

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/CS/HB 7007	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Economic Affairs Committee; Transportation & Economic Development Appropriations Subcommittee; Economic Development & Tourism Subcommittee; Trujillo, McBurney	68 Y's	48 N's
<b>COMPANION BILLS:</b>	(CS/HB 391, CS/HB 563, HB 641, HB 1057, SB 222, CS/SB 224, CS/CS/CS/SB 306, CS/SB 316, CS/SB 406, SB 494, CS/SB 518, CS/SB 572, CS/CS/SB 1024)	<b>GOVERNOR'S ACTION:</b>	Approved

### SUMMARY ANALYSIS

CS/CS/HB 7007 passed the House on April 29, 2013. The bill was amended by the Senate on May 1, 2013, and subsequently passed the House on May 1, 2013. Part of the bill also passed the House and Senate in CS/SB 406 on May 3, 2013. The bill modifies and revises various programs and activities administered by the Department of Economic Opportunity (DEO). Specifically, the bill addresses the following areas:

#### Economic Development Program Evaluations and Reporting

- Directs the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate economic development programs; and directs EDR to determine the economic benefits of each economic development program on a 3-year review schedule.
- Directs DEO to maintain a website for publishing information pertaining to economic development incentives awarded to Florida businesses on a project-by-project basis; and to publish on its website Quick Action Closing Fund (QACF) project information and the average time it takes to receive and approve completed applications.
- Consolidates reports and reporting dates for various economic development programs prepared by DEO, Enterprise Florida, Inc. (EFI), the Office of Film and Entertainment, and Space Florida.

#### Machinery and Equipment Sales Tax Exemption

The bill creates a sales tax exemption for machinery and equipment used within Florida to manufacture, process, compound, or produce tangible goods for sale. The sales tax exemption is available for 3 years, from April 30, 2014 until April 30, 2017.

#### Gulf Coast Restoration

The bill creates Triumph Gulf Coast, Inc., a nonprofit corporation administratively housed within the DEO, to administer and invest 75 percent of all funds recovered by the Attorney General for economic damages to the state resulting from the Deepwater Horizon oil spill.

#### The Florida Small Business Development Center Network and Redevelopment Programs

The bill modifies the size and make-up of the Small Business Development Center Network (Network) statewide advisory board, codifies support services the Network must provide to small businesses, provides for performance incentives, and requires annual reports to the Legislature.

The bill revises the Small Cities Community Development Block Grant Loan Guarantee Program to reduce the risk to the state and eligible local governments, provides for the expansion of enterprise zone boundaries in certain areas of the state, and defines "brownfield area" for purposes of the sales tax exemption for building materials.

#### Reemployment Assistance Program

The bill revises provisions related to benefit eligibility, interest assessments, confidentiality, and fraudulent claims to enhance program integrity and implement certain federal requirements.

See Fiscal Comments.

The bill was approved by the Governor on May 17, 2013, chapter 2013-39, L.O.F., except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: hb7007z.EDTS.docx

DATE: May 3, 2013

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Economic Development Incentives Evaluation**

##### ***Present Situation***

##### **Economic Development Application and Review**

Enterprise Florida, Inc. (EFI), a nonprofit public-private partnership, serves as the state's flagship economic development organization, operating under a contract with the Department of Economic Opportunity (DEO).<sup>1</sup> EFI works with businesses and economic development partners to determine whether projects are eligible for state economic development incentives. Once a project has been vetted by EFI and it has been determined that incentives are necessary to secure a deal, an incentive package is developed and sent to DEO for further review. Once the incentive package is finalized, DEO and other appropriate state bodies issue formal approvals.

According to the Office of Economic and Demographic Research (EDR), EFI prospectively evaluates applications for each of the state's economic development incentive programs using RIMS II multipliers, a model developed by the U.S. Department of Commerce's Bureau of Economic Analysis. EDR is required to evaluate the model used by EFI for the prospective impact analysis of all qualified target industry tax refund projects (QTI), and to report such findings every 3 years.<sup>2</sup> The model evaluated by EDR and used by EFI for the QTI tax refund program is also used across all economic development incentive programs with the exception of the Innovation Incentive Program, which is not required by law to be evaluated for "economic benefits." Innovation Incentive Program projects are required to have a break-even "return on investment" (ROI) within a 20-year period except for certain exceptions.<sup>3</sup>

In 2010, EDR published its first report<sup>4</sup> on the model used by EFI to evaluate QTI projects. In this report, EDR concluded that the model being utilized by EFI was not fully in compliance with statutory requirements that EFI's model evaluate ROI, defined as the gain in state revenues as a percentage of the state's investment. EDR determined that the model used by EFI needed changes in order to move incrementally closer to a true ROI. Enterprise Florida and EDR worked to redefine certain variables for the impact analysis in the interim period. In the report, EDR noted that a new ROI model will ultimately be required. Since the publication of the EDR report in 2010, the term "economic benefits" has replaced "return on investment" for the purposes of evaluating QTI in state statute.<sup>5</sup> The next EDR report is due September 1, 2013.

##### **Economic Development Incentives**

Florida's economic development incentives utilize tax refunds and performance-based cash awards. To receive an incentive, businesses must first enter into a contract with DEO which outlines performance expectations such as specific job creation goals, a schedule by which new jobs are to be created, and an average wage to be paid for the new jobs. After the business has commenced the project and begun hiring, it will submit an annual claim form and documentation of taxes paid. The state verifies the claim data with the company's quarterly reemployment assistance and payroll reports and verifies the tax documentation. If the state confirms the contractual obligations have been met and any required local financial support has been received, a refund check is sent to the business. Businesses not filing claims or not meeting the performance obligations of its contract are terminated from the program. Only QTI businesses are eligible to receive pro-rated refunds in cases where contracted job or wage requirements are not fully met.

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<sup>1</sup> Section 288.901, F.S.

<sup>2</sup> Section 288.106(4)(c)2., F.S.

<sup>3</sup> Section 288.1089, F.S.

<sup>4</sup> 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 February 8, 2013).

<sup>5</sup> Section 288.005, F.S.

Businesses receiving economic development incentives must enter into performance-based contracts with the state, which outlines specific milestones for performance and payment. All of the state's incentive awards contain penalties for non-performance, and the state may actively pursue the recapture of funds in cases where a business has failed to meet the terms of its contract.

The state has developed numerous economic development programs designed to incentivize private sector investment for the purpose of encouraging job growth. DEO awarded over \$111 million in tax refund and grant awards through existing incentive programs in FY 2012.<sup>6</sup> Economic development tax credits and incentives include, but are not limited to the following:

- Qualified Target Industry Program<sup>7</sup>
- Qualified Defense and Space Contractor Program<sup>8</sup>
- Brownfield Bonus Program<sup>9</sup>
- Manufacturing and Spaceport Investment Incentive<sup>10</sup>
- High Impact Performance Incentive<sup>11</sup>
- Quick Action Closing Fund<sup>12</sup>
- Innovation Incentive Program<sup>13</sup>
- Quick Response Training Program<sup>14</sup>

#### Quick Action Closing Fund

Established by the Legislature in 1999,<sup>15</sup> the Quick Action Closing Fund (QACF) is a discretionary "deal closing" tool in highly competitive negotiations where Florida's traditional incentives are not enough to win the deal.<sup>16</sup> The Legislature declared that sufficient resources must be available to respond to extraordinary economic opportunities and to compete effectively for high-impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities. Up to 20 percent of these resources may be used for projects to retain or create high-technology jobs that are directly associated with developing a more diverse aerospace economy in the state.<sup>17</sup> Projects eligible to receive funds must:

- Be a qualified target industry business.<sup>18</sup>
- Have a positive economic benefit ratio of at least 5 to 1.
- Be an inducement to the project's location or expansion in the state.

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<sup>6</sup> Enterprise Florida, Inc., 2012 Annual Incentives Report, (2012), *available at* [http://www.eflorida.com/IntelligenceCenter/download/ER/BRR\\_Incentives\\_Report.pdf](http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf), (last visited on April 2, 2013).

<sup>7</sup> Section 288.106, F.S.

<sup>8</sup> Section 288.1045, F.S.

<sup>9</sup> Section 288.107, F.S.

<sup>10</sup> Section 288.1083, F.S. The Manufacturing and Spaceport Investment Incentive was created in 2010 to serve as a means of relieving some of the sales tax burden on existing manufacturers that were not increasing their productive output enough to be eligible for the standard manufacturing and equipment sales tax exemption. This is a temporary program, with refunds available through Fiscal Year 2012.

