

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 406

INTRODUCER: Committee on Appropriations, (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development)and Senators Gardiner and Benacquisto

SUBJECT: Economic Development

DATE: March 21, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	Favorable
2.	Pingree	Martin	ATD	Fav/CS
3.	Pingree	Hansen	AP	Fav/CS
4.				
5.				
6.				

I. Summary:

CS/SB 406 revises and creates various statutory provisions relating to economic development. The bill has a fiscal impact on both state revenues and expenditures.

For Fiscal Year 2013-14, recurring receipts for General Revenue will be decreased and nonrecurring General Revenue funds will be correspondingly increased by anywhere from \$2.7 million to \$4 million, depending on the estimate that may be adopted by the Revenue Estimating Conference. Fiscal Year 2013-14 state expenditures will also be increased by \$912,887. Of the \$912,887 expenditures, \$734,724 would need to be appropriated in the General Appropriations Act for EDR and the DEO, and \$178,163 can be absorbed by the OPPAGA within existing resources. The DEO can absorb within existing resources the impact associated with the implementation of the bill’s provisions related to baseball spring training facilities. The bill also commits future state revenues that will be used to make payments for baseball spring training facilities, while making such revenue decreases contingent upon increased revenues associated with the repeal of the international banking facility income tax deduction. See Section V.

The bill:

- Streamlines the process by which all incentive program applicants are evaluated by requiring that all applicants be evaluated for the “economic benefits” of the proposed project.
- Creates a rotating, 3-year review schedule for specified incentives and programs to be evaluated by the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA).

- Consolidates required reports and reporting dates for various economic development program reports by the Department of Economic Opportunity (DEO), Enterprise Florida, Inc. (EFI), the Office of Film and Entertainment, and Space Florida.
- Requires the DEO to publish project-based information on economic development programs provided to businesses on its website in a user-friendly format.
- Creates a new certification process for local governments to receive state funds for the construction and renovation of spring training facilities, contingent upon passage of SB 306, or similar legislation, which repeals section 220.63(5), Florida Statutes, the corporate income tax deduction for an international banking facility.
- Specifies the meaning of the term “brownfield” for purposes of the sales tax exemption for building materials in redevelopment projects and for the brownfield redevelopment bonus refund.

The bill is effective upon becoming a law.

This bill creates sections 288.076 and 288.11631, Florida Statutes.

This bill creates general law not contained in a designated section of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 20.60, 212.08, 212.20, 220.194, 288.005, 288.012, 288.061, 288.0656, 288.106, 288.107, 288.1081, 288.1082, 288.1088, 288.1089, 288.1253, 288.1254, 288.1258, 288.714, 288.7771, 288.903, 288.906, 288.907, 288.92, 288.95155, 290.0056, 290.014, 331.3051, 331.310, and 446.50.

This bill repeals sections 288.095(3)(c) and 288.904(6), Florida Statutes.

II. Present Situation:

Economic Development Incentives Application and Review

Under Florida’s current economic development framework, Enterprise Florida, Inc. (EFI), serves as the state’s economic development organization, operating under a contract with the Department of Economic Opportunity (DEO).¹ EFI is a public-private partnership that serves as the state’s primary contact for businesses interested in pursuing relocation, expansion, or retention possibilities. EFI works with businesses to match business needs with state and local resources, including developing an economic development incentive proposal for the prospective business in order to “sell the State as a place to do business.”²

After EFI has worked with businesses and offered an incentives proposal, EFI submits incentives applications to the DEO, which in turn evaluates incentive applications based on statutorily-defined requirements. The DEO makes the final determination of incentive eligibility, executes incentives contracts, and is responsible for contract monitoring and compliance.³

¹ Section 288.901, F.S.

² Enterprise Florida, Inc., *2012 Annual Incentives Report*, (2012), available at: http://www.floridajobs.org/about%20awi/open_government/2012_IncentivesReport.pdf, (last visited on January 17, 2013).

³ Section 288.061, F.S.

EFI performs a prospective impact analysis on each potential project. Presently, the qualified target industry tax refund program,⁴ quick action closing fund,⁵ qualified defense contractor and space flight business tax refund program,⁶ and the brownfield redevelopment bonus refund program⁷ have statutory provisions that require any application for the incentive be evaluated prospectively for “economic benefits.” EFI currently performs a similar prospective impact analysis for the high-impact sector performance grants⁸ and the capital investment tax credit program,⁹ but there is no statutory requirement for such an evaluation.¹⁰

Section 288.005(1), F.S., defines the term “economic benefits” to mean “the direct, indirect, and induced gains in state revenues as a percentage of the state’s investment. The state’s investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives.” Direct economic effects are those resulting directly from the economic event, in this case the state’s expenditure on the incentive to the applicant business. Indirect effects are the secondary effects of the economic event on suppliers, services, labor, and taxes. Induced effects are one step further removed from the event and measure the effects on the economy as a result of spending from indirect effects as the money spent continues to cycle through the economy.¹¹

According to the Office of Economic and Demographic Research (EDR), EFI prospectively evaluates applications for each of the incentives and programs mentioned above using RIMS II multipliers,¹² a model developed by the U.S. Department of Commerce’s Bureau of Economic Analysis. The EDR is required to evaluate the model used by EFI for the prospective impact analysis of all qualified target industry refund projects, and to report such findings every 3 years.¹³ The model evaluated by the EDR and used by EFI for the qualified target industry tax refund program is also used across the programs previously mentioned except for the Innovation Incentive Program.¹⁴

In 2010, the EDR produced its first report on the model used by EFI to evaluate qualified target industry refund projects. In their report, the EDR concluded that the model being utilized by EFI was not fully in compliance with statutory requirements that EFI’s model evaluate “return on investment” (ROI), defined as the gain in state revenues as a percentage of the state’s investment. The EDR determined that the model, which EFI terms a “payback ratio,” needed changes to move incrementally closer to a true ROI. EFI and the EDR worked to redefine certain

⁴ Section 288.106, F.S.

⁵ Section 288.1088, F.S.

⁶ Section 288.1045, F.S.

⁷ Section 288.107, F.S.

⁸ Section 288.108, F.S.

⁹ Section 220.191, F.S.

¹⁰ Office of Economic and Demographic Research, *Tax Refund Program for Qualified Target Industry Businesses: A review of the methodology and model used in determining the state’s return on investment*, (9/1/2010), available at: <http://edr.state.fl.us/Content/special-research-projects/economic/ROI.pdf>, (last visited on January 29, 2013).

¹¹ Adapted from “What is IMPLAN?” by MIG. Available at: http://implan.com/v4/index.php?option=com_content&view=article&id=282:what-is-implan&catid=152:implan-appliance-&Itemid=2, (last visited on January 4, 2013).

¹² For more information on RIMS II multipliers and their application, see U.S. Department of Commerce, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)*, (March, 1997), available at: <http://www.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf>, (last visited on January 4, 2013).

¹³ Section 288.106(4)(c)2., F.S.

¹⁴ *Supra* note 10 at page 20.

variables for the impact analysis in the interim period. In the report, the EDR noted that recommendations and changes to the model used by EFI “should be viewed as interim measures, pending completion of the new ROI model that will be ultimately required.”¹⁵ The next report is due September 1, 2013.

The Innovation Incentive Program is not required by law to be evaluated for “economic benefits,” but any potential project is required to have a break-even “return on investment” within a 20-year period, with certain exceptions.¹⁶ Return on investment as it relates to the Innovation Incentive Program is not defined under current law. EFI evaluates the Innovation Incentive Program using the REMI model.¹⁷ EFI’s modeling evaluation of the Innovation Incentive Program is not currently evaluated by the EDR.¹⁸

Incentive and Program Reporting

In addition to conducting an up-front impact analysis of each potential economic development project, EFI is also required to produce an Annual Incentives Report¹⁹ that requires, among other things, an analysis of the economic benefits that actually occurred based on actual private investment, jobs created, and wages paid over the previous 3 years. The Annual Incentives Report compares the projected impacts of each incentive program over the previous 3 years to the confirmed, realized results. The Division of Strategic Business Development within the DEO is required to assist EFI in the preparation of the Annual Incentives Report.²⁰

The Annual Incentives Report also requires certain information such as the amount of awards given, jobs created, amount of capital investment, and wages paid. This information is organized by incentive program and by project. The Annual Incentives Report also requires information on incentive projects that occurred over the previous fiscal year, including the number of incentive applications received, recommendations from EFI to the DEO, the number of final decisions issued by the DEO for approval or denial, and the projects for which incentive agreements were executed.

