192 (c) The department shall perform background checks of the
193 principals of the SESP provider applicant to ensure compliance
194 with subparagraph (b)1.

195 (d) The department may adopt additional rules to govern
196 the application process, including the preparation of forms to
197 be completed as a part of the application process, if any such

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198 rules or forms have been adopted by the department at least 30
199 days prior to the deadline for receipt of applications.

200 (e) The department may deny the application or rescind the
201 application of a SESP provider if the grounds for rescission are
202 not removed or corrected within 90 days after the notice of such
203 grounds is received by the SESP provider applicant. The
204 department may deny the application or rescind the application
205 of a SESP provider applicant if the SESP provider applicant, or
206 any principal or director of the SESP provider applicant, has:

207 1. Violated any provision of this section; or
208 2. Made a material misrepresentation or concealed any
209 essential or material fact from any person during the
210 application process or in connection with the information and
211 reports required of SESP providers under section 3 of this act.

212 (f) A SESP provider applicant must file an application in
213 the form prescribed by the department accompanied by a
214 nonrefundable application fee of \$7,500. The application must
215 include an audited balance sheet of the SESP provider applicant,
216 with an unqualified opinion from an independent certified public
217 accountant, as of a date not more than 35 days before the date
218 of the application.

219 (g) The SESP provider applicant must have incorporated or
220 organized within the state no later than 15 days before applying
221 for certification.

222 (h) The SESP provider applicant must have established an
223 office within the state before or within 60 days of SESP
224 provider status.

225 (4) ALLOCATION PROCESS.--

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226 (a) The maximum full offset amount to be allocated to SESP
227 providers pursuant to this section shall be an amount equal to
228 the aggregate of all allocation claims received by the
229 department by the department's stated deadline, if such
230 allocation is limited to \$200 million.

231 (b) No single investor, together with its affiliates,
232 shall invest or commit to invest more than 20 percent of the
233 maximum full offset amount in all SESP providers.

234 (c) The SESP provider allocation process shall occur on or
235 before 60 days following the SESP provider application deadline
236 and shall include all SESP providers, so designated by the
237 department as of the SESP application deadline.

238 (d) Each SESP provider must apply to the department for an
239 allocation of offsets for potential investors on a form
240 developed by the department. The form must be accompanied by an
241 affidavit from each potential investor confirming that the
242 potential investor has agreed to make an investment in a
243 permitted debt instrument issued by a SESP provider up to a
244 specified amount, subject only to the offset allocation pursuant
245 to this subsection. A SESP provider may not submit offset
246 allocation claims on behalf of investors that, in the aggregate,
247 total more than the maximum full offset amount authorized under
248 paragraph (5)(a). An allocation may not be made to the potential
249 investors of a SESP provider unless such SESP provider has met
250 all requirements of subsection (3), and has filed allocation
251 claims of not less than \$20 million in the aggregate.

252 (e) The department shall inform each SESP provider of its
253 share of full offsets available for allocation to each of its
254 potential investors.

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255 (f) If within 10 business days after the investor received
256 a notice of offset allocation a SESP provider does not receive
257 investments sufficient to purchase permitted debt instruments
258 issued by the SESP provider to a potential investor, the SESP
259 provider shall notify the department by overnight common carrier
260 delivery service of the company's failure to receive the
261 investment. That portion of the offset allocated to the SESP
262 provider shall be forfeited. If the office must make a pro rata
263 allocation under subsection (5), the department shall reallocate
264 such available offsets among the other SESP providers on the
265 same pro rata basis as the initial allocation.

266 (g) If the full face amount of the permitted debt
267 instruments offered by the SESP providers committed by all
268 investors to SESP providers in offset allocation claims received
269 by a deadline set by the department exceeds the aggregate cap on
270 the amount of offsets, the offsets that may be allowed to any
271 one investor shall be allocated using the following ratio:

$$\frac{A}{B} = \frac{X}{\$200,000,000}$$

273 where the letter "A" represents the full face amount that
274 investors have agreed to invest in any one SESP provider, the
275 letter "B" represents the aggregate face amount of investments
276 that all investors have agreed to invest in all SESP providers,
277 the letter "X" is the numerator and represents the full amount
278 of offsets or full offset amount that may be allocated to a SESP
279 provider on a date determined by rule adopted by the department,
280 and \$200 million is the denominator and represents the full
281 offset amount that may be allocated to all SESP providers.