<sup>11</sup> Section 288.108, F.S.

<sup>12</sup> Section 288.1088, F.S.

<sup>13</sup> Section 288.1089, F.S.

<sup>14</sup> Section 288.047, F.S. Quick Response Training Program awards are made directly to third parties on behalf of eligible businesses to be used for employer-driven training programs designed to assist new value-added businesses and to provide existing businesses the necessary training for expansion. This program is managed by Workforce Florida, Inc., a division within DEO.

<sup>15</sup> Section 105, ch. 99-251, L.O.F.

<sup>16</sup> *Supra* note 6 at 11.

<sup>17</sup> Section 288.1088(1)(c), F.S.

<sup>18</sup> See s. 288.106, F.S.

- Pay an average annual wage of at least 125 percent of the area-wide or statewide private sector average wage.
- Be supported by the local community in which the project is located.

DEO and EFI are required to jointly review applications and determine the eligibility of each project. Waivers of the required criteria may be granted under certain circumstances such as a project located in a rural area of critical economic concern or a project that mitigates the impact of the conclusion of the space shuttle program. Within seven business days after evaluating a project, DEO must make a recommendation to the Governor to approve or deny funds from the QACF. If the project is recommended, then DEO must include proposed performance conditions that the project must meet in order to obtain funds.<sup>19</sup>

The Governor is authorized to approve projects requiring less than \$2 million in funding. However, for project funding amounts of \$2 million to \$5 million, the Governor must provide a written description and evaluation of a project recommended for approval to the Legislative Budget Commission (LBC).<sup>20</sup> Any project exceeding \$5 million must be approved by the LBC.<sup>21</sup>

Upon approval of the Governor, DEO and the business must enter into a contract that establishes the conditions for payment from the QACF. The contract must include the total amount of funds awarded and the performance conditions that must be met to obtain the award. These conditions include net new employment in the state, average salary, total capital investment, and sanctions for failure to meet performance goals.<sup>22</sup>

EFI is required to validate contractor performance and report the validation within six months after completion of the contract to the Governor and the Legislature.<sup>23</sup>

#### Publication of Economic Development Incentives Information

Annually, by December 30 of each year, EFI is directed to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a detailed incentives report quantifying the economic benefits for all of the economic development incentive programs marketed by EFI.<sup>24</sup> This report contains information related to the validation of business performance under the various economic development programs, tax refunds, and other payments provided to businesses under the various economic development programs.

In addition to the EFI annual incentives report, DEO has developed and maintains a website that contains the Economic Development Incentives Portal<sup>25</sup> for the purpose of publishing information related to economic development incentives awarded since January 1996 to Florida businesses on a project-by-project basis. The Economic Development Incentives Portal can run a report based on:

- Economic Development Incentive Program
- Project County
- Date Approved
- Business Name

Reports generated from the Economic Development Incentives Portal show:

- Economic Development Incentive Program Name
- Economic Development Incentive Program Statutory Reference

<sup>19</sup> Section 288.1088(3), F.S.

<sup>20</sup> Section 288.1088(3)(c), F.S.

<sup>21</sup> Section 288.1088(3)(c)(4), F.S.

<sup>22</sup> Section 288.1088(3)(d), F.S.

<sup>23</sup> Section 288.1088(3)(e), F.S.

<sup>24</sup> Section 288.907(1), F.S.

<sup>25</sup> DEO's Economic Development Incentives Portal, available at <http://www.floridajobs.org/office-directory/division-of-strategic-business-development/economic-development-incentives-portal>, (last visited on February 27, 2013).

- Business Name
- Business Industry
- Approval Date
- Amount of State Incentive
- Payments to Date
- Project County
- Project Status
- Capital Investment
- New Jobs related to Performance Requirements
- New Jobs related to Performance Due to Date
- New Jobs Confirmed to Date

DEO is in the process of populating the Economic Development Incentives Portal with data for all approved economic development projects by March 2013, and not just those that have been completed since January 1996.

***Effect of Proposed Changes***

Economic Development Program Evaluation

EDR and the Office of Office of Program Policy Analysis and Government Accountability (OPPAGA) are directed to develop the Economic Development Programs Evaluation. The work plan must be submitted to the President of the Senate and the Speaker of the House of Representatives by July 1, 2013. EDR and OPPAGA must provide a detailed analysis of economic development programs based on the following schedule:

*Incentive Program Evaluation Schedule*

<b>Year 1 (January 1, 2014 and every 3<sup>rd</sup> year thereafter)</b>	
<b>Economic Development Incentives</b>	<b>Florida Statutes</b>
Capital Investment Tax Credit	s. 220.191, F.S.
Qualified Target Industry Tax Refund	s. 288.106, F.S.
Brownfield Redevelopment Bonus Tax Refund	s. 288.107, F.S.
High-Impact Sector Performance Grants	s. 288.108, F.S.
Quick Action Closing Fund	s. 288.1088, F.S.
Innovation Incentive Program	s. 288.1089, F.S.
Enterprise Zone Program	ss. 212.0805, 212.0815, 212.096, 220.181, and 220.182, F.S.
<b>Year 2 (January 1, 2015 and every 3<sup>rd</sup> year thereafter)</b>	
<b>Economic Development Incentives</b>	<b>Florida Statutes</b>
Entertainment Industry Financial Incentive Program	s. 288.1254, F.S.
Entertainment Industry Sales Tax Exemption Program	s. 288.1258, F.S.
VISIT Florida	ss. 288.122, 288.1266, 288.12265, and 288.124, F.S.

Florida Sports Foundation	ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171, F.S.
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<b>Year 3 (January 1, 2016 and every 3<sup>rd</sup> year thereafter)</b>	
<b>Economic Development Incentives</b>	<b>Florida Statutes</b>
Qualified Defense Contractor and Space Flight Business Tax Refund Program	s. 288.1045, F.S.
Tax Exemption for Semiconductor, Defense, or Space Technology Sales	s. 212.08(5)(j), F.S.
Military Base Protection Program	s. 288.980, F.S.
Manufacturing and Spaceport Investment Incentive Program	s. 288.1083, F.S.
Quick Response Training Program	s. 288.047, F.S.
Incumbent Worker Training Program	s. 445.003, F.S.
International Trade and Business Development Programs	s. 288.826, F.S.

Based on the program evaluation schedule, EDR must evaluate and determine the economic benefits<sup>26</sup> of each program over the previous three years. The analysis must also evaluate:

- The number of jobs created.
- The increase or decrease in personal income.
- The impact state gross domestic product from the direct, indirect, and induced effects of the state's investment in each program over the previous three years.

When evaluating incentive programs, EDR must evaluate only data from those projects in which businesses received state funds during the evaluation period. The projects may be fully complete, partially completed with future fund dispersal possible pending performance measures, or partially completed with no future fund dispersal possible as a result of a business's inability to meet performance measures. The analysis must use the model<sup>27</sup> developed by EDR to evaluate each program. EDR must provide a written explanation of the model's key assumptions. Should EDR determine that another evaluation model is more appropriate, EDR is authorized to use the model so long as they provide an explanation as to why the selected model was more appropriate.

Based on the program evaluation schedule, OPPAGA is directed to evaluate each program over the previous 3 years for effectiveness and value to the state's taxpayers and include recommendations on each program for consideration by the Legislature. The analysis may include relevant economic development reports or analyses prepared by DEO, EFI, local or regional economic development organizations, or any other relevant data.

EDR and OPPAGA are provided access to all data necessary to complete the Economic Development Programs Evaluation, including any confidential information, notwithstanding s. 213.053, F.S., relating to confidentiality and information sharing. EDR and OPPAGA are also authorized to collaborate on data collection and analysis.

<sup>26</sup> "Economic benefits" means 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. Section 288.005, F.S.

<sup>27</sup> See s. 216.138, F.S., authority to request additional analysis of legislative proposals.

## Economic Development Project Evaluation

### *Award Publication*

DEO is directed to maintain a website for the purpose of publishing information related to economic development incentives awarded to Florida businesses on a project-by-project basis. Within 48 hours after expiration of the period of confidentiality provided under s. 288.075, F.S., DEO must publish the following information on the website:

#### Projected Economic Benefits

- The projected economic benefits at the time of the initial project award date.