Other required information in the Annual Incentives Report includes:

- A description of federal or local incentives received, organized by project.
- The number of withdrawn or terminated projects that did not receive incentives due to not fulfilling the terms of their incentives agreement.

¹⁵ *Supra* note 10 at pages 3 and 4.

¹⁶ Section 288.1089, F.S., requires any potential business qualifying for the Innovation Incentive Program be a high-value research and development, innovation business, or an alternative and renewable energy project. Research and development and alternative and renewable energy projects are required to meet the break-even 20-year return on investment requirement, but applicants qualifying as “innovation business projects” are not required to demonstrate the return on investment requirements.

¹⁷ The REMI model is a proprietary model developed by Regional Economic Models, Inc. The model evaluates linkages in an economy and how economic impacts can impact the larger regional economy. For more information see “The REMI Model,” available at: <http://www.remi.com/the-remi-model>, (last visited on January 7, 2013).

¹⁸ *Supra* note 10.

¹⁹ Section 288.907, F.S.

²⁰ Section 288.907(2), F.S.

- An analysis of the economic benefits of incentives made to projects locating in state enterprise zones, rural communities, brownfield areas, or distressed urban communities.
- Identification of target industry businesses and high-impact businesses.
- Trends relating to business interest in and usage of the state's incentives programs, including the number of minority-owned and woman-owned businesses receiving incentives.
- Identification of incentive programs not utilized.

Section 288.095(3)(c), F.S., requires information similar to the Annual Incentives Report to be reported by the DEO related to programs funded through the Economic Development Incentives Account in the Economic Development Trust Fund.

Section 288.906, F.S., requires EFI to produce an annual report, separate from the Annual Incentives Report. The annual report includes broad organizational information including:

- A description of EFI's operations and accomplishments, including its divisions and the interactions with local and private economic development organizations.
- An evaluation of progress toward achieving organizational goals and specific performance outcomes.
- Methods for implementing and funding EFI's operations.
- An assessment of direct job creation benefits for welfare transition program participants or other programs designed to assist the long-term unemployed in finding work.
- The results of a customer satisfaction survey of businesses served.
- Annual compliance and financial audit information.

EFI's annual report is also required to include an analysis of the return on the public's investment in EFI. Section 288.904, F.S., requires EFI to consult with EDR to hire an economic analysis firm to develop the model to report on the public's return on investment (ROI) in EFI. The EDR is directed to review the model and to offer feedback before its implementation. EFI has hired Ernst & Young to perform an ROI analysis of EFI.²¹ Ernst & Young estimated EFI's 2011 return on investment to be 2.66:1, or an estimation that for every dollar invested in EFI and the incentive programs it markets to businesses, the state will receive \$2.66 in state and local taxes.

The DEO also produces an annual report, which is required to include information on the state's business climate and economic development, as well as an identification of problems and recommendations.²²

Florida presently has multiple reporting requirements for its various economic development programs. These reports are required separately from the information included in EFI annual report, the Annual Incentives Report, and the DEO annual report. Reporting due dates and reporting periods are not uniform, and are due at various dates throughout the year. The reporting due dates for Florida's economic development incentives and programs are as follows:

²¹ Enterprise Florida, *2011 Annual Report*, (2011), available at: http://www.eflorida.com/IntelligenceCenter/download/AU/AR_2011.pdf, (last visited on January 7, 2013).

²² Section 20.60(10), F.S.

Date	Report
January 1	<ul style="list-style-type: none"> • The DEO's Annual Report (s. 20.60, F.S.) • Displaced Homemaker plan and report (s. 446.50, F.S.)
February 1	<ul style="list-style-type: none"> • Annual reports on enterprise zones (s. 290.014, F.S.)
August 31	<ul style="list-style-type: none"> • Black Business Loan Program Annual Report (s. 288.714, F.S.)
September 1	<ul style="list-style-type: none"> • Rural Economic Development Initiative (s. 288.0656, F.S.) • Space Florida annual performance report (s. 331.3051, F.S.)
October 1	<ul style="list-style-type: none"> • State of Florida International Offices (s. 288.012, F.S.) • Entertainment Financial Incentive Annual Report (s. 288.1254, F.S.)
October 15	<ul style="list-style-type: none"> • Reports on each division of EFI (s. 288.92, F.S.)
November 30	<ul style="list-style-type: none"> • Florida Space Business Incentive Act annual report, beginning in 2014 (s. 220.194, F.S.) • Space Florida annual operations report (s. 331.310, F.S.)
December 1	<ul style="list-style-type: none"> • Report on information on the causes of business' failures to complete qualified target industry tax refund program agreements (s. 288.106, F.S.) • Report detailing the relationship between tax exemptions and film industry growth (s. 288.1258, F.S.) • Enterprise Zone Development Agency report to the DEO (s. 290.0056, F.S.) • EFI's Annual Report, due <i>before</i> this date (s. 288.906, F.S.)

<p>December 30</p>	<ul style="list-style-type: none"> • EFI’s Annual Incentives Report (s. 288.907, F.S.) • Annual report on the Economic Development Trust Fund (s. 288.095, F.S.) • Florida Export Finance Corporation, report due as part of the DEO report on the Economic Development Trust Fund (s. 288.7771, F.S.) • Office of Film and Entertainment annual travel and expenses report (s. 288.1253, F.S.) • Florida Small Business Technology Growth Program report on the financial status of the program (s. 288.95155, F.S.)
<p>December 31</p>	<ul style="list-style-type: none"> • Economic Gardening Technical Assistance Pilot Program (s. 288.1082, F.S.)
<p>Miscellaneous or multiple dates</p>	<ul style="list-style-type: none"> • Quick Action Closing Fund, reported within 6 months of validation of contract performance. (s. 288.1088, F.S.) • Innovation Incentive Fund, reported within 90 days of the conclusion or termination of an award (s. 288.1089, F.S.) • Economic Gardening Business Loan Pilot Program, reports are due June 30th and December 31st (s. 288.1081, F.S.)

The Legislature also requires periodic review and analysis of several economic development programs by the Office of Program Policy Analysis and Government Accountability (OPPAGA). Economic development program reports by the OPPAGA typically focus on areas such as program administration and whether the program is meeting its statutory goals and direction. A sample of recent OPPAGA reports evaluating economic development programs includes:

- Economic Development Technical Assistance Program (GrowFL);²³
- Research Commercialization Matching Grant Program;²⁴ and

²³ OPPAGA, *Report No. 12-14: GrowFL Participants that Received Multiple Services and Met Eligibility Requirements Experienced Higher Growth*, (December 2012), available at: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1214rpt.pdf>, (last visited on January 16, 2013).

- Enterprise Zone Program.²⁵

Section 20.601, F.S., requires the OPPAGA to review the DEO and EFI by July 1, 2016, detailing several aspects of the operations, performance, and effectiveness of both.

Information on local economic development incentives is collected by EDR. EDR is required to collect information relating to each county or municipality that granted local economic development incentives in excess of \$25,000 during a fiscal year.²⁶ Counties and municipalities may complete their reporting requirements by completing a survey either online or by hard copy and returning it to EDR, who compiles the information into a single report.²⁷

DEO Incentives Portal

On August 2, 2012, the DEO launched an online portal for the public to view economic development projects receiving state funds.²⁸ The portal allows the public to view:

- Completed projects approved from January 1996 through May 2012;
- Inactive or terminated projects that were approved from January 1996 through December 1998; and
- Quick Action Closing Fund projects approved from program inception (1999) through December 2011, which are not confidential.

The portal's website states that DEO expects to have all non-confidential projects available on the portal by March of 2013.²⁹ The portal website allows users to view projects by incentive program, by the county of the project's location, by the date of the project, and by the recipient business's name. Information provided includes the total state incentive awarded, payments to date, job requirements, and capital investment requirements.

Economic Development Confidentiality Requirements

Section 288.075, F.S., specifies confidentiality of records requirements relating to a business's plans to locate, relocate, or expand business activities in Florida. Currently, certain business

²⁴ OPPAGA, *Report No. 11-20: Research Commercialization Matching Grant Program Underway, Additional Performance Data Needed*, (November 2011), available at: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1120rpt.pdf>, (last visited on January 16, 2013).

²⁵ OPPAGA, *Report No. 11-01: Few Businesses Take Advantage of Enterprise Zone Benefits; The Legislature Could Consider Several Options to Modify the Program*, (January, 2011), available at: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1101rpt.pdf>, (last visited on January 16, 2013).