282 (h) To the extent that the full face amount of investments
283 raised in connection with the procedure set forth in this

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284 subsection is less than \$200 million, the department may adopt
285 rules to allow a subsequent allocation of the remaining offsets
286 authorized under this subsection.

287 (i) The department shall issue a certification letter for
288 each investor, showing the approved offset amount and the face
289 amount and price of the permitted debt instrument under which
290 the investor invested in the SESP provider. The applicable SESP
291 provider shall attest to the validity of the certification
292 letter.

293 (5) SESP FUND INVESTMENT.--

294 (a) Until the SESP provider has invested 100 percent of
295 the full offset amount in economic development projects, money
296 in the SESP fund shall be used only for:

- 297 1. Investments in economic development projects;
298 2. Permissible investments; and
299 3. SESP costs.

300 (b) The SESP provider may not make any payments, other
301 than SESP costs, to any affiliate or any other person owning
302 equity securities in the SESP provider has invested 100 percent
303 of the full offset amount in economic development projects.

304 (c) All amounts invested in economic development projects
305 made by the SESP provider shall count toward the 100 percent-
306 investment-requirement of paragraphs (b) and (c), including
307 money returned to the SESP provider by or as a result of a prior
308 investment in an economic development project.

309 (d) Any investment that is an economic development project
310 at the time of the SESP provider's initial investment shall be
311 classified as an economic development project for any follow-on
312 investment by the SESP provider so long as the economic

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313 development project still meets the criteria in subparagraphs
314 (2)(e)1. and 2.

315 (e) The SESP provider shall, within 24 months after the
316 fund allocation date, invest no less than 20 percent of the full
317 offset amount in economic development projects and, within each
318 12 months thereafter, shall invest no less than an additional 10
319 percent until 100 percent of the full offset amount is invested.
320 If, within the initial 24-month period or any 12-month period
321 thereafter, the SESP provider fails to meet the investment
322 target of this subsection, the management fee for that period
323 shall be reduced by the percentage equal to the cumulative
324 investments made divided by the cumulative investment target for
325 that period subtracted from 100 percent. A determination of a
326 reduction pursuant to this subsection shall be made during the
327 annual audit required by subsection (6).

328 (f) Any SESP funds not held in economic development
329 projects shall be held in cash or permissible investments.

330 (g) The department shall approve a proposed investment as
331 an economic development project or a permissible investment, as
332 the case may be, within 20 days after its receipt of a written
333 request from the SESP provider. If the department fails to
334 respond within the 20-day period, the proposed investment shall
335 be deemed to be approved as an economic development project or
336 permissible investment, as requested by the SESP provider.
337 Absent fraud or material misrepresentations by the SESP provider
338 or its proposed investee, the approval of the department
339 pursuant to this subsection shall be conclusive.

340 (6) SESP PROVIDER; REPORTS.--

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341 (a) Within 30 days after the fund allocation date, the
342 SESP provider shall report to the department and the Chief
343 Financial Officer the following:

344 1. The name of each investor from whom an investment was
345 received, including the investor's identification number;

346 2. The amount of each investor's investment; and

347 3. The date on which the money was received.

348 (b) Within 90 days after an economic development project
349 investment made by the SESP provider, the SESP provider shall
350 report to the department the following:

351 1. The name and address of each project receiving the
352 investment and a description of its business;

353 2. The amount of the investment and a brief description of
354 the terms;

355 3. The date on which the money was received; and

356 4. Any other information required by the department.

357 (c) Not later than each anniversary of the fund allocation
358 date, the SESP provider shall report to the department the
359 amount the SESP provider has invested in economic development
360 projects during the previous year, the percentage of the SESP
361 funds invested to determine the threshold required in paragraph
362 (5)(f), along with a copy of the material documentation
363 pertaining to the investment, and any other information required
364 by the department.

