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LEGISLATIVE ACTION

Senate

House

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01/14/2009 11:28 AM

The Conference Committee on CS for SB 38-A recommended the following:

Senate Conference Committee Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 288.1081, Florida Statutes, is created to read:

288.1081 Economic Gardening Business Loan Pilot Program.—

(1) There is created within the Office of Tourism, Trade, and Economic Development the Economic Gardening Business Loan Pilot Program. The purpose of the pilot program is to stimulate



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12 investment in Florida's economy by providing loans to expanding
13 businesses in the state. As used in this section, the term
14 "office" means the Office of Tourism, Trade, and Economic
15 Development.

16 (2) The Legislature finds that it is vital to the overall
17 health and growth of the state's economy to promote favorable
18 conditions for expanding Florida businesses that demonstrate the
19 ability to grow. The Legislature further finds that, due to the
20 current extraordinary economic challenges confronting the state,
21 there exists a public purpose in expending state resources to
22 stimulate investment in Florida's economy. It is therefore the
23 intent of the Legislature that resources be provided for the
24 pilot program.

25 (3) (a) To be eligible for a loan under the pilot program,
26 an applicant must be a business eligible for assistance under
27 the Economic Gardening Technical Assistance Pilot Program as
28 provided in s. 288.1082(4) (a).

29 (b) A loan applicant must submit a written application to
30 the loan administrator in the format prescribed by the loan
31 administrator. The application must include:

32 1. The applicant's federal employer identification number,
33 unemployment account number, and sales or other tax registration
34 number.

35 2. The street address of the applicant's principal place of
36 business in this state.

37 3. A description of the type of economic activity, product,
38 or research and development undertaken by the applicant,
39 including the six-digit North American Industry Classification
40 System code for each type of economic activity conducted by the



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41 applicant.

42 4. The applicant's annual revenue, number of employees,
43 number of full-time equivalent employees, and other information
44 necessary to verify the applicant's eligibility for the pilot
45 program under s. 288.1082(4) (a).

46 5. The projected investment in the business, if any, which
47 the applicant proposes in conjunction with the loan.

48 6. The total investment in the business from all sources,
49 if any, which the applicant proposes in conjunction with the
50 loan.

51 7. The number of net new full-time equivalent jobs that, as
52 a result of the loan, the applicant proposes to create in this
53 state as of December 31 of each year and the average annual wage
54 of the proposed jobs.

55 8. The total number of full-time equivalent employees the
56 applicant currently employs in this state.

57 9. The date that the applicant anticipates it needs the
58 loan.

59 10. A detailed explanation of why the loan is needed to
60 assist the applicant in expanding jobs in the state.

61 11. A statement that all of the applicant's available
62 corporate assets are pledged as collateral for the amount of the
63 loan.

64 12. A statement that the applicant, upon receiving the
65 loan, agrees not to seek additional long-term debt without prior
66 approval of the loan administrator.

67 13. A statement that the loan is a joint obligation of the
68 business and of each person who owns at least 20 percent of the
69 business.



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70 14. Any additional information requested by the office or
71 the loan administrator.

72 (c) The loan administrator, after verifying the accuracy of
73 a submitted application, shall award the loan to the applicant
74 if the administrator determines that the applicant, as compared
75 to other applicants submitting applications, is in the best
76 position to use the loan to continue making a successful long-
77 term business commitment to the state. The loan administrator
78 also shall consider the following factors:

79 1. Whether the applicant has applied for or received
80 incentives from local governments;

81 2. Whether the applicant has applied for or received
82 waivers of taxes, impact fees, or other fees or charges by local
83 governments; and

84 3. What other sources of investments or financing for the
85 project that is the subject of the loan application will be
86 available to the applicant.

87 (d) A borrower awarded a loan under this section and the
88 loan administrator must enter into a loan agreement that
89 provides for the borrower's repayment of the loan.

90 (4) The following terms apply to a loan received under the
91 pilot program:

92 (a) The maximum amount of the loan is \$250,000.

93 (b) The proceeds of the loan may be used for working
94 capital purchases, employee training, or salaries for newly
95 created jobs in the state.

96 (c) The security interest for the loan's collateral
97 covering all of the borrower's available corporate assets to
98 cover the amount of the loan must be perfected by recording a



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99 lien under the Uniform Commercial Code.