²⁶ Section 125.045, F.S., requires counties to report economic development incentives of \$25,000 or more that were granted in the fiscal year. Section 166.021, F.S., requires municipalities with revenues and expenditures over \$250,000 to report economic development incentives of \$25,000 or more granted in the fiscal year.

²⁷ More information on the report and survey can be accessed by visiting <http://edr.state.fl.us/Content/local-government/economic-development-incentives/index.cfm>, (last visited on January 16, 2013).

²⁸ DEO press release, "DEO Launches Public Economic Development Incentives Portal, (August 02, 2012), available at: <http://www.floridajobs.org/news-center/news-feed/2012/08/02/deo-launches-public-economic-development-incentives-portal>, (last visited on February 15, 2013).

²⁹ DEO Economic Development Incentives Portal website, available at: <http://www.floridajobs.org/office-directory/division-of-strategic-business-development/economic-development-incentives-portal>, (last visited on February 15, 2013).

records are confidential and exempt³⁰ from Florida’s public records requirements when held by an economic development agency and requested to be exempt by the affected business. Examples of economic development agencies include the Department of Economic Opportunity (DEO), Enterprise Florida, Inc. (EFI), and public economic development agencies of local governments.

The following information is confidential and exempt from public records requirements for the duration specified:

- Upon written request, information relating to a business’s plans, intentions, and interests to locate, relocate, or expand its business activities in Florida. This information remains confidential and exempt for 12 months and may be extended an additional 12 months. If a final project order is issued, the information becomes public the earlier of: 180 days after the final project order for a signed economic development incentive award agreement is issued, a date specified in the final project order, or when the information is otherwise disclosed.
- Proprietary confidential business information and trade secrets are always confidential and exempt.
- Information on a business’s federal employer identification number, reemployment assistance account number, or Florida sales tax registration number is always confidential and exempt.
- Certain information pertaining to economic development incentive agreements. Specific sales, employee wage, and tax information remains confidential and exempt for the duration of the incentive agreement. Information including a business’s name, expected number of jobs created or retained, total jobs, the amount of incentives awarded, and the committed total annual wages remain confidential and exempt until the earlier of: 180 days after a final project order is issued for a signed economic development incentives agreement, a date specified in the final project order, or when the information is otherwise disclosed.

Florida’s Grapefruit League

Florida hosts 15 Major League Baseball (MLB) franchises each February and March as part of MLB’s annual Spring Training. The 15 teams constitute the Grapefruit League. The teams and their locations are below:

Team	Host Location	Facility Name	Average Per-game Attendance in 2012 ³¹	Team’s Lease Expires ³²
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³⁰ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

³¹ Florida Sports, *Press Release: Florida Spring Training Baseball Tops 1.6 Million Total Attendance for 2012 Season*, (April 13, 2012), (on file with the Commerce and Tourism Committee).

³² Florida Sports, *Florida Spring Training Stadium Lease Dates*, (on file with the Commerce and Tourism Committee).

Team	Host Location	Facility Name	Average Per-game Attendance in 2012 ³¹	Team's Lease Expires ³²
Atlanta Braves	Walt Disney World Resort (Lake Buena Vista)	Disney's Wide World of Sports ³³	7,489	2017
Baltimore Orioles	Sarasota	Ed Smith Stadium	7,093	2039
Boston Red Sox	Fort Myers	JetBlue Park	7,469	2042
Detroit Tigers	Lakeland	Joker Marchant Stadium	7,935	2016
Houston Astros	Kissimmee	Osceola County Stadium	4,027	2016
Miami Marlins	Jupiter	Roger Dean Stadium	7,935	2027
Minnesota Twins	Fort Myers	Hammond Stadium	7,344	2045
New York Mets	Port St. Lucie	Digital Domain Park	5,358	2023
New York Yankees	Tampa	Steinbrenner Field	10,855	2027
Philadelphia Phillies	Clearwater	Bright House Field	9,593	2023
Pittsburgh Pirates	Bradenton	McKechnie Field	5,493	2037
St. Louis Cardinals	Jupiter	Roger Dean Stadium	6,604	2027
Tampa Bay Rays	Port Charlotte	Charlotte Sports Park	5,495	2028
Toronto Blue Jays	Dunedin	Florida Auto Exchange Stadium	4,751	2016
Washington Nationals	Viera	Space Coast Stadium	4,880	2017

The Washington Capitals (now defunct) were the first professional team to come to Florida for spring training in 1888, spending three weeks in Jacksonville to prepare for the upcoming regular season. In the modern era, Florida's Grapefruit League (league) has been the spring-training home to as many as 20 of the 30 Major League Baseball teams.³⁴ The Grapefruit League saw a total attendance of 1.6 million fans during the 2012 MLB spring training season and set a per-game average attendance record, with an average of 6,965 fans attending games during the

³³ The Braves play at the only privately-owned stadium in the Grapefruit League.

³⁴ More information about the league is available at: <http://www.floridagrapefruitleague.com/>, (last visited on March 11, 2013).

month of March 2012.³⁵ The league results in approximately \$752.3 million in total economic impacts on the Florida economy, creating or supporting 9,205 full-time and part-time jobs.³⁶

Competition from Arizona

Since the late 1990s, the league has lost several teams to Arizona's Cactus League,³⁷ which has a 60-year history of its own with Major League Baseball spring training. A 2012 economic impact study indicated that the Cactus League generated approximately \$632 million annually to Arizona's economy.³⁸

The impetus for Arizona's emergence as a spring-training competitor to Florida was passage of legislation in 2000 creating the "Arizona Sports and Tourism Authority." The authority was authorized to levy and collect certain taxes (such as car-rental fees), and to bond them as debt service for certain specified sports facilities.³⁹ These revenue sources, coupled with local bed-tax and other funds, have enabled the construction of new spring-training ballparks, some of which are shared.

Aside from the availability of large, new facilities, baseball teams are drawn to Arizona due to the close proximity of the spring training stadiums, which are located within two adjacent counties: Maricopa and Pima. Florida's spring training facilities, on the other hand, are scattered along the state's two coasts and its central regions, making travel between stadiums time-consuming.

Since 1998, the following six teams have left the Grapefruit League for the Cactus League: the Texas Rangers, the Kansas City Royals, the Chicago White Sox, the Los Angeles Dodgers, the Cleveland Indians, and the Cincinnati Reds.

State Incentives for Spring Training Facilities

Section 288.11621, F.S., provides the procedures by which local governments may be certified to receive state funding for the purposes of acquiring, constructing, reconstructing, or renovating a MLB spring training facility. Only local governments may apply for certification

Eligibility Criteria

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants for state funding. The DEO must screen each applicant to confirm that the county where the facility is located levies a tourist development tax under s. 125.0104, F.S., and that the local government:

³⁵ *Supra* note 31.

³⁶ Florida Sports Foundation & The Bonn Marketing Research Group, Inc., *2009 Major League Baseball Florida Spring Training Economic Impact Study*, (June 2009), (on file with the Senate Commerce and Tourism Committee).

³⁷ The Cactus League began in 1947 with two teams, and now has 15 teams.

³⁸ Cactus League press release: *Two New Studies Credit Cactus League Industry with \$632 Million Annual Economic Impact*, (December 17, 2012), available at: <http://www.cactusleague.com/about.php>, (last visited on March 11, 2013).

³⁹ See A.R.S. T.5, Ch.8 at: <http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=5>. The relevant statewide legislation was ch. 372, Laws 2000, and the implementing local referendum was Proposition 302, which Maricopa County voters approved by a vote of 52 percent to 48 percent, authorizing new tourism taxes.

- Is responsible for the acquisition, construction, management, or operation of the facility for a spring training franchise or holds title to the property where the facility is located;
- Has a certified copy of a signed agreement with a spring training franchise for the use of the facility for a term of at least 20 years. The agreement must require the franchise to reimburse the state for state funds expended by the local government if the franchise relocates before the agreement expires;
- Has made a financial commitment to provide 50 percent or more of the funds required for the acquisition, construction, management, or operation of the spring training franchise facility (such commitment may be contingent upon award of state funds);
- Demonstrates that the spring training franchise facility will attract an annual paid attendance of at least 50,000 patrons.