#### Project Information

- Program or programs through which the state investment is being made.
- The maximum potential value of the state investment in the project.
- The target industry or industries<sup>28</sup> involved, and any high impact sectors<sup>29</sup> implicated by the project.
- The county or counties that will be substantially impacted by the project.
- The total value of local financial commitment and in-kind support for a project that requires local commitment.

#### Participant Business Information

- The location of the participant business's headquarters, or, if a subsidiary, the headquarters of its parent company.
- The firm size class of the participant business, or where owned by a parent company the firm size class of the participant business' parent company, using the firm size classes established by the US Department of Labor Bureau of Labor Statistics, and whether the participant business qualifies as a small business under s. 288.703, F.S.
- Project award date.
- Expected duration of the project.
- Anticipated dates when the participant business will claim the first and last state investment.

#### Project Evaluation Criteria

- Economic benefits generated by the project.

#### Project Performance Goals

- The incremental direct jobs attributable to the project
- The number of jobs generated and the number of jobs retained by the project; for projects that commence after the effective date of this act, the average annual wage of persons holding such jobs.
- The incremental direct capital investment in the state generated by the project.

#### Total Amount of State Investment

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

### *Other Publication Requirements*

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<sup>28</sup> Section 288.106(2)(q), F.S.

<sup>29</sup> Section 288.108(6)(a), F.S.

DEO is required to update information on its website related to Project Information, Participant Business Information, Project Evaluation Criteria, and Project Performance Goals at least once a year, and to publish on its website when such information was most recently updated.

The bill also requires DEO to publish on its website copies of incentive contracts or agreements. This information must be published within 48 hours after the expiration of the period of confidentiality provided under s. 288.075, F.S, and may be redacted to protect the participant business from disclosure of information that remains confidential or exempt by law.

Within 48 hours after submitting any report of findings and recommendations concerning a business's failure to complete a QTI tax refund agreement, DEO must publish the report.

DEO is required to compile a list of economic development projects completed prior to October 1, 2013, and to publish information related to those projects prior to October 1, 2014.

#### *Quick Action Closing Fund Timeline*

At least once per year, DEO must publish on its website information pertaining to Quick Action Closing Fund projects and the average number of days between the date upon which DEO has received completed applications and the date upon which they were approved.

#### *Economic Benefits Methodology*

DEO is required to publish the economic benefits of each project on its website within 48 hours of the conclusion of the agreement between each participant business and DEO. DEO is directed to work with EDR to provide a description of the methodology used for this purpose, and to publish the information on the department's website.

### **Annual Report Consolidation**

#### ***Present Situation***

Numerous annual reports relating to economic development programs and activities are required to be submitted to the Governor and the Legislature at various times of the year from January 1 to December 31. Additionally, certain entities are required to compile and submit information to the Governor and Legislature and/or to DEO as separate reports. A lack of uniform reporting makes it difficult for DEO to effectively track and report program activities and functions.

#### *Department of Economic Opportunity*

The Department of Economic Opportunity, with assistance from EFI, is directed to submit an annual report by January 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state.<sup>30</sup>

#### *Enterprise Florida, Inc.*

Enterprise Florida, Inc., is required to prepare an annual report and an annual incentives report.<sup>31</sup> Annually, before December 1, EFI is directed to submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader, a complete and detailed report including a description of the operations and accomplishments of EFI, and its divisions, boards, advisory councils, or similar entities created by EFI, and an identification of any major trends, initiatives, or developments affecting the performance of any program or activity. The individual annual reports prepared by each division must be included as addenda.<sup>32</sup>

Annually, by December 30 of each year, EFI is directed to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a detailed incentives report quantifying the economic benefits for all of the economic development incentive programs marketed by EFI.<sup>33</sup> The

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<sup>30</sup> Section 20.60(10), F.S.

<sup>31</sup> Section 288.903(3), F.S.

<sup>32</sup> Section 288.906(1) and (1)(a), F.S.

<sup>33</sup> Section 288.907(1), F.S.

report is not required to be submitted in conjunction with DEO. The following is a list of statutorily required economic development related annual reports and their due dates:

<b>Program</b>	<b>Statute</b>	<b>Date Report Due</b>
Corporate income tax credits for spaceflight	s. 220.194(9), F.S.	November 30 – Separate report submitted to the Governor and Legislature (Beginning 2014)
State of Florida international offices	s. 288.012(3), F.S.	October 1 – Report submitted to DEO
Rural Economic Development Initiative	s. 288.0656(8), F.S.	On or before September 1 – Separate report submitted to the Governor and Legislature
Economic Development Trust Fund	s. 288.095(3)(c), F.S.	December 30 - Separate report submitted to the Governor and Legislature
Tax refund program for qualified target industry businesses	s. 288.106(7), F.S.	December 1 - Separate report submitted to the Governor and Legislature
Economic Gardening Business Loan Pilot Program	s. 288.1081(8), F.S.	June 30 December 31 Separate report submitted to the Governor and Legislature
Economic Gardening Technical Assistance Pilot Program	s. 288.1082(8), F.S.	December 31 - Separate report submitted to the Governor and Legislature
Quick Action Closing Fund	s. 288.1088(3), F.S.	Within 6 months after completion of the contract -Separate report submitted to the Governor and Legislature
Innovation Incentive Program	s. 288.1089(9) and (11)(a), F.S.	Within 90 days after the conclusion of the innovation incentive award agreement. Separate report submitted to the Governor and Legislature  Report summarizing the activities and accomplishments of

<b>Program</b>	<b>Statute</b>	<b>Date Report Due</b>
		grant recipients from the Innovation Incentive Program during the previous 12 months. No specific date but in time to be submitted as part of the DEO's annual report.
Travel and Entertainment Expenses – Office of Film and Entertainment	s. 288.1253(3), F.S.	December 30 – Separate report submitted to the Legislature.
Entertainment Industry Financial Incentive Program	s. 288.1254(10), F.S.	October 1 - Separate report submitted to the Governor and the Legislature
Entertainment industry qualified production companies – relationship of tax exemptions and incentives to industry growth	s. 288.1258(5), F.S.	December 1 – Separate Report to the Legislature
Black Business Loan Program	s. 288.714(3), F.S.	August 31 - Separate report submitted to the Governor and Legislature
Florida Export Finance Corporation	s. 288.7771, F.S.	No specific date but should report on its assets and liabilities at the end of its most recent year and submitted in time to be incorporated into the DEO's annual report.
Annual Report of EFI	s. 288.906, F.S.	December 1 – Separate report due to the Governor and Legislature
Annual Incentives Report -EFI	s. 288.907, F.S.	December 30 – Separate report submitted to the Governor and the Legislature
Divisions of Enterprise Florida, Inc.	s. 288.92(3), F.S.	October 15
Florida Small Business Technology Growth Program	s. 288.95155(5), F.S.	No specific date – Report prepared for inclusion in DEO's annual report.
New Markets Development Program Act	s. 288.9918, F.S.	April 30 – Report submitted to DEO
Enterprise Zone Development Agency	s. 290.0056(11), F.S.	December 1 – Report submitted to DEO

<b>Program</b>	<b>Statute</b>	<b>Date Report Due</b>
Information detailing the usage and revenue impact of state incentives authorized for use in support of the Florida Enterprise Zone Act provided by the Department of Revenue (DOR).	s. 290.014(1), F.S.	February 1 – Report submitted to DEO
Information provided by the enterprise zone development agencies required under the Florida Enterprise Zone Act.	s. 290.014(2), F.S.	March 1 – Separate report but combined with the information provided by DOR submitted to the Governor and the Legislature.
Displaced Homemaker Program	s. 446.50(4), F.S.	January 1 – 3 year plan and annual updates submitted to the Governor and the Legislature.

### ***Effect of Proposed Changes***

The bill consolidates annual reporting requirements of statutorily required reports and information and incorporates them into reports prepared by DEO, EFI, and the Office of Film and Entertainment.