365 (d) Not later than April 30 of each year, the SESP
366 provider shall provide to the department an annual audited
367 financial statement for the SESP provider which includes the
368 opinion of an independent accountant.

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369 (e) Upon investment in economic development projects
370 equaling 100 percent of the full offset amount, the SESP
371 provider shall no longer be subject to the State Economic
372 Stimulus Plan Act.

373 (7) SESP PROVIDER ASSESSMENT OFFSETS.--

374 (a) Each investor that makes an investment in the SESP
375 provider shall earn offsets against future assessments under s.
376 440.49 equal to the face amount of the permitted debt instrument
377 offered by the SESP provider, issued to the investors and
378 evidencing their investment of cash in the SESP provider. Such
379 offsets shall be earned on the fund allocation date.

380 (b) Each investor investing in the SESP provider may:

381 1. Take up to 10 percent of the vested assessment offsets
382 against investor assessments each year for 10 consecutive years,
383 beginning with the annual return filed with respect to the fund
384 allocation date;

385 2. Reduce its estimated payments of assessment liability
386 for each year for which offsets are available to offset
387 assessment liability by the same percentage as the percentage
388 payment due on each estimated payment date; and

389 3. Credits shall be applied to assessments under s.
390 440.49.

391 (c) The offsets against assessments which are used by an
392 investor with respect to any year may not exceed the full
393 assessment liability of the investor for that year.

394 (d) Any offsets against assessments which an investor is
395 permitted to use under paragraphs (a) and (b) but is unable to
396 use because of paragraph (c), may be carried forward
397 indefinitely and used to offset the investor's assessment

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398 liability in any subsequent year in which the investor has
399 sufficient assessment liability, including in a year in which
400 the investor also uses assessment offsets that are allocated to
401 that year under paragraph (b).

402 (e) An investor that has invested in the SESP provider is
403 not required to reduce the amount of assessment including by the
404 investor in connection with the ratemaking for any insurance
405 contract written in this department because of a reduction in
406 the investor's assessment derived from the offsets granted under
407 this subsection.

408 (f) If the assessments that an investor does not pay by
409 virtue of the offsets earned under this subsection would
410 constitute a credit against another tax or assessment if paid,
411 the investor shall continue to earn the credit as though the
412 offset assessments were paid by cash.

413 (g) An investor may transfer the offsets it earns under
414 this subsection to another investor if the transferor delivers
415 to the director of the Office of Insurance Regulation within 30
416 days after the transfer a written notice indicating the name of
417 the transferee, the amount of offsets being transferred and the
418 year or years to which such offsets are allocable as provided in
419 paragraph (b).

420 (h) The general revenue surcharges payable by the Special
421 Disabilities Trust Fund shall not be reduced by the offsets
422 taken under this act.

423
424 ===== T I T L E A M E N D M E N T =====
425 Remove line(s) 40, and insert:

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426 facilitate the formation of investor networks; creating s.
427 624.5108, F.S., relating to casualty insurance assessment
428 offsets; providing definitions; providing for an application
429 procedure for designation as a state economic stimulus plan
430 provider; creating application criteria; authorizing the Office
431 of Tourism, Trade, and Economic Development to perform
432 background checks on applicants; authorizing the Office of
433 Tourism, Trade, and Economic Development to deny the application
434 if the criteria for a provider applicant is not met; requiring
435 the provider applicant to be incorporated in Florida; requiring
436 the provider applicant to establish an office in the state
437 within 60 days after being designated a SESP provider;
438 authorizing the Office of Tourism, Trade, and Economic
439 Development to adopt rules to govern the application process;
440 providing for a SESP provider allocation offset process;
441 establishing a State Economic Stimulus Plan Fund; providing for
442 permissible uses for the SESP funds; requiring the Office of
443 Tourism, Trade, and Economic Development to approve economic
444 development projects or permissible investment proposals no
445 later than 20 days after receiving a written proposal; requiring
446 the SESP provider to report certain information to the Office of
447 Tourism, Trade, and Economic Development no later than 30 days
448 after the fund allocation date; requiring the SESP provider to
449 file an annual report; requiring the SESP provider to provide an
450 annual audited financial statement; providing for SESP provider
451 assessment offsets; repealing

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