Evaluation Criteria

DEO is directed to competitively evaluate applications for state funding. DEO must evaluate applicants based on the following criteria, prioritized in descending order of importance:

- The anticipated effect on the local economy where the spring training facility will be located, with priority given to applicants with the largest projected economic impact;
- The amount of local matching funds committed to a facility relative to total state funding sought, with priority to local governments committing larger amounts;
- The potential for the facility to serve multiple uses;
- The intended use of state funds, with priority given to local governments planning to use funds to acquire, construct, or renovate a facility;
- The length of time a local government has been under agreement with a franchise to hold spring training activities within its jurisdiction, with priority given to the longest-standing agreements;
- The length of time a local government's facility has been used by one or more franchises, with priority given to local governments whose facility has been in continuous use by the franchise the longest;
- The remaining term on a lease between a local government and a franchise, with priority given to local governments with the shortest lease terms remaining;
- The length of time that a franchise agrees to use a local government's facility if the local government is certified, with priority given to agreements with the longest future use;
- The net increase of total active recreation space owned by the local government after acquisition of land for the facility, with priority given to local governments having the largest percentage increase in total active recreations space available for public use; and
- If the facility is located in a brownfield, enterprise zone, community redevelopment area, or other targeted economic development area or revitalization included in an urban infill redevelopment plan, with priority given to local governments having facilities located in such areas.

Local governments must enter into an agreement with DEO that specifies:

- The amount of state incentive funding to be distributed;
- The criteria the local government must meet to remain certified;

- That the local government is subject to decertification if it fails to comply with the agreement or other requirements of certification;
- That DEO may recover state funds if the local government is decertified; and
- Any other provisions deemed prudent by DEO.

Sales Tax Distribution Payments

Any applicant local government meeting the above mentioned eligibility criteria and competitively evaluated by DEO is eligible to receive monthly sales tax distribution payments from the state of \$41,667 for not more than 30 years,⁴⁰ for an annual payment totaling \$500,004. The Department of Revenue (DOR) disburses the payments. DOR may not distribute payments until it receives notice from DEO that the local government has encumbered funds.

Sales tax distribution payments may only be used for the public purposes of:

- Acquiring, constructing, reconstructing, or renovating a facility for a new or retained professional sports franchise;
- Paying or pledging payments of debt service on bonds issued for such activities;
- Funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities;
- Refinancing such bonds;
- Reimbursing associated costs for such activities; or
- Assisting in the relocation of a spring training franchise from one local government to another, but only if the governing board of the current host local government agrees to relocation by majority vote.

State funds may not be awarded to a local government to subsidize a privately owned facility, exclusively used by the franchise.

Any funds received by a local government that are not expended must be placed in a separate account or trust fund, and may only be used for authorized uses outlined above. Local governments may request that DOR suspend further distribution of state funds for 12 months after an existing agreement with a franchise expires in order to give the local government an opportunity to enter into a new agreement with a franchise. If the local government is able to enter into a new agreement, DOR will continue distributions. Local governments must begin expending state funds distributed within 48 months after initial receipt, and the construction or capital improvements to a spring training facility must be completed within 2 years after the project begins.

Decertification Process

DEO must decertify any local government who requests decertification. Any local government that does not have a valid agreement with a franchise or satisfy its commitment to provide local matching funds is also subject to decertification by DEO. Decertification is delayed for 12 months after an agreement between a local government and a franchise expires if the local government can demonstrate it is actively negotiating with a franchise other than the franchise

⁴⁰ Section 212.20(6)(d)6.b., F.S.

that was the basis for the original certification. A local government who receives notice of intent to decertify has 60 days to petition for a review of the decision, and DEO has 45 days from the date of the request to notify the local government of the review’s outcome. DOR must immediately stop payments to a decertified applicant for any funds that are not encumbered. A decertified local government has 60 days from final notice of decertification to repay all unencumbered state funds received, plus any interest accrued. A local government *may not* be decertified if it has encumbered funds to pay or pledge for the payment of debt service or other associated debt financing or bonding related to the acquisition, construction, or renovation of a spring training facility.

If a local government is decertified, DEO may accept applications for additional certifications, however a local government may only be certified once.

Strategic Planning

DEO is required to seek assistance from Enterprise Florida, Inc., and the Florida Grapefruit League Association to develop a comprehensive strategic plan. The strategic plan was published in 2010.⁴¹ The strategic plan is required to include recommendations and strategies to:

- Finance spring training facilities;
- Monitor and oversee the use of state funds awarded to recipients;
- Identify spring training’s impact on the state and ways to improve the impact;
- Identify opportunities for public-private partnerships to engage in marketing and advertising;
- Identify efforts of other states to maintain or develop partnerships with spring training franchises; and
- Develop recommendations for the Legislature to consider for sustaining or improving the state’s spring training tradition.

Current Certified Teams

Total certifications may not exceed 10 at any time. As of January 8, 2013, there were 10 certified local governments. The local governments and the payment distribution for each are listed below:⁴²

Certified Local Government	Franchise	Facility	First Payment	Final Payment	Total Payments to Date
City of Clearwater	Phillies	Bright House Field	February 2001	February 2031	\$5,958,381
City of Dunedin	Blue Jays	Dunedin Stadium	February 2001	February 2023	\$5,958,381

⁴¹ Governor’s Office of Tourism, Trade, and Economic Development, The Florida Sports Foundation, and the Florida Grapefruit League Association, *The State of Florida’s Major League Baseball Spring Training Strategic Plan*, (December 2010), (on file with the Commerce and Tourism Committee).

⁴² Department of Economic Opportunity, *Spring Training Baseball*, (2013), on file with the Commerce and Tourism Committee.

Certified Local Government	Franchise	Facility	First Payment	Final Payment	Total Payments to Date
Indian River County	Dodgers ⁴³	Holman Stadium (Dodgertown)	February 2001	February 2031	\$5,958,381
Osceola County	Astros	Osceola County Stadium	February 2001	February 2016	\$5,958,381
City of Lakeland	Tigers	Joker Marchant Stadium	February 2001	February 2016	\$5,561,127
Charlotte County	Rays	Charlotte County Stadium	March 2007	March 2037	\$2,958,357
City of Bradenton	Pirates	McKechnie Field	March 2007	March 2037	\$2,958,357
City of Fort Lauderdale ⁴⁴	N/A	N/A	March 2007	March 2037	\$2,291,685
City of Sarasota ⁴⁵	Baltimore Orioles	Ed Smith Stadium	March 2007	March 2037	\$2,958,357
St. Lucie County	Mets	Digital Domain Park	March 2007	March 2037	\$1,560,967

Certification of Lee County⁴⁶

On April 6, 2012, a notice was published in the Florida Administrative Register announcing the application period for the Spring Training Baseball Facilities program, based on an opening that resulted from the decertification of the City of Fort Lauderdale and the return of funds. Lee County was the only applicant, on behalf of the Minnesota Twins for \$15 million over 30 years. On August 9, 2012, Lee County received notice that it had been certified. Lee County is now required to enter into a contract with DEO, at which point it will begin receiving state funding.

Reporting and Audits

Each certified local government must submit an annual report to DEO by September 1 with information including a copy of its most recent audit, information on the use of state and local funds expended, a copy of the contract between the local government and the franchise, a cost-benefit analysis of the team’s impact on the community, and evidence the local government continues to meet eligibility criteria.

⁴³ The L.A. Dodgers relocated their spring training operations to Arizona in 2008.

⁴⁴ The City of Ft. Lauderdale was unable to find a suitable home for the Baltimore Orioles. In 2011, OTTED requested the city return the unspent funds to the state. The city submitted a check to the state for the full amount, plus interest, as required by statute. The funds were returned to the state’s General Revenue Fund.

⁴⁵ Sarasota was unable to use state funds due to its loss of the Cincinnati Reds to Arizona in 2009. Sarasota petitioned the then Director of OTTED, and was granted permission to use the state funds to help pay debt service on bonds to be issued and entered into a long-term agreement with the Baltimore Orioles.

⁴⁶ *Supra* note 43 at pages 3 and 4.

The Auditor General may conduct audits to verify state funds distributed to local governments for the program are properly spent. If the Auditor General finds that funds have been spent improperly, the Auditor General must notify the Department of Revenue, who may pursue recovery of state funds.