#### DEO Annual Report

The bill changes the due date of DEO's annual report from January 1 to November 1 and incorporates the annual reports of the following programs:

- Rural Economic Development Initiative
- Economic Gardening Business Loan Pilot Program and the Economic Gardening Technical Assistance Pilot Program
- Black Business Loan Program
- Enterprise Zone Program
- Displaced Homemaker Program

#### Enterprise Florida, Inc. Annual Report

The bill directs EFI to include, as a supplement to its annual report, information or reports required for the following programs and activities:

- State of Florida International Offices
- The Florida Export Finance Corporation
- EFI's division reports

#### Annual Incentives Report

The bill incorporates the following reports or information into the annual incentives report:

- Beginning in 2014, the activities relating to the Florida Space Business Incentives Act.
- The Economic Development Trust Fund Annual Report. Section 288.095(3)(c), F.S., relating to the annual report and its components for the Economic Development Trust Fund is repealed and most of the provision is integrated into the annual incentives report, rather than a separate

report. The following information originally required as part of the Economic Development Incentives Account Report must be incorporated in the annual incentives report:

- Tax refunds or other payments funded out of the Economic Development Incentives Account for each project.
  - The types of projects supported.
  - Separate analysis of the impact of tax refunds on state enterprise zones, rural communities, brownfield areas, and distressed urban communities.
  - The name and tax refund amounts for each business receiving a tax refund under the qualified defense contractor and space flight business tax refund program or the tax refund program for qualified target industry businesses.
- Information on the causes of a business's inability to complete its Qualified Targeted Industry (QTI) incentives agreement.
  - Validation by DEO, instead of EFI, of contractor performance for the Quick Action Closing Fund.
  - Validation of the Innovation Incentive Program to include the evaluation as to whether the recipients were catalysts for additional economic development in Florida is also added to the report. The bill deletes the requirement for reporting on contractor performance 90 days after completion because it is included in the annual incentives report.
  - Validation of contractor performance for incentives.
  - Recommended changes to the underutilized incentive programs. Current law requires the annual incentive report to identify incentive programs that are not utilized.
  - Florida Small Business Technology Growth Program.

The bill revises the annual incentives report to require it be a joint report by EFI and DEO. The report due date remains December 30 as provided in current law.

#### Office of Film and Entertainment

The bill changes the due date of the Office of Film and Entertainment's (OFE) annual report from October 1 to November 1 and consolidates the annual reports relating to the OFE by requiring the expenditures report and the report detailing the relationship between tax exemptions and incentives to industry growth<sup>34</sup> to be included. The report remains as a separate report submitted to the Governor and Legislature.

#### Space Florida Annual Report

The bill requires that the annual operations report be included as a supplement to the Space Florida annual performance report.

#### Machinery & Equipment Sales Tax Exemption

##### ***Present Situation***

Florida has a diverse manufacturing sector that encompasses traditional industries, such as food and beverage processing, technology-driven industries that produce medical devices, pharmaceuticals, and aerospace equipment. The sector is comprised of more than 18,000 employers and 315,300 workers,<sup>35</sup> with nearly 53 percent of all manufacturers in the state operating as small businesses with less than 20 employees.<sup>36</sup> Workers employed in Florida's manufacturing sector earn an average annual wage of

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<sup>34</sup> See s. 288.1258(5), F.S.

<sup>35</sup> Current Employment Statistics, Florida Department of Economic Opportunity, December of 2012, <http://www.floridajobs.org/labor-market-information/data-center/statistical-programs/current-employment-statistics>, (last visited April 15, 2013).

<sup>36</sup> Manufacturing and Trade Data by State, National Association of Manufacturers, <http://www.nam.org/Statistics-And-Data/State-Manufacturing-Data/Manufacturing-by-State.aspx>, (last visited May 6, 2013).

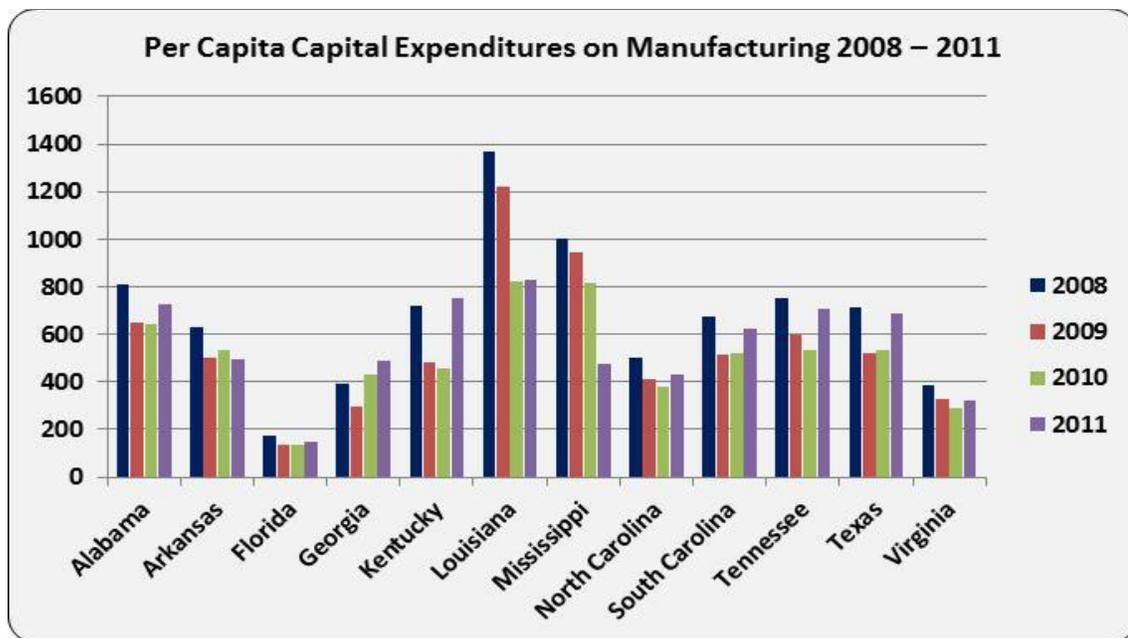
\$52,372, which is more than \$10,000 above the average annual wage for all private non-agricultural sectors.<sup>37</sup>

### Capital Investment in the Manufacturing Sector

In order to remain competitive, manufacturing companies must regularly upgrade or acquire new fixed assets such as property, plant, machinery and equipment. As demand and variable costs fluctuate, investments in machinery and equipment are made to expand production or improve operational efficiency. Over the long term, investments in fixed assets may lead to a higher demand for skilled labor and higher wages for employees.<sup>38</sup>

Manufacturing is a capital intensive industry because substantial investments in technology and equipment are required before production is initiated or transitioned to different purposes. Because capital investment is generally made upfront and subject to depreciation, manufacturers are sensitive to taxes levied on certain types of property, machinery and equipment. In general, a strong manufacturing base generates gains in economic output and increases the productivity of labor.<sup>39</sup>

In recent years, competitor states have worked to intensify and diversify their manufacturing sectors by eliminating taxes that discourage productivity.<sup>40</sup> When measuring capital intensity by expenditures per capita, Florida manufacturers have invested in less property, machinery and equipment than any other southern state.<sup>41</sup>



### Competitor States

Among the twelve southern states, Arkansas, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, Texas and Virginia exempt machinery and equipment purchases from the state sales tax.

<sup>37</sup> Occupational Employment Statistics and Wages, Florida Department of Economic Opportunity, 2012, <http://www.floridajobs.org/labor-market-information/data-center/statistical-programs/occupational-employment-statistics-and-wages>, (last visited May 6, 2013).

<sup>38</sup> Widening the Wage Gap: The Skill Premium and Technology, Federal Reserve Bank of Philadelphia Business Review, Q4 2002. [www.philadelphiafed.org/files/br/brq402ks.pdf](http://www.philadelphiafed.org/files/br/brq402ks.pdf), (last visited May 6, 2013).

<sup>39</sup> The Benefits of Manufacturing Jobs, Economics and Statistics Administration, U.S. Department of Commerce, Issue Brief #01-12, <http://www.esa.doc.gov/Reports/benefits-manufacturing-jobs>, (last visited May 6, 2013).

<sup>40</sup> Louisiana phased out its sales tax on machinery and equipment in 2010. Georgia expanded its existing machinery and equipment sales tax exemption in 2009.

<sup>41</sup> Manufacturing: An Economic Driver for Jobs and Florida's Future, Florida TaxWatch, August 2011. [www.floridataxwatch.org/resources/pdf/20110808Manufacturing.pdf](http://www.floridataxwatch.org/resources/pdf/20110808Manufacturing.pdf), (last visited May 6, 2013).

<sup>42</sup> It should be noted that Federal and state disaster recovery incentives in Louisiana and Mississippi may have front-loaded capital expenditures that would have otherwise been delayed to future years.