100 (d) The period of the loan is 4 years.

101 (e) The interest rate of the loan is 2 percent. However, if
102 the borrower does not create the projected number of jobs within
103 the terms of the loan agreement, the interest rate shall be
104 increased for the remaining period of the loan to the prime rate
105 published in the Wall Street Journal, as of the date specified
106 in the loan agreement, plus 4 percentage points. The loan
107 agreement may provide flexibility in meeting the projected
108 number of jobs for delays due to governmental regulatory issues,
109 including, but not limited to, permitting.

110 (f) For the first 12 months of the loan, payment is due for
111 interest only, payable during the twelfth month. Thereafter,
112 payment for interest and principal is due each month until the
113 loan is paid in full. Interest and principal payments are based
114 on the unpaid balance of the total loan amount.

115 (5) (a) The office may designate one or more qualified
116 entities to serve as loan administrators for the pilot program.

117 A loan administrator must:

118 1. Be a Florida corporation not for profit incorporated
119 under chapter 617 which has its principal place of business in
120 the state.

121 2. Have 5 years of verifiable experience of lending to
122 businesses in this state.

123 3. Submit an application to the office on forms prescribed
124 by the office. The application must include the loan
125 administrator's business plan for its proposed lending
126 activities under the pilot program, including, but not limited
127 to, a description of its outreach efforts, underwriting, credit



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128 policies and procedures, credit decision processes, monitoring
129 policies and procedures, and collection practices; the
130 membership of its board of directors; and samples of its
131 currently used loan documentation. The application must also
132 include a detailed description and supporting documentation of
133 the nature of the loan administrator's partnerships with local
134 or regional economic and business development organizations.

135 (b) The office, upon selecting a loan administrator, shall
136 enter into a grant agreement with the administrator to issue the
137 available loans to eligible applicants. The grant agreement must
138 specify the aggregate amount of the loans authorized for award
139 by the loan administrator. The term of the grant agreement must
140 be at least 4 years, except that the office may terminate the
141 agreement earlier if the loan administrator fails to meet
142 minimum performance standards set by the office. The grant
143 agreement may be amended by mutual consent of both parties.

144 (c) The office shall disburse from the Economic Development
145 Trust Fund to the loan administrator the appropriations provided
146 for the pilot program. Disbursements to the loan administrator
147 must not exceed the aggregate amount of the loans authorized in
148 the grant agreement. The office may not disburse more than 50
149 percent of the aggregate amount of the loans authorized in the
150 grant agreement until the office verifies the borrowers' use of
151 the loan proceeds and the loan administrator's successful credit
152 decisionmaking policies.

153 (d) A loan administrator is entitled to receive a loan
154 origination fee, payable at closing, of 1 percent of each loan
155 issued by the loan administrator and a servicing fee of 0.625
156 percent per annum of the loan's outstanding principle balance,



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157 payable monthly. During the first 12 months of the loan, the
158 servicing fee shall be paid from the disbursement from the
159 Economic Development Trust Fund, and thereafter the loan
160 administrator shall collect the servicing fee from the payments
161 made by the borrower, charging the fee against repayments of
162 principal.

163 (e) A loan administrator, after collecting the servicing
164 fee in accordance with paragraph (d), shall remit the borrower's
165 collected interest, principal payments, and charges for late
166 payments to the office on a quarterly basis. If the borrower
167 defaults on the loan, the loan administrator shall initiate
168 collection efforts to seek repayment of the loan. The loan
169 administrator, upon collecting payments for a defaulted loan,
170 shall remit the payments to the office but, to the extent
171 authorized in the grant agreement, may deduct the costs of the
172 administrator's collection efforts. The office shall deposit all
173 funds received under this paragraph in the General Revenue Fund.

174 (f) A loan administrator shall submit quarterly reports to
175 the office which include the information required in the grant
176 agreement. A quarterly report must include, at a minimum, the
177 number of full-time equivalent jobs created as a result of the
178 loans, the amount of wages paid to employees in the newly
179 created jobs, and the locations and types of economic activity
180 undertaken by the borrowers.