The Brownfields Redevelopment Act

The term “brownfield” came into existence in the 1970s and originally referred to any previously developed property, regardless of any contamination issues. The term, as it is currently used, originated in 1992 during a U.S. Congressional field hearing and is defined by the U.S. Environmental Protection Agency (EPA) as, “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”⁴⁷ In 1995, the EPA created the Brownfields Program in order to manage contaminated property through site remediation and redevelopment. The program was designed to provide local communities around the country access to federal funds that have been allocated for redevelopment, including environmental assessments and cleanups, environmental health studies, and environmental training programs.⁴⁸

In 1997, the Legislature enacted the Brownfields Redevelopment Act (Act).⁴⁹ The act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of brownfield sites in order to improve public health and reduce environmental hazards.⁵⁰ The Act required the Department of Environmental Protection (DEP) to adopt rules to determine site-specific investigation methods, clean-up methods, and clean-up target levels by incorporating risk based corrective action principles.⁵¹

The act also created the Brownfield Redevelopment Bonus Refund to provide a refund to qualified businesses for new jobs that are created in a brownfield area.⁵² The act identifies specific procedures and criteria for the designation of a brownfield area by local governments,⁵³ counties,⁵⁴ and municipalities.⁵⁵ Brownfield areas are also eligible for a number of other incentives created throughout the years. For example, building materials used in redevelopment projects in designated brownfield areas are eligible for an exemption from sales tax.⁵⁶

⁴⁷ Robert A. Jones and William F. Welsh, *Michigan Brownfield Redevelopment Innovation: Two Decades of Success*, (Sept. 2010), available at <http://www.miseagrant.umich.edu/downloads/focus/brownfields/10-201-EMU-Final-Report.pdf> (last visited Feb. 15, 2013).

⁴⁸ The Florida Brownfields Association, *Brownfields 101*, available at <http://floridabrownfields.org/associations/11916/files/Brownfields101.pdf> (last visited Feb. 15, 2013).

⁴⁹ Chapter 97-277, Laws of Fla.

⁵⁰ DEP, *Florida Brownfields Redevelopment Act-1998 Annual Report*, available at http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/leginfo/1998/98final.pdf (last visited Feb. 15, 2013).

⁵¹ ASTM International defines “risk based corrective action principles” as consistent decision-making processes for assessment and response to chemical releases. See <http://www.astm.org/Standards/E2081.htm> (last visited Feb. 22, 2013).

⁵² Section 288.107, F.S.

⁵³ Section 376.80, F.S.

⁵⁴ Section 125.66, F.S.

⁵⁵ Section 166.041, F.S.

⁵⁶ See s. 212.08(5)(o), F.S.

A “brownfield site” is defined as “real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.” A “brownfield area” means “a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.”⁵⁷

As of January 23, 2013, local governments have adopted 330 resolutions to officially designate brownfield areas and 183 brownfield site rehabilitation agreements have been executed.⁵⁸

III. Effect of Proposed Changes:

CS/SB 406 revises and creates various statutory provisions relating to economic development. The bill:

- Streamlines the process by which all incentive program applicants are evaluated by requiring that all applicants be evaluated for the “economic benefits” of the proposed project.
- Creates a rotating, 3-year review schedule for specified incentives and programs to be evaluated by the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA).
- Consolidates required reports and reporting dates for various economic development program reports by the Department of Economic Opportunity (DEO), Enterprise Florida, Inc. (EFI), the Office of Film and Entertainment, and Space Florida.
- Requires the DEO to publish project-based information on economic development programs provided to businesses on its website in a user-friendly format.
- Creates a new certification process for local governments to receive state funds for the construction and renovation of spring training facilities, contingent upon passage of SB 306, or similar legislation, which repeals section 220.63(5), Florida Statutes, the corporate income tax deduction for an international banking facility.
- Specifies the meaning of the term “brownfield” for the sales tax exemption for building materials in redevelopment projects and for the brownfield redevelopment bonus refund.

Evaluation of Incentive Program Applicants

This bill requires that the DEO evaluate all incentives applications for “economic benefits” using a model that will be developed and reviewed by the EDR. The DEO and the EDR are permitted to develop an amended definition of “economic benefits” from the one defined by s. 288.005, F.S., for the up-front evaluation. The EDR is required to report on the methodology and model by September 1, 2013, and every third year thereafter to the President of the Senate and the Speaker of the House of Representatives. The executive director of the DEO may not approve an incentives application unless the applicant signs a written declaration stating that the applicant has read the information in the application and that such information is true, correct,

⁵⁷ Section 376.79(3) and (4), F.S.

⁵⁸ DEP, *Senate Bill 554 Agency Analysis* (Feb. 2013) (on file with the Appropriations Subcommittee on Transportation, Tourism, and Economic Development).

and complete to the best of the applicant’s knowledge. If an incentives award is approved, the awardee is required to sign a written declaration in each year the DEO validates contract performance. The declaration must state that the awardee has reviewed the information and that the information is true, correct, and complete to the best of the awardee’s knowledge and belief. **(Section 10, amends s. 288.061, F.S.)**

Similar language requiring an up-front analysis of “economic benefits” for an application for a qualified target industry tax refund (QTI) application is removed. Applications for a QTI incentive are required by the bill to be evaluated to determine if an applicant has previously received economic development incentives in other states, and the outcome of any such previous agreements. The bill also requires all QTI applications to be evaluated for the expected effect on the unemployed and underemployed in the county where a project will be located. Current law states that applications are evaluated for their effect on the unemployment *rate* in the county where a project will be located. The existing requirement that a QTI application be evaluated for the expected long-term commitment to economic growth and employment in Florida is removed by the bill. **(Section 14, amends s. 288.106, F.S.)**

The bill changes requirements that a project qualifying for the Innovation Incentive Program as a research and development program or as an alternative and renewable energy project demonstrate a break-even “return on investment” over a 20-year period, and instead requires the projects to demonstrate a *cumulative* break-even “economic benefit” over a 20-year period. The term “return on investment” as it related to the Innovation Incentive Program is not defined under current law. This change creates consistent terminology and ensures applicants for the Innovation Incentive Program will be evaluated similarly to other incentive programs. **(Section 19, amends s. 288.1089, F.S.)**

Evaluation of Economic Development Programs

The bill creates the Economic Development Programs Evaluation (evaluation). **(Section 1)** EDR and the OPPAGA are required to jointly present the evaluation to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees. The offices are required to evaluate the state’s economic development programs according to a rotating schedule every 3 years. Programs are grouped together based on general program type. The evaluation schedule is as follows:

YEAR 1 (January 1, 2014) and every 3rd year	
Program	Florida Statute(s)
Quick Action Closing Fund	s. 288.1088
Brownfield Redevelopment Bonus Tax Refund	s. 288.107
High Impact Sector Performance Grants	s. 288.108
Capital Investment Tax Credit	s. 220.191
Qualified Target Industry Tax Refund	s. 288.106
Innovation Incentive Program	s. 288.1089
Enterprise Zone Programs	ss. 220.181-182, 212.08(5), 212.096, 212.08(15)

YEAR 2 (January 1, 2015) and every 3rd year	
Program	Florida Statute(s)
Entertainment Industry Financial Incentive Program	s. 288.1254
Entertainment Industry Sales Tax Exemption Program	s. 288.1258
The Florida Commission on Tourism/VISIT Florida	ss. 288.122-124
Florida Sports Foundation	ss. 288.1162-1171

YEAR 3 (January 1, 2016) and every 3rd year	
Program	Florida Statute(s)
Qualified Defense Contractor and Space Flight Business Tax Refund Program	s. 288.1045
Semiconductor, Defense, or Space Technology Sales Tax Exemption	s. 212.08(5)(j)
Military Base Protection	s. 288.980
Manufacturing & Spaceport Investment Incentive Program	s. 288.1083
Quick Response Training	s. 288.047
Incumbent Worker Training	s. 445.003
International Trade & Business Development	s. 288.826

EDR and the OPPAGA are required to coordinate and submit a work plan for the evaluation to the President of the Senate and the Speaker of the House of Representatives by July 1, 2013.

The bill requires EDR to use specialized modeling techniques to evaluate the economic development programs listed above. EDR is required to evaluate each program for “economic benefits,” as well as jobs created, the increase or decrease in personal income, and the impact on state GDP of each program using data from the previous 3 years. The data used to evaluate any tax credits, tax refunds, sales tax exemptions, cash grants, and similar programs is specified as being data from projects that are either fully complete, partially complete with future fund disbursement possible pending performance measures, or partially completed with no future fund disbursement possible as a result of a business’s inability to meet performance measures. EDR is required to provide an explanation of the model used in its analysis, and the model’s key assumptions. EDR is permitted to use another model if it explains why another model is more appropriate.

The OPPAGA is required to evaluate each program for effectiveness and value to Florida taxpayers, and to provide recommendations to the Legislature based on its evaluation of each program. The OPPAGA’s analysis is required to include information from interviews, reviews of relevant reports, or other data.

The bill gives EDR and the OPPAGA access to all data necessary to complete the Economic Development Programs Evaluation, including confidential data. The offices may coordinate data collection and analysis.