Two states, Alabama and Mississippi, tax the sale of machinery and equipment used in the manufacturing process, but at rates far below the general sales tax. The chart below indicates the rate of tax that would apply to the sale of machinery and equipment and whether a full exemption is provided.

Machinery & Equipment Purchases: State Tax Rates and Exemptions <sup>43</sup>												
	FL	AR	GA	LA <sup>44</sup>	NC <sup>45</sup>	SC	TN	TX	VA <sup>46</sup>	AL <sup>47</sup>	MS <sup>48</sup>	KY <sup>49</sup>
<b>Sales/Use Tax Rate</b>	6.0%	6.0%	4.0%	4.0%	4.75%	6.0%	7.0%	6.25%	4.0%	1.5%	1.5%	6.0%
<b>Full M&amp;E Exemption</b>	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No

As indicated above, Florida is one of only four southern states that imposes a tax on the sale or use of machinery and equipment. The state provides several exemptions from this tax;<sup>50</sup> however, current law may require an existing manufacturer to meet one of the following requirements, in order to qualify for an exemption:

- Expand current business operations.  
*(Florida and Kentucky are the only states in the south with this requirement)*
- Increase the level of productive output.  
*(Florida is the only state in the south with this requirement)*
- Purchase machinery and equipment used to produce energy, facilitate research and development, or manufacture products related to aerospace, semiconductors, national defense or pollution control.

When upgrades to machinery and equipment are related to the production of a non-qualifying good or directed at improving the operational efficiency of an existing facility, a manufacturer may not be exempt from the levy of sales tax. The burden of this tax increases the cost of replacing fixed assets and may contribute to the low level of capital investment seen in the state's manufacturing sector.<sup>51</sup> Over time, higher costs and insufficient capital investment may reduce the competitiveness of Florida's existing manufacturers and discourage prospective manufacturers from expanding operations to the state.

#### Florida's Tax Exempt Machinery & Equipment

Unless the transaction is exempt, each sale, admission charge, storage, or rental is taxable under ch. 212, F.S. Generally, the sales tax is added to the price of a taxable good and collected from the purchaser at the time of sale. As a complement to the sales tax, the state levies a use tax on transactions not otherwise exempt or taxed at the time of sale.

Current law provides exemptions for purchased machinery and equipment used in industrial production, research and development, energy production, aviation, and pollution control. The chart below lists the exemptions that are available for industrial machinery and equipment and the applicability of such

<sup>43</sup> Data compiled from state tax collection agencies. (On file with the Economic Development and Tourism Subcommittee)

<sup>44</sup> Localities in Louisiana may impose a local option sales tax on machinery and equipment.

<sup>45</sup> Certain machinery and equipment in North Carolina are subject to a 1% excise tax with a maximum of \$80 per item.

<sup>46</sup> Localities in Virginia may impose a local option sales tax on machinery and equipment.

<sup>47</sup> The general sales tax rate in Alabama is 4.0%. Machinery and equipment purchases may also qualify for the state's tax abatement program.

<sup>48</sup> The general sales tax rate in Mississippi is 7.0%. Machinery and equipment purchased by ship manufacturers are tax exempt.

<sup>49</sup> Machinery and equipment purchased by new or expanding manufacturers are tax exempt.

<sup>50</sup> Section 212.08(5), F.S.

<sup>51</sup> See: Manufacturing: An Economic Driver for Jobs and Florida's Future, Florida TaxWatch, August 2011.

exemptions to various points in a business growth cycle. These exemptions are generally more available to new and expanding businesses.

<b>Current Industrial Machinery &amp; Equipment Sales Tax Exemptions</b>			
Applicability by Business Growth Cycle			
<b>Exemption</b>	<b>New Business</b>	<b>Expanding Business</b>	<b>Upgrading Business</b>
M&E used to manufacture, process, compound, or produce items of tangible personal property for sale.	Qualified	Qualified, but requires a 5% increase in productive output.	Not qualified
M&E used in spaceport activities.	Qualified	Qualified	Not qualified
M&E used under federal procurement contracts.	Not qualified	Qualified, but requires a 10% increase in productive output.	Not qualified
M&E used in semiconductor, defense, or space technology production.	Meet application, certification, and permit requirements of two or more agencies.	Meet application, certification, and permit requirements of two or more agencies.	Meet application, certification, and permit requirements of two or more agencies.

- *Industrial M&E used to increase productive output*

Section 212.08(5)(b), F.S., exempts industrial machinery and equipment purchased and used exclusively for spaceport activities or to manufacture, process, compound, or produce for sale items of tangible personal property.<sup>52</sup> This exemption is limited to new or expanding businesses.<sup>53</sup> A new business must purchase machinery and equipment before the initiation of productive operations. Delivery of such items must be made within twelve months of that date. However, an expanding business not engaged in spaceport activities, must demonstrate to the Department of Revenue (DOR) that it has increased the productive output of a facility by at least five percent.<sup>54</sup>

In order to receive the exemption, a business must apply to DOR to request the issuance of a temporary tax exemption permit. The permit must be returned to DOR after all the machinery and equipment is purchased. In cases where a business is denied a temporary tax exemption permit, a business may later receive a refund on taxes paid if such business is found to have met the requirements for an exemption. DOR may conduct audits to enforce exemption requirements.

- *Industrial M&E used under federal procurement contracts*

<sup>52</sup> “Industrial Machinery and Equipment” means tangible personal property or other property that has a depreciable life of 3 years or more and is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities. Buildings, structural components, and heating and air-conditioning systems, generally do not meet the definition of industrial machinery and equipment unless closely related to the industrial machinery and equipment that it houses, supports, or such building or structural component can be expected to be replaced when the machinery and equipment are replaced. Heating and air-conditioning systems are not industrial machinery and equipment unless the sole justification for their installation is to meet the requirements of the production process. The term may include parts and accessories that are consistent with the exemption provided in s. 212.08, F.S. “Spaceport Activities” means activities directed or sponsored by Space Florida on spaceport territory pursuant to its powers and responsibilities under the Space Florida Act.

<sup>53</sup> This exemption does not apply to industrial machinery or equipment purchased or used by electric utility companies, communications companies, oil or gas exploration or production operations, publishing firms that do not export at least 50 percent of their finished product out of the state, or any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

<sup>54</sup> Productive output is determined by dividing the output for 12 continuous months (after completion of the installation of purchased machinery or equipment) by the output for the 12 continuous months immediately preceding the installation. The time period for measuring productive output must begin no later than 2 years after completion of the installation of the new machinery and equipment. In 2012, the Legislature reduced the productive output requirement from 10 percent to 5 percent (See HB 7087, Chapter No. 2012-32 L.O.F.).

Section 212.08(5)(d), F.S., exempts industrial machinery and equipment purchased by an expanding business, which manufactures tangible personal property in accordance with federal procurement regulations.<sup>55</sup> This exemption is limited to an expanding business that increases implicit productive output by at least ten percent.<sup>56</sup> Currently, a new business is not eligible for this exemption.

Eligible machinery or equipment purchases must be related to production contracts with the United States Department of Defense and Armed Forces, the National Aeronautics and Space Administration, and other federal agencies for which the contracts are classified for national security reasons. The amount of the exemption is reduced or offset by business's percentage of gross receipts attributable to cost-reimbursement contracts. DOR administers the exemption by providing a refund on taxes paid.

- *Industrial M&E used in semiconductor, defense, or space technology production*

Section 212.08(5)(j), F.S., exempts industrial machinery and equipment purchased and used to manufacture, process, compound or produce semiconductor, defense or space technology products for sale or for use by qualifying facilities.<sup>57</sup> A business certified to receive this exemption may elect to designate one or more state universities or community colleges as the recipients of the refund. In order to qualify, a business must submit an application to Enterprise Florida, receive a two-year certification issue by DEO, and receive a tax exemption permit issued by DOR. DOR may conduct audits to enforce exemption requirements.

### North American Industry Classification System

The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.<sup>58</sup> NAICS uses a six-digit hierarchical coding system to classify all economic activity into twenty industry sectors. Five sectors are mainly goods-producing sectors and fifteen are entirely services-producing sectors.<sup>59</sup> The manufacturing sector is classified under codes 31-33.