181 (6) All notes, mortgages, security agreements, letters of
182 credit, or other instruments that are given to secure the
183 repayment of loans issued in connection with the financing of
184 any loan under the program, without regard to the status of any
185 party thereto as a private party, are exempt from taxation by



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186 the state and its political subdivisions. The exemption granted
187 in this subsection does not apply to any tax imposed by chapter
188 220 on interest, income, or profits on debt obligations owned by
189 corporations.

190 (7) The office shall adopt rules under ss. 120.536(1) and
191 120.54 to administer this section. To the extent necessary to
192 expedite implementation of the pilot program, the office may
193 adopt initial emergency rules for the pilot program in
194 accordance with s. 120.54(4).

195 (8) On June 30 and December 31 of each year, beginning in
196 2009, the office shall submit a report to the Governor, the
197 President of the Senate, and the Speaker of the House of
198 Representatives which describes in detail the use of the loan
199 funds. The report must include, at a minimum, the number of
200 businesses receiving loans, the number of full-time equivalent
201 jobs created as a result of the loans, the amount of wages paid
202 to employees in the newly created jobs, the locations and types
203 of economic activity undertaken by the borrowers, the amounts of
204 loan repayments made to date, and the default rate of borrowers.

205 (9) Unexpended balances of appropriations provided for the
206 pilot program shall not revert to the fund from which the
207 appropriation was made at the end of a fiscal year but shall be
208 retained in the Economic Development Trust Fund and be carried
209 forward for expenditure for the pilot program during the
210 following fiscal year. A loan administrator may not award a new
211 loan or enter into a loan agreement after June 30, 2011.
212 Balances of appropriations provided for the pilot program which
213 remain unexpended as of July 1, 2011, shall revert to the
214 General Revenue Fund.



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215 (10) This section is repealed July 1, 2016, unless reviewed
216 and reenacted by the Legislature before that date.

217 Section 2. Section 288.1082, Florida Statutes, is created
218 to read:

219 288.1082 Economic Gardening Technical Assistance Pilot
220 Program.—

221 (1) There is created within the Office of Tourism, Trade,
222 and Economic Development the Economic Gardening Technical
223 Assistance Pilot Program. The purpose of the pilot program is to
224 stimulate investment in Florida's economy by providing technical
225 assistance for expanding businesses in the state. As used in
226 this section, the term "office" means the Office of Tourism,
227 Trade, and Economic Development.

228 (2) The office shall contract with one or more entities to
229 administer the pilot program under this section. The office
230 shall award each contract in accordance with the competitive
231 bidding requirements in s. 287.057 to an entity that
232 demonstrates the ability to implement the pilot program on a
233 statewide basis, has an outreach plan, and has the ability to
234 provide counseling services, access to technology and
235 information, marketing services and advice, business management
236 support, and other similar services. In selecting these
237 entities, the office also must consider whether the entities
238 will qualify for matching funds to provide the technical
239 assistance.

240 (3) A contracted entity administering the pilot program
241 shall provide technical assistance for eligible businesses which
242 includes, but is not limited to:

243 (a) Access to free or affordable information services and



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244 consulting services, including information on markets,
245 customers, and competitors, such as business databases,
246 geographic information systems, and search engine marketing.

247 (b) Development of business connections, including
248 interaction and exchange among business owners and resource
249 providers, such as trade associations, think tanks, academic
250 institutions, business roundtables, peer-to-peer learning
251 sessions, and mentoring programs.

252 (4) (a) To be eligible for assistance under the pilot
253 program, a business must be a for-profit, privately held,
254 investment-grade business that employs at least 10 persons but
255 not more than 50 persons, has maintained its principal place of
256 business in the state for at least the previous 2 years,
257 generates at least \$1 million but not more than \$25 million in
258 annual revenue, qualifies for the tax refund program for
259 qualified target industry businesses under s. 288.106, and,
260 during 3 of the previous 5 years, has increased both its number
261 of full-time equivalent employees in this state and its gross
262 revenues.

263 (b) A contracted entity administering the pilot program, in
264 selecting the eligible businesses to receive assistance, shall
265 choose businesses in more than one industry cluster and, to the
266 maximum extent practicable, shall choose businesses that are
267 geographically distributed throughout Florida or are in
268 partnership with businesses that are geographically distributed
269 throughout Florida.

270 (5) (a) A business receiving assistance under the pilot
271 program must enter into an agreement with the contracted entity
272 administering the program to establish the business's commitment



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273 to participation in the pilot program. The agreement must
274 require, at a minimum, that the business:

275 1. Attend a minimum number of meetings between the business
276 and the contracted entity administering the pilot program.