Any information shared by the DOR with EDR and the OPPAGA may be shared by the director of OPPAGA and the coordinator of EDR or the director or coordinator's authorized agent, for purposes of completing the Economic Development Programs Evaluation. (**Section 6, amends s. 212.053, F.S.**)

The bill updates requirements for the Annual Incentives Report currently produced by EFI (**Section 29, amends s. 288.907, F.S.**) and requires the report to be a joint report by the DEO and EFI. The agencies no longer will be required to report on the "economic benefit" of each project or program in the Annual Incentives Report. The evaluation of "economic benefits" will now be conducted as part of the Economic Development Programs Evaluation, conducted jointly by the EDR and the OPPAGA. See above.

"Jobs" is defined to ensure that all jobs data is reported and evaluated in the same manner across programs. The term means only full-time equivalent positions, and excludes any temporary construction jobs involved with the construction of facilities for a project. (**Section 8, amends s. 288.005, F.S.**)

The bill repeals a required the OPPAGA report on the Innovation Incentive Program. (**Section 19, amends s. 288.1089, F.S.**) This report is duplicative as a result of the evaluation of the Innovation Incentive Program required as part of the Economic Development Programs Evaluation created in Section 1 of the bill.

A duplicative analysis of EFI's return on the public's investment is repealed. (**Section 27, amends s. 288.904, F.S.**) Current law requires the analysis to be included as part of EFI Annual Report. Current s. 20.601(3), F.S., requires OPPAGA to conduct a similar analysis in 2016.

Agency Reporting Consolidation

The bill consolidates several independent program reports and reporting dates.

The DEO Annual Report

The bill makes several changes to the DEO annual report. (**Section 2, amends s. 20.60, F.S.**) The report's annual due date is changed from January 1st to November 1st. The DEO is directed to include supplements to its annual report on several programs. As a result, the independent due dates for each of the reports are removed. The programs to be included in the DEO annual report are:

- Displaced Homemaker program (**Section 36, amends s. 446.50, F.S.**).
- Enterprise Zone program (**Sections 32 and 33**).
 - Changes the due date of each enterprise zone development agency's report to the DEO from December 1st to October 1st. (**Section 32, amends s. 290.0056, F.S.**)

- Changes the due date of the Department of Revenue's report on the usage and revenue impacts, by county, of state incentives relating to enterprise zones from February 1st to October 1st. (**Section 33, amends s. 290.014, F.S.**)
- Economic Gardening Business Loan Pilot Program (**Section 16, amends s. 288.1081, F.S.**)
- Economic Gardening Technical Assistance Pilot Program (**Section 17, amends s. 288.1082, F.S.**)
- Black business loan program (**Section 24, amends s. 288.714, F.S.**)
- Rural Economic Development Initiative (**Section 11, amends s. 288.0656, F.S.**)

EFI Annual Report

The bill (**Section 28, amends s. 288.906, F.S.**) requires EFI to include as a supplement in its annual report information on:

- State of Florida International Offices (**Section 9, amends s. 288.012, F.S.**)
- Florida Export Finance Corporation annual report (**Section 25, amends s. 288.7771, F.S.**)

Additionally, under current law EFI division reports are due independently on October 1st, for inclusion in EFI annual report. The bill repeals this independent due date. (**Section 30, amends s. 288.92, F.S.**)

Annual Incentives Report

The bill revises the duties of EFI to require the Annual Incentives Report to be a joint report by EFI and DEO. (**Section 26, amends s. 288.903, F.S.**) The report is currently produced by EFI alone using data supplied by the DEO. The report would still be due annually on December 30th.

Information on the Economic Development Trust Fund is required to be included in the Annual Incentives Report. The information is currently required under s. 288.095(3)(c), F.S. The bill repeals this paragraph (**Section 13**) and incorporates the information into the Annual Incentives Report. (**Section 29, amends s. 288.907, F.S.**) The information includes:

- The types of projects supported;
- Tax refunds or other payments made out of the Economic Development Incentives Account for each project supported;
- A separate analysis of the impact of tax refunds on Enterprise Zones, rural communities, brownfield areas, and distressed urban communities; and
- The name and tax refund amounts for each business receiving a QTI or qualified defense space contractor and space flight business tax refund.

Several other stand-alone program reports are incorporated as supplements to the Annual Incentives Report. As a result, the independent due dates for the reports are removed. The reports required to be included as supplements to the Annual Incentives Report include:

- Florida Space Business Incentives Act annual report (**Section 7, amends s. 220.194, F.S.**), beginning in 2014.

- Information on the causes of a business's failure to complete its QTI incentive agreement (**Section 14, amends s. 288.106, F.S.**). The term *failure* is also changed to *inability* by the bill.
- Information relating to Innovation Incentive Program recipients, including the evaluation as to whether the recipients were catalysts for additional economic development (**Section 19, amends s. 288.1089, F.S.**).
- Florida Small Business Technology Growth Program annual report (**Section 31, amends s. 288.95155, F.S.**).

Validation of contractor performance for all incentive programs is currently required as part of the Annual Incentives Report. The bill adds a cross-reference to s. 288.061(3), F.S., clarifying that validation of contractor performance is to be included in the Annual Incentives Report. (**Section 29, amends s. 288.907**)

The bill clarifies that the DEO rather than EFI is responsible for validating contractor performance for the Quick Action Closing Fund incentives and that such information is to be included in the Annual Incentives Report. Current law requires the contractor performance validation to be reported within 6 months of completion of a contract with a business. This requirement is deleted by the bill. (**Section 18, amends s. 288.1088, F.S.**)

Validation of contractor performance for the Innovation Incentive Program recipients is required to be included in the Annual Incentives Report. The current law requirement that a report on contractor performance be submitted within 90 days of an agreement's conclusion is repealed. (**Section 19, amends s. 288.1089, F.S.**)

Office of Film and Entertainment Annual Report

The bill changes the due date of the Office of Film and Entertainment's (OFE) Annual Report on the entertainment industry financial incentive program from October 1st to November 1st. (**Section 22, amends s. 288.1254, F.S.**) The OFE Annual Report is also required to include the OFE expenditures report (**Section 21, amends s. 288.1253, F.S.**) and the report detailing the relationship between tax exemptions and incentives to industry. (**Section 23, amends s. 288.1258, F.S.**)

Space Florida Annual Report

The bill changes the due date for the Space Florida annual performance report from September 1st to November 30th (**Section 34, amends s. 331.3051, F.S.**), and requires the Space Florida annual operations report to be included in the performance report. (**Section 35, amends s. 331.310, F.S.**)

Return on Investment Reporting for Economic Development Programs

The bill establishes an economic development incentive review and online publication process to be implemented by DEO. **Section 12** creates s. 288.076, F.S., relating to reporting for economic development programs, requiring the DEO to maintain a website that publishes information on economic development incentive awards to businesses. Information must be made available in an

easy to use format that allows users to view and retrieve all required information at once. The DEO has 48 hours after the expiration of the period of confidentiality to publish the following information on each project:

Projected Economic Benefits

- The economic benefits *projected* to occur for each project at the time of the initial project award date.

Project Information

- The program or programs through which state investment is being made. “State investment” is defined by the bill as any state grants, tax exemptions, tax refunds, tax credits, or other state incentives awarded to a business under a program administered by the DEO, including the capital investment tax credit.
- The maximum potential cumulative value of the state investment in a project.
- The target industries⁵⁹ or high-impact sectors⁶⁰ that the project may fall under.
- The county or counties that may be affected by the project.
- The total cumulative value of any local financial commitment and in-kind support for the project.

Participant Business Information

- The location of the participant business’s headquarters or the headquarters of the parent company if it is a subsidiary. “Participant business” is defined by the bill to mean an employing unit, as defined in s. 443.036, F.S., that has entered into an agreement with DEO to receive a state investment.
- The firm size class of the participant business, or where owned by a parent company, the firm size class of the participant business’s parent company, using firm size classes established by the U.S. Department of Labor’s Bureau of Labor Statistics. This information must also note whether the participant business qualifies as a small business under s. 288.703, F.S.
- The date of the project award.
- The expected duration of the contract.
- The anticipated date when the participant business will claim its last state investment.

Project Evaluation Criteria

- The economic benefits generated by the project.
- The net indirect and induced incremental jobs to be generated by the project. The bill states that “jobs” has the same meaning as in s. 288.106(2)(i), F.S., which means full-time equivalent positions, including positions obtained from a temporary employment agency or employee leasing company, or through a union agreement or coemployment under a

⁵⁹ Section 288.106(2)(q), F.S.