### ***Effect of Proposed Changes***

CS/CS/HB 7007 creates a streamlined sales or use tax exemption for industrial machinery and equipment purchased and used to manufacture, process, compound, or produce items of tangible personal property for sale. The exemption applies only to industrial machinery and equipment used at fixed locations within Florida. Further, this exemption does not restrict eligibility to new manufacturers or certain expanding manufacturers that increase productive output by at least five percent. The bill will also allow a manufacturer to receive a tax exemption for equipment upgrades at an existing facility.

The bill provides that an eligible manufacturing business must be engaged in a primary business activity as defined by NAICS codes 31-33 at the specific location where the industrial machinery and equipment is installed.<sup>60</sup> Further, qualified industrial machinery and equipment is limited to property

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<sup>55</sup> Exempt purchases are limited to machinery and equipment as defined by s. 212.08(5)(d), F.S. This exemption does not apply to industrial machinery or equipment purchased or used by businesses listed in s. 212.08(5)(b)5., F.S., or any business that can measure an increase in productive output as provided in s. 212.08(5)(b)6., F.S.

<sup>56</sup> The percentage of increase is measured by calculating the deflated implicit productive output for the calendar year during which the installation of the machinery or equipment is completed or during which commencement of production utilizing such items is begun divided by the implicit productive output for the preceding calendar year. Commencement of production must begin no later than two years following completion of installation of the machinery or equipment.

<sup>57</sup> This exemption also applies to building materials purchased to manufacture or expand clean room facilities.

<sup>58</sup> Introduction to NAICS at the Census Bureau, U.S. Department of Commerce, <http://www.census.gov/eos/www/naics/>, (last visited May 6, 2013).

<sup>59</sup> North American Industry Classification System at the Bureau of Labor Statistics, U.S. Department of Labor, <http://www.bls.gov/bls/naics.htm>, (last visited May 6, 2013).

<sup>60</sup> "Primary business activity" means an activity representing more than fifty percent of the activities conducted at the location where the industrial machinery and equipment is located. The primary business activity of establishments classified in manufacturing codes 31-33, are generally described as the mechanical, physical, or chemical transformation

with a depreciable life of three years or more that is an integral part of the manufacturing process. The bill also provides that buildings, structural components, and heating and air-conditioning systems, generally do not meet the definition of industrial machinery and equipment unless a close nexus or sole justification links such items to the manufacturing process. Parts and accessories for industrial machinery and equipment may qualify for this exemption if such items are purchased prior to the date the machinery and equipment are placed in service.

The bill obligates the purchaser to furnish the seller with a signed certificate stating that the purchase will be used in compliance with the tax exemption's requirements. The certificate relieves the seller of the responsibility of collecting the tax on the sale of the qualifying machinery or equipment. If DOR determines the purchaser was not entitled to the exemption, the bill provides that DOR will seek recovery of the tax from the purchaser.

The bill stipulates that the sales tax exemption will be available for 3 years, from April 30, 2014 through April 29, 2017. The chart below provides the applicability of the proposed tax exemption by business growth cycle:

<b>CS/CS/HB 7007 – Industrial Machinery &amp; Equipment Sales Tax Exemption</b>			
Applicability by Business Growth Cycle			
<b>New M&amp;E Exemption</b>	<b>New Business</b>	<b>Expanding Business</b>	<b>Upgrading Business</b>
M&E used to manufacture, process, compound, or produce items of tangible personal property for sale.	Yes	Yes	Yes
<b>Limitations</b>			
By NAICS Manufacturing Codes	Yes	Yes	Yes
By productive output requirement	No	No	No

## **Gulf Coast Restoration**

### ***Present Situation***

On April 20, 2010, the Transocean offshore drilling rig known as Deepwater Horizon exploded in the Gulf of Mexico with the loss of 11 crewmembers.<sup>61</sup> At the time of the explosion, the rig was under the operation of BP and anchored in the Macondo prospect approximately 45 miles southeast of the Louisiana coast. Over the next three months, an estimated 4.9 million barrels of crude oil was discharged into the Gulf of Mexico.<sup>62</sup> As a result of the spreading oil spill in the Gulf of Mexico, a state of emergency was declared in 26 Florida counties, including the disproportionately affected counties in Florida's panhandle.<sup>63</sup> The total economic loss to Florida is estimated to exceed \$5.48 billion.<sup>64</sup> However, the cumulative damage to coastal natural resources may not be fully determined for several years.

In 2011, the Legislature passed SB 2156, which addressed the negative economic impacts of the Deepwater Horizon oil spill.<sup>65</sup> The bill tolled certain permits and waived job, wage and other requirements for businesses seeking economic development incentives in disproportionately affected

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of materials, substances, or components into new products. Further, the assembling of component parts of manufactured products is considered manufacturing, except in cases where the activity is appropriately classified as construction.

<sup>61</sup> Rig Disaster: Timeline, Wall Street Journal,

<http://online.wsj.com/article/SB10001424052748704302304575213883555525958.html>, (last visited May 6, 2013).

<sup>62</sup> Assessment of Flow Rate Estimates for the Deepwater Horizon / Macondo Well Oil Spill, National Incident Command and the United States Department of the Interior, <http://on.doi.gov/hZU3Xf>, (last visited May 6, 2013).

<sup>63</sup> Fla. Exec. Order Nos. 10-99, 10-100, and 10-106.

<sup>64</sup> State of Florida's OPA Presentment Letter to BP as a responsible party, dated January 17, 2013; Office of the Attorney General. (On file with the House Economic Development & Tourism Subcommittee.)

<sup>65</sup> Chapter 2011-142, L.O.F.

counties.<sup>66</sup> Further, the bill created s. 377.43, F.S., which provides that 75 percent of any funds received by the state from any governmental or private entity for damages caused by the oil spill may be used in disproportionately affected counties and 25 percent may be used in non-disproportionally affected counties to further the following:

- Scientific research into the impact of the oil spill on Florida's natural resources and environment.
- Development of strategies to implement restoration measures.
- Environmental restoration of coastal areas.
- Economic incentives directed to any county.
- Initiatives to expand and diversify the local economy of any county.

Section 377.43, F.S., also designates the Department of Environmental Protection as the lead agency for expending funds directed to environmental restoration and DEO as the lead agency for expending funds directed to economic incentives and diversification efforts.

### Civil Penalties and Federal Law

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating water quality standards for surface waters.<sup>67</sup> Violations of the CWA can result in both civil and criminal prosecutions by the federal government. The Oil Spill Pollution Act of 1990 (OPA) was amended on to the CWA in order to specifically address oil spills.<sup>68</sup>

OPA provides that responsible parties are liable for clean-up costs, economic damages, and damages associated with injuries to natural resources. OPA caps liability for damages from an offshore facility spill at \$75 million per incident. However, this limit does not apply if the incident was caused by a responsible party's gross negligence, willful misconduct, or violation of applicable federal regulations.<sup>69</sup> The limitation on liability also does not apply to civil and criminal penalties under federal and state law, oil spill removal costs under federal law, or claims for damages brought under state law.<sup>70</sup>

Under CWA/OPA, civil penalties are authorized up to \$1,100 per barrel of oil discharged. If gross negligence or criminal conduct is found, civil penalties penalty can increase to \$4,300 per barrel of oil discharged.<sup>71</sup> Civil penalties recovered under CWA must be deposited into the Oil Spill Liability Trust Fund. The Fund was created to ensure that there are available funds for clean-up, response, and restoration efforts for future oil spills. As a contingency, the Fund may be used to pay compensation for removal costs and damages if a responsible party fails to do so and to pay compensation in excess of the responsible parties' liability.<sup>72</sup>

The RESTORE Act of 2012 directs 80 percent of the CWA penalties paid by those responsible for the Deepwater Horizon oil spill to the Gulf Coast Restoration Trust Fund, which was created to fund environmental and economic restoration projects in the five Gulf Coast States.<sup>73</sup> The balance of the penalties is then distributed to the Oil Spill Liability Trust Fund.

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<sup>66</sup> The "disproportionally affected counties" are Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton and Wakulla counties.

<sup>67</sup> Codified at 33 U.S.C. §1251 et seq.

<sup>68</sup> Codified at 33 U.S.C. §2701 et seq.

<sup>69</sup> Liability and Compensation Requirements under the Oil Pollution Act, Staff working paper No. 10, National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling.

<sup>70</sup> *Id.*

<sup>71</sup> Environment & Natural Resources Division, U.S. Department of Justice, <http://www.justice.gov/enrd/4483.htm>, (last visited May 6, 2013).