277 2. Report job-creation data in the manner prescribed by the
278 contracted entity administering the pilot program.

279 3. Provide financial data in the manner prescribed by the
280 contracted entity administering the program.

281 (b) The office or the contracted entity administering the
282 pilot program may prescribe in the agreement additional
283 reporting requirements that are necessary to track the progress
284 of the business and monitor the business's implementation of the
285 assistance. The contracted entity shall report the information
286 to the office on a quarterly basis.

287 (6) A contracted entity administering the pilot program is
288 authorized to promote the general business interests or
289 industrial interests of the state.

290 (7) The office shall review the progress of a contracted
291 entity administering the pilot program at least once each 6
292 months and shall determine whether the contracted entity is
293 meeting its contractual obligations for administering the pilot
294 program. The office may terminate and rebid a contract if the
295 contracted entity does not meet its contractual obligations.

296 (8) On December 31 of each year, beginning in 2009, the
297 office shall submit a report to the Governor, the President of
298 the Senate, and the Speaker of the House of Representatives
299 which describes in detail the progress of the pilot program. The
300 report must include, at a minimum, the number of businesses
301 receiving assistance, the number of full-time equivalent jobs



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302 created as a result of the assistance, if any, the amount of
303 wages paid to employees in the newly created jobs, and the
304 locations and types of economic activity undertaken by the
305 businesses.

306 (9) The office may adopt rules under ss. 120.536(1) and
307 120.54 to administer this section.

308 Section 3. By December 31, 2012, the Office of Program
309 Policy Analysis and Government Accountability shall submit a
310 report to the Governor, the President of the Senate, and the
311 Speaker of the House of Representatives which evaluates the
312 Economic Gardening Technical Assistance Pilot Program in s.
313 288.1082, Florida Statutes, and the pilot program's
314 effectiveness in expanding the targeted businesses.

315 Section 4. From the funds specifically appropriated to fund
316 this act, up to \$1.5 million may be used to implement the
317 Economic Gardening Technical Assistance Pilot Program created in
318 section 2 of this act.

319 Section 5. This act shall take effect upon becoming a law.

320
321 ===== T I T L E A M E N D M E N T =====

322 And the title is amended as follows:

323 Delete everything before the enacting clause
324 and insert:

325 A bill to be entitled
326 An act relating to economic development; creating s. 288.1081,
327 F.S.; creating the Economic Gardening Business Loan Pilot
328 Program within the Office of Tourism, Trade, and Economic
329 Development; providing legislative findings and intent;
330 providing eligibility criteria for the award of loans to certain



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331 businesses; providing application procedures; requiring loan
332 agreements; providing terms of loans; providing for use of loan
333 proceeds; providing criteria and application procedures for the
334 selection of loan administrators; requiring a loan administrator
335 to enter into a grant agreement; providing for the disbursement
336 of certain funds from the Economic Development Trust Fund;
337 requiring fees for the loan administrator; providing for the
338 collection and deposit of loan payments; requiring the loan
339 administrator to submit a report to the office; requiring the
340 office to adopt rules; authorizing the use of emergency
341 rulemaking procedures; requiring the office to submit a report
342 to the Governor and Legislature; providing for reversion and
343 carryforward of certain unexpended appropriations; prohibiting
344 new loans after a specified date; providing for future repeal;
345 creating s. 288.1082, F.S.; creating the Economic Gardening
346 Technical Assistance Pilot Program within the office; requiring
347 the office to contract for administration of the pilot program;
348 requiring competitive procurement; requiring the provision of
349 technical assistance to certain businesses; providing
350 eligibility criteria for businesses to receive technical
351 assistance; requiring the businesses to enter into agreements
352 with the contracted entity administering the pilot program;
353 requiring the businesses to report certain data; providing that
354 the contracted entity is an economic development agency;
355 providing for review of contracts; requiring the office to
356 submit a report to the Governor and Legislature; authorizing the
357 office to adopt rules; directing the Office of Program Policy
358 Analysis and Government Accountability to submit a report to the
359 Governor and Legislature; authorizing the expenditure of certain



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360 funds appropriated for the pilot program; providing an effective
361 date.