⁶⁰ Section 288.108(6)(a), F.S.

professional employer organization agreement. Temporary construction jobs are not included in the definition.

- The net indirect and induced incremental capital investment to be generated by the project.
- The net indirect and induced incremental tax revenue paid to the state to be generated by the project.

Project Performance Goals

- The incremental direct jobs attributable to the project, identifying the number of jobs generated and the number of jobs retained.
- The number of jobs generated and the number of jobs retained by the project. For projects that begin after the bill's effective date, DEO must report the median annual wage of persons holding such jobs.
- The incremental direct capital investment in the state generated by the project.
- The incremental projected tax revenue to the state paid by the participant business for the project.

Total State Investment to Date

- The total amount of state investment disbursed to the participant business to date, itemized by incentive program.

The DEO is required to use the methodology and formulas developed by the EDR to determine each project's economic benefits. Each project's economic benefits must be published on the DEO website within 48 hours after the conclusion of an agreement between a participant business and the DEO. This ensures a project's total economic benefits that actually occurred are published, allowing visitors of the website to view and compare the information with projected economic benefits at the time of the project's award date. The DEO is directed to publish a description of the methodology and formulas developed by the EDR to calculate economic benefits of a project, and must publish the information on its website within 48 hours after receiving it from the EDR.

The bill requires the DEO to update information on its website for each project annually from its award date. Verified results must be updated for each project, including information on Project Information, Participant Business Information, Project Evaluation Criteria, Project Performance Goals, and Total State Investment discussed above. The DEO must publish the date on which the information was last updated on the website.

Within 48 hours after the expiration of the period of confidentiality, the DEO must publish the contract or award agreement with the participant business on its website. The agreement may be redacted to protect a participant business from disclosure of any information that remains confidential or exempt by law.

The bill requires the DEO to publish all information required above for all projects completed prior to the bill's effective date of October 1, 2013. The DEO has until October 1, 2014, to compile and publish the information.

The bill clarifies that provisions restricting the publication of any information on the DEO's website is limited to that purpose, and is not to be construed as creating a public records exemption.

The DEO may adopt rules to administer the provisions included in **section 12** of the bill.

Qualified Target Industry Tax Refund Reports

DEO must publish on the website any reports of findings and recommendations concerning a business's failure to complete its qualified target industry tax refund program agreement within 48 hours after submitting the report.

Quick Action Closing Fund Timeline

The bill requires DEO to publish information on its website relating to Quick Action Closing Fund⁶¹ (QACF) incentive projects, including the average number of days between the date DEO receives a completed QACF application and the date on which the application was approved.

Retention of Spring Training Franchises

Section 5 amends s. 212.20, F.S., to authorize the Department of Revenue to distribute up to \$55,555 per month to each applicant certified to receive state funds for a spring training facility, or up to \$111,110 per month for certified applicants who use a spring training facility for more than one spring training franchise. Distributions begin 60 days after such certification or July 1, 2016, whichever is later, and continue for no more than 30 years, except as otherwise provided under s. 288.11631, F.S. No certified applicants may receive more in distribution payments than it expends. This is a new distribution for a new designation created in **Section 20**. This section is contingent upon repeal of s. 220.63(5), F.S., relating to the corporate income tax deduction for international banking facilities.

Section 20 creates s. 288.11631, F.S., relating to retention of Major League Baseball (MLB) spring training baseball franchises. The bill creates a new certification process to allow local governments to receive additional state funds after July 1, 2016, for the public purpose of constructing or renovating a spring training facility.

Eligibility Criteria

The bill specifies the certification process for local governments to be certified under the retention program. Before certifying a local government, the DEO must verify that the local government:

- Is responsible for the construction or renovation of a spring training facility for a MLB franchise, or holds title to the property where the facility is located;

⁶¹ Section 288.1088, F.S.

- Has a certified copy of a signed agreement with a MLB franchise for use of the facility that is, at a minimum, equal to the length of the term of any bonds issued to construct or renovate the spring training facility, or for a term of 20 years in instances where bonds will not be issued. The agreement for the MLB franchise to use the facility may not be signed more than 3 years before the expiration of any existing agreement between the franchise and the local government. The agreement must require the franchise to reimburse the state for any state funds expended for retention if the franchise relocates before the agreement expires. The agreement may be contingent upon award of state funds;
- Has committed to provide a 50 percent minimum match to state funds. The agreement may be contingent upon award of state funds;
- Demonstrates the spring training facility will attract at least 50,000 paying guests per year; and
- Is a county or is a municipality within a county that levies a tourist development tax under s. 125.0104, F.S.

Evaluation Criteria

The DEO evaluates applications for state funds based on the following criteria:

- The anticipated effect on the local economy where the spring training facility is or will be located;
- The amount of local matching funds committed to a facility relative to total state funding sought;
- The potential for the facility to serve multiple uses year-round;
- The intended use of state funds by the local government;
- The length of time an MLB franchise has been under agreement to conduct spring training activities within the local government's geographic location or jurisdiction;
- The length of time the local government's spring training facility has been used by one or more spring training franchises, including continuous use as a facility for spring training;
- The remaining term on a lease between a local government and a MLB franchise for use of the facility;
- The length of time that a MLB franchise agrees to use the facility if the application is granted; and
- Whether the facility is located in a brownfield, enterprise zone, community redevelopment area, or other targeted economic development area or revitalization included in an urban infill redevelopment plan.

If a local government is certified by the DEO on or after July 1, 2013, it must enter into an agreement with the DEO specifying certain terms relating to the use of state funds. The agreement must:

- Specify the amount of state funding to be distributed;
- State the provisions the local government must meet in order to remain certified;
- State that the local government may be decertified if it fails to comply with the agreement;
- State that the DEO may recover state funds if the local government is decertified;
- Specify required reporting information; and
- Include any other provisions the DEO deems prudent.

Payments

The bill limits payments to a local government certified by the DEO to no more than \$20 million, or \$40 million if the local government hosts more than one MLB franchise. Such funds may only be used for the public purpose of constructing or renovating a spring training franchise; paying or pledging payments of debt service on bonds issued for such activities; funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; refinancing such bonds; or reimbursing associated costs for such activities. State funds may not be used to subsidize a privately-owned facility that is maintained and used exclusively by a MLB franchise for spring training activities.

The Department of Revenue (DOR) may not distribute funds until July 1, 2016. The DOR begins distributions once the DEO has notified it that a local government has encumbered funds and, if applicable, any existing agreement with a spring training franchise for the use of a facility has expired. Certified local governments must place funds that are not expended in a separate account or trust fund, and may only be used for authorized uses outlined above. Local governments may request that the DOR suspend further distribution of state funds for 12 months after an existing agreement with a franchise expires in order to provide the local government with an opportunity to enter into a new agreement with a new MLB franchise. If the local government is able to enter into a new agreement, the DOR will continue distributions. Local governments must begin expending state funds distributed within 48 months after initial receipt, and the construction or capital improvements to a spring training facility must be completed within 2 years after the project starts.

Decertification Process

The DEO must decertify any local government who requests decertification. Any local government that does not have a valid agreement with a MLB franchise or satisfy its commitment to provide local matching funds is also subject to decertification by the DEO. Decertification is delayed for 12 months after an agreement between a local government and a franchise expires if the local government can demonstrate it is actively negotiating with a franchise other than the franchise that was the basis for the original certification. A local government who receives notice of intent to decertify has 60 days to petition for a review of the decision, and the DEO has 45 days from the date of the request to notify the local government of the review's outcome. The DOR must immediately stop payments to a decertified applicant for any funds that are not encumbered. A decertified local government has 60 days from final notice of decertification to repay all unencumbered state funds received, plus any interest accrued. A local government *may not* be decertified if it has encumbered funds to pay or pledge for the payment of debt service or other associated debt financing or bonding related to the construction or renovation of a spring training facility.

Reports and Auditing

The bill requires each certified local government must submit an annual report to the DEO by September 1 with certain information, including information on the use of state and local funds expended, a copy of the contract between the local government and the MLB franchise, a cost-benefit analysis of the team's impact on the community, and evidence the local government continues to meet eligibility criteria. The DEO must compile the information received and publish the information by November 1 each year.

The Auditor General may conduct audits to verify state funds distributed to local governments for the program are properly spent. If it is found that funds are spent improperly, the Auditor General must notify the DOR, who may pursue recovery of such state funds.

Provision Contingent Upon Repeal of Corporate Income Tax Deduction

Section 20 is contingent upon the repeal of s. 220.63(5), F.S., relating to the corporate income tax deduction for “international banking facilities”.