<sup>72</sup> America's Gulf Coast: A Long Term Recovery Plan After the Deepwater Horizon Oil Spill, September 2010, <http://www.restorethegulf.gov/sites/default/files/documents/pdf/gulf-recovery-sep-2010.pdf>, (last visited May 6, 2013).

<sup>73</sup> Pub. L. No. 112-141 (113th Congress). Codified at 33 U.S.C. §1321.

## Pending Litigation

On December 15, 2010, the federal government filed suit against BP and eight other companies asking that the companies be held liable without limitation under OPA for all removal costs and damages caused by the spill, including damages to natural resources.<sup>74</sup> The lawsuit also seeks civil penalties for gross negligence under the CWA.

Currently, individual and business claims for economic and property damages and medical benefits are being processed through a court-ordered settlement process. However, several states are seeking damages from responsible parties through OPA and other applicable federal and state laws. On April 23, 2013, Attorney General Pam Bondi announced that Florida has filed a lawsuit against BP and Halliburton seeking \$5.48 billion in economic damages related to the oil spill.<sup>75</sup>

## ***Effect of Proposed Changes***

CS/CS/HB 7007 creates Triumph Gulf Coast, Inc., to manage, distribute, and assess the use of certain funds related to the Deepwater Horizon oil spill. Triumph Gulf Coast, Inc., is organized as a nonprofit corporation, administratively housed within the DEO. The corporation is a separate entity from state government and not subject to control, supervision, or direction of DEO.

## Duties of Triumph Gulf Coast, Inc.

The corporation is authorized to establish a trust or “recovery fund” for the benefit of the disproportionately affected counties. After the payment of attorney fees, costs, and expenses, including contingency fee agreements provided in s. 16.0155, F.S., the bill directs 75 percent of all funds recovered by the Attorney General for economic damage to the state resulting from the Deepwater Horizon disaster to the Gulf Coast Recovery Fund.

The bill requires Triumph Gulf Coast, Inc., to administer the Recovery Fund and all programs created under the Gulf Coast Economic Corridor Act in a transparent manner and in accordance with all applicable laws, bylaws, or contractual requirements. Further, the corporation is required to monitor, review, and evaluate awardees and related projects or programs. The evaluation process must be used to determine funding priorities and determine whether an award should be reauthorized or terminated. The corporation is also required to maintain a website that provides information related to meetings, issuance of awards, and the status of projects and programs.

## Board of Directors

The bill establishes a 5-member board of directors to govern Triumph Gulf Coast, Inc. The board is composed of individuals from the private sector, with the Trustees of the State Board of Administration, the President of the Senate, and the Speaker of the House of Representatives each appointing one member to the board.<sup>76</sup> The board is required meet at least quarterly to:

- Review the Recovery Fund.
- Establish priorities for economic recovery in disproportionately affected counties.
- Determine how available earnings are used.

In addition to the powers and duties prescribed in ch. 617, F.S., and in the articles and bylaws of the corporation, the board of directors may:

- Enter into certain contracts or instruments.
- Make expenditures from earnings consistent with the board’s powers.

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<sup>74</sup> Attorney General Eric Holder Announces Civil Lawsuit Against Nine Defendants for Deepwater Horizon Oil Spill, United States Department of Justice, December 15, 2010, <http://www.justice.gov/opa/pr/2010/December/10-ag-1442.html>, (last visited May 6, 2013).

<sup>75</sup> Damages related to Florida’s natural resources and the environment continue to be assessed and are not part of this lawsuit. [http://myfloridalegal.com/webfiles.nsf/WF/KGRG975HBL/\\$file/AmendedComplaint.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KGRG975HBL/$file/AmendedComplaint.pdf), (last visited May 6, 2013).

<sup>76</sup> The Governor, the Chief Financial Officer, and the Attorney General are the Trustees of the State Board of Administration.

- Adopt, use, and alter a common corporate seal.
- In certain cases, use the state seal for certain standard corporate identity applications.

Members of the board serve without compensation for a term of 4 years.<sup>77</sup> However, the bill allows travel and per diem expenses as provided under s. 112.061, F.S. The initial appointments to the board must be made by November 15, 2013. Members of the board are subject to the standards of conduct, post-employment restrictions, and disclosure requirements that are required of public officers and employees.<sup>78</sup> The bill provides for the removal of board members. The bill also requires designees from DEO, DEP, and the Committee of the Eight Disproportionately Affected Counties to be available for consultation, which may include attending board meetings.

### Awards

Triumph Gulf Coast, Inc., is authorized to provide awards for projects or programs that encourage economic recovery in the eight disproportionately affected counties.<sup>79</sup> Notwithstanding the provisions of s. 377.43, F.S., awards may be provided for:

- Ad valorem tax reduction.
- Payment of impact fees adopted pursuant to s. 163.31801, F.S.
- Administrative funding for economic development organizations.
- Local match requirements for projects related to the:
  - Rural Infrastructure Fund
  - Local Government Distressed Area Matching Grant Program
  - Qualified Defense Contractor and Space Flight Business Tax Refund Program
  - Tax refund Program for Qualified Target Industry Businesses
- Economic development projects.
- Infrastructure projects that are shown to enhance economic development.
- Grants in a disproportionately affected county related to:
  - Local government emergency preparedness and disaster response.
  - Programs of excellence at an K-20 institutions.
  - Visit Florida advertisement and tourist promotion.

The bill requires Triumph Gulf Coast, Inc., to establish an application procedure for awards and a scoring process for the selection of projects and programs. The corporation must give priority to projects and programs that:

- Generate maximum estimated economic benefit.
- Increase household income above national average household income.

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<sup>77</sup> Board members appointed by the President of the Senate and the Speaker of the House of Representatives serve a term of 2 years to achieve staggered terms among members of the board. However, appointments with durations of two years or less are eligible to be reappointed for an additional four years.

<sup>78</sup> Sections 112.3135, 112.3143, 112.313, and 112.3145, F.S. In addition to the postemployment restrictions of s. 112.313(9), F.S., a person appointed to the board of directors must agree to refrain from having any direct interest in any contract, franchise, privilege, project, program, or other benefit arising from an award by Triumph Gulf Coast, Inc., during the term of his or her appointment and for 2 years after the termination of such appointment. It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for a person to accept appointment to the board of directors in violation of this subsection or to accept a direct interest in any contract, franchise, privilege, project, program, or other benefit granted by Triumph Gulf Coast, Inc., to an awardee within 2 years after the termination of his or her service on the board.

<sup>79</sup> "Disproportionately affected county" means Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, Walton County, or Wakulla County.

- Expand high growth industries or establish new high growth industries in the region.
- Leverage key regional assets.
- Partner with local governments to provide funds, infrastructure, land, or other assistance.
- Receive investment commitments from private equity or venture capital funds.
- Provide seed stage investments in start-up companies.
- Provide advice and technical assistance to companies related to management or production.
- Benefit the environment in addition to the economy.
- Provide outcome measures and metric related to programs of excellence.
- Partner with K-20 educational institutions or school districts within the region.
- Partner with tourist and business promotion organizations within the region.

The bill provides Triumph Gulf Coast, Inc., with the flexibility to require a private-sector match as an application condition. The corporation may distribute awards as applications are received or after a specific application time period. An award may not be used to finance 100 percent of any project or program nor shall an awardee receive the Recovery Fund's entire earnings or available principal in any given year. Related to contracts executed by the corporation and an awardee, the contract must include a performance report on contracted activities, an accounting of the proper use of funds as provided under the contract, and provisions for the recovery of the award. Awardees must regularly report to Triumph Gulf Coast, Inc., the status of the project or program on a schedule determined by the corporation.

#### Administrative Costs

The bill provides general authority for Triumph Gulf Coast, Inc., to hire or contract necessary staff, but the bill specifically requires the corporation to retain the following staff persons: a certified public accountant, a financial advisor, an economic advisor, and a legal counsel. The bill limits the corporation's total administrative costs to 2.25 percent of annual earnings, which includes payment of investment fees, travel and per diem expenses, audits, and salaries. Employees of the corporation are required to comply with the code of ethics standards for public employees and may be required to refrain from having a direct financial interest in the activities of Triumph Gulf Coast, Inc. for certain post-employment time period.

#### Recovery Fund Investments

Triumph Gulf Coast, Inc., is authorized to invest and reinvest the principal of the Recovery Fund in accordance with s. 617.2104, F.S., in order to maintain a stable source of revenue. Funds are to be expensed over a 30-year period in equal amounts each year. In consultation with the financial advisor and the State Board of Administration, the corporation's board must formulate an investment policy and competitively procure a fund manager to invest the principal of the Recovery Fund. Further, the bill provides requirements for the fund manager and certain limitations for costs and fees related to investment services.

#### Audit and Reporting Requirements

The bill requires a local government entity to include in annual financial audits conducted pursuant to s. 218.39, F.S., an accounting of all Deepwater Horizon oil spill funds received and expended, including funds provided through the RESTORE Act and Triumph Gulf Coast, Inc. The bill directs the Auditor General to biennially conduct an operational audit pursuant to s. 11.45, F.S., of any oil spill funds received or expended by a local government entity. In addition, the Auditor General is required to annually conduct an audit of the Recovery Fund and Triumph Gulf Coast Inc. The bill provides the Auditor General with rule-making authority related to the financial audits required by this bill and the U.S. Department of the Treasury.

On June 30th and December 30th of each year, Triumph Gulf Coast, Inc., must provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the corporations activities and the financial status of the Recovery Fund.

## **Florida Small Business Development Center Network**

### ***Present Situation***

#### **Small Business Development Centers (SBDCs)**

The Florida Small Business Development Center Network (Network) was established in 1976 pursuant to the Small Business Act<sup>80</sup> as a partnership between the U.S. Small Business Administration (SBA) and the post-secondary education system to provide business management and educational assistance directly to small businesses. The Network consists of eight affiliated Small Business Development Centers and 34 offices located throughout the state which are managed by the Lead Center at the University of West Florida (UWF) as designated through cooperative agreement with SBA. The Lead Center, in addition to serving its local small business community, is also responsible for administering the activities of the Network through memoranda of understanding with each affiliated SBDC. The eight SBDCs are housed within UWF, Gulf Coast State College, Palm Beach State College, the University of North Florida, the University of Central Florida, The University of South Florida, Florida Gulf Coast University, and Florida Agricultural and Mechanical University.

Each SBDC provides services such as development of business plans, manufacturing assistance, financial packages, and procurement contracts. Special emphasis areas include:

- International trade and export assistance.
- E-commerce.
- Technology transfer.
- Assistance for veterans, including reservists, active duty, and disabled personnel returning from deployment.
- Disaster recovery assistance.
- IRS, EPA, and OSHA regulatory compliance.
- Research and development as well as market research.

Based on client needs and local business trends and individual business requirements, SBDCs modify their services to meet the evolving needs of the small business community in which they are situated.

The Network's statewide director is appointed by the President of UWF on a funded faculty line, and evaluated annually by the university. Directors and staff of the affiliate SBDCs are employees of their respective organizations and are not subject to termination or suspension by the Network director. An advisory board of no more than 23 members representing the various segments and industries of the Florida marketplace are appointed by the provost of UWF after being recommended by the eight regional SBDCs.

Funding for the Network is supplied from federal, state, local, and private sources, including both cash and in-kind contributions. Federal funds must be matched through cash, indirect, and in-kind contributions. The Network receives no direct state matching funds, but does receive cash match and indirect contributions from host universities, colleges, economic development organizations, regional workforce boards, and some local governments. In-kind contributions are provided from chambers of commerce, private businesses, and other organizations. Each participating university is responsible for supplying the required cash match and indirect contributions to receive the federal funds available to each service area within the state.

According to the Network, in 2011 they served approximately 38,000 entrepreneurs and small business owners through consulting, training, and information, resulting in 43,856 created, retained and saved

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<sup>80</sup> 15 U.S.C. § 648

jobs; \$6 billion in sales growth; \$98.1 million in capital accessed; \$426.2 million in government contract awards; and 1,067 new businesses started.

### ***Effect of Proposed Changes***

The bill makes a number of changes to the Florida Small Business Development Center Network including changing the size and make-up of the statewide advisory board, codifying support services the Network must provide to small businesses, providing for performance incentives, and requiring annual reports to the Legislature.

#### **Advisory Board**

The statewide advisory board must consist of 19 members:

- 3 members from the private sector appointed by the Governor.
- 3 members from the private sector appointed by the Speaker of the House of Representatives.
- 3 members from the private sector appointed by the President of the Senate.
- 3 members from the private sector appointed by the statewide director.
- 1 member from the host institution.
- The Chief Financial Officer
- The president of Enterprise Florida, Inc.
- The president of the Florida Chamber of Commerce.
- The executive director of the Florida chapter of the National Federation of Independent Businesses.
- The executive director of the Florida United Business Association.
- The SBDC project officer from the SBA at the South Florida district office.

The bill requires that at least 12 members of the advisory board must be representatives of the private sector who are knowledgeable of the needs and challenges of small businesses. Members must represent various segments and industries of the state economy and bring knowledge and skills to the advisory board. Minority and gender representation must be considered when making appointments to the advisory board. The term of appointed members shall be for four years, except at the time of the initial appointments two members appointed by the Governor, one appointed by the Speaker of the House of Representatives, one appointed by the President of the Senate, and one appointed by the statewide director shall be appointed for two years.

#### **Support Services**

The statewide director, in consultation with the advisory board, is required to develop support services to be delivered through regional SBDCs and target the needs of businesses of less than 100 employees and demonstrate the capacity for growth. These support services must include providing information or research, consulting, educating, or assisting businesses with the following:

- Planning related to start-up, operation, or expansion of a small business enterprise.
- Developing and implementing strategic or business plans.
- Developing the financial literacy of existing businesses related to their business cash flow and financial management plans.
- Developing and implementing plans for existing businesses to access or expand to new or existing markets
- Supporting access to capital for business investment and expansion.

- Assisting existing businesses to plan for a natural or man-made disaster, and assisting businesses when such an event occurs.

The bill requires that businesses receiving support services must agree to participate in service assessments. Information to be provided by the businesses includes demographic characteristics, changes in employment and sales, debt and equity capital attained, and government contracts acquired. The host institution may require additional reporting requirements.

### Performance Incentives

Any funding directly appropriated by the Legislature to the host institution specifically designated for the Network must be matched by the Network. Of that match, at least 50% must be cash. The remaining portion may be provided through any allowable combination of additional cash, in-kind contributions, or indirect costs.

The statewide director, coordinating with the host institution, must establish a pay-per-performance incentive for regional SBDCs funded by half of any state appropriation received directly by the host institution specifically for the Network. The distribution formula developed by the statewide director must be based in part on the gross number of jobs created annually by each regional SBDC and in part on the number of jobs created per support service hour. The incentive may not reduce matching funds dedicated to the regional SBDCs, but must supplement their operations and support services.

Half of the state funds received directly by the host institution designated for the Network shall be distributed to the statewide director who, in coordination with the advisory board, shall establish annual programs to distribute funds for the following purposes:

- Ensuring that support services are available statewide including underserved and rural areas.
- Enhancing participation in the Network among state universities and colleges.
- Facilitating the adoption of innovative small business assistance best practices by the regional SBDCs.

The Network must announce the annual amount of funds available for each program, performance expectations, and other requirements. The statewide director is directed to present applications and make recommendations to the advisory board for final approval. The bill requires that the programs include, at minimum, new regional SBDCs and awards for the top six regional SBDCs that adopt best practices.

If the statewide director determines that any regional SBDC has performed poorly, engaged in improper activity affecting the operation and integrity of the Network, or failed to follow the rules and procedures set forth in the laws, regulations, and policies governing the Network, then the regional SBDC is not eligible to receive funds through the programs created by this bill.

### Annual Reporting

The statewide director, in coordination with the advisory board, is directed to provide a report on June 30<sup>th</sup> of each year to the Speaker of the House of Representatives and the President of the Senate detailing the Network's progress and outcomes for the previous fiscal year. The report must include information regarding businesses assisted, services and programs, the use of funds specifically dedicated to the Network, and the Network's economic benefit to the state. The report must contain specific information on performance-based metrics and contain the methodology used to calculate the network's economic benefit to the state.

## **Florida Small Cities Community Development Block Grant Loan Guarantee Program**

### ***Present Situation***

Chapter 290, F.S., provides that the intent of the Florida Small Cities Community Development Block Grant Program Act (CDBG) is to provide the necessary means to develop, preserve, redevelop, and revitalize Florida communities exhibiting signs