Brownfields

Section 3 amends s. 212.08, F.S., to specify that a redevelopment project located in a brownfield site for which a rehabilitation agreement with the Department of Environmental Protection (DEP) or a local government delegated by the DEP has been executed under s. 376.80, F.S., or any abutting real property parcel within a brownfield area designated by the local government, is eligible for the sales tax exemption.

Section 15 amends s. 288.107, to specify that in order to be eligible for the brownfield redevelopment bonus refund for a qualified target industry agreement, the jobs must be created in a brownfield area eligible for bonus refunds. The term “brownfield area eligible for bonus refunds” is defined as a brownfield site for which a rehabilitation agreement with the DEP or a local government delegated by the DEP has been executed under s. 376.80 or any abutting real property parcel within a brownfield area designated by the local government.

Section 4 provides that amendments to ss. 212.08 and 288.107, F.S., do not apply to building materials purchased before the effective date of the bill, or to contracts for brownfield redevelopment bonus refunds executed by the DEO or EFI prior to the bill’s effective date.

Effective Date - the bill takes effect upon becoming law. (**Section 37**)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill is projected to have a fiscal impact to the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability, as follows:

- Office of Economic and Demographic Research (EDR)
 - Economic Development Program Evaluation Workload - three positions and \$302,324 to cover salaries, benefits and expenses associated with the new positions (\$37,002 of the expenses are nonrecurring).
 - Modifications to Statewide Model - \$34,400 to design and develop an employment module for the statewide model.

Funding for the EDR would need to be appropriated in the General Appropriations Act.

- Office of Program Policy Analysis and Government Accountability (OPPAGA) Economic Development Program Evaluation Workload - two positions and a part-time intern - \$178,163 for salaries and benefits. The OPPAGA has indicated that they can absorb the additional workload within existing resources.

These estimates assume that the EDR and the OPPAGA will obtain access to all information related to economic development programs that is needed to complete the Economic Development Program Evaluations without cost to the EDR or the OPPAGA.

The provisions of the bill that streamline reporting requirements, delete duplicative reports, and consolidate reporting due dates may improve efficiencies and are not expected to have a fiscal impact to the Department of Economic Opportunity, Enterprise Florida, Inc., the Office of Film and Entertainment, or Space Florida.

The provisions of the bill that authorize the DEO to adopt rules to implement the certification, decertification, and decertification review processes of local governments to disburse state funds for spring training franchises will have an indeterminate fiscal impact to the department. This impact will be absorbed by the DEO within existing resources.

The DEO projects that the provisions of the bill that require “return on investment” reporting for economic development programs will require two full-time positions and \$398,000 of additional state funds to implement. Currently, information regarding

economic development incentives available on the DEO’s Economic Development Incentives Portal includes the following:

- Quick Action Closing Fund
- Innovation Incentive Program
- Qualified Target Industry Tax Refund Program
- Qualified Defense Contractor and Space Flight Business Tax Refund Program
- Brownfield Redevelopment Bonus Tax Refund
- Semiconductor, Defense, or Space Technology Sales Tax Exemption
- Capital Investment Tax Credit
- Manufacturing & Spaceport Investment Incentive Program
- High Impact Sector Performance Grants.

The bill requires the DEO to provide additional information for the programs listed above and to expand the enhanced reporting to all economic development “projects” (defined as the creation of a new business or expansion of an existing business) that receive state grants, tax exemptions, tax refunds, tax credits, or other state incentives provided to a business under an economic development program administered by the DEO. The department projects that it will need an additional \$398,000 from state funding sources in Fiscal Year 2013-14 and two full-time positions to implement these requirements, as follows:

	<u>Total</u>	<u>Nonrecurring</u>
Process Mapping	\$75,000	\$75,000
Sales Force and portal development	\$85,000	\$85,000
Data Migration	\$50,000	\$50,000
Training	\$ 6,000	\$ 6,000
Cloud Storage	\$12,000	
Additional Software Licenses	\$10,000	
FTE – Technical Administrator	\$80,000	
FTE – Substantive Administrator	\$80,000	
Total Projected Costs	<u>\$398,000</u>	<u>\$216,000</u>

The provisions of the bill that revise the meaning of the term “brownfield” for the sales tax exemption for building materials in redevelopment projects and for the brownfield redevelopment bonus refund have not yet been reviewed by the Revenue Estimating Conference (REC). It is likely that state expenditures related to the brownfield redevelopment bonus refunds and refunds for the brownfield sales tax exemption for building materials will decrease in future fiscal years by indeterminate amounts due to the application of more restrictive criteria.

With respect to the provisions of the bill that create sales tax distribution payments for local governments responsible for Major League Baseball (MLB) spring training facilities, current leases for the 15 MLB teams in Florida will begin to expire in 2016. State distributions under this bill would begin in Fiscal Year 2015-16. The following

table shows projected distributions for the existing Florida teams through Fiscal Year 2035-36 based on the expiration dates for current facility leases:

State Fiscal Year	Number Of Teams/Payments	Total Funds Distributed Annually
2013-14	0	\$0
2014-15	0	\$0
2015-16	3	\$666,600
2016-17	4	\$2,222,200
2017-18	4	\$2,666,640
2018-19	4	\$2,666,640
2019-20	4	\$2,666,640
2020-21	4	\$2,666,640
2021-22	4	\$2,666,640
2022-23	6	\$3,111,080
2023-24	6	\$3,999,960
2024-25	6	\$3,999,960
2025-26	6	\$3,999,960
2026-27	10	\$4,666,620
2027-28	11	\$6,222,160
2028-29	11	\$6,666,600
2029-30	11	\$6,666,600
2030-31	11	\$6,666,600
2031-32	11	\$6,666,600
2032-33	11	\$6,666,600
2033-34	11	\$6,666,600
2034-35	11	\$6,666,600
2035-36	11	\$6,666,600

The REC has not yet estimated the impact of the future spring training sales tax distribution payments. While there is no cash fiscal impact for the first two fiscal years, it is likely that the REC will reduce the available recurring General Revenue by an amount ranging from \$2.7 million to \$4 million for Fiscal Year 2013-14, and increase the available nonrecurring General Revenue for that fiscal year by the same amount. This assumes that no new MLB teams would come to Florida and be certified for the payments authorized in the bill. This fiscal impact is offset by the contingency included in the bill that provides that the new spring training sales tax distribution payments are effective only if the corporate income tax deduction currently provided for international banking facilities is repealed. While the REC has not yet estimated the impact of repealing this tax deduction, staff of the Senate Appropriations Subcommittee on Finance and Tax has informally estimated that the annual impact would be an increase of \$10.8 million in recurring General Revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the DEO to adopt rules to implement the certification, decertification, and decertification review processes of local governments as it relates to disbursement of state funds for spring training franchises.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Appropriations on March 21, 2013:**

- Clarifies that spring training distributions begin July 1, 2016, or 60 days after a spring training applicant is certified, whichever is later.
- Clarifies that the new distributions for existing certified teams do not begin until after July 1, 2016, and a local government's existing agreement with a team has expired.
- Adopted Recommended CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on March 13, 2013.

Recommended CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on March 13, 2013:

- Clarifies that the coordinator of the Office of Economic and Demographic Research and the Director of the Office of Program Policy Analysis and Government Accountability, or his or her authorized agent, may share confidential information for the purposes of completing the Economic Development Programs Evaluation.
- Adds a requirement that DEO publish certain project-specific information on each economic development program awarded to businesses on its website in an easy-to-use format.
- Adds a requirement that the DEO executive director not approve an incentives application unless the applicant signs a written declaration that the applicant has read the application and that the information is true, correct, and complete to their knowledge. Also adds a requirement that in each year after an incentives agreement is approved and DEO validates contractor performance, the awardee must sign a written declaration stating that the awardee has reviewed the information and that the information is true, correct, and complete to their knowledge and belief.
- Creates s. 288.11631, F.S., to provide a new process for local governments to apply for and receive certification to receive state funds to construct or renovate spring training facilities, contingent upon repeal of s. 220.63(5), F.S., relating to the corporate income tax deduction for international banking facilities.
- Creates a process for certified local governments to receive a distribution of \$55,555 per month to construct or renovate a spring training facility, or a distribution of

\$111,110 per month if a certified local government's facility is used by more than one professional baseball franchise by amending s. 212.20, F.S.

- Specifies the meaning of the term "brownfield" for the sales tax exemption for building materials in redevelopment projects and for the brownfield redevelopment bonus refund.

B. Amendments:

None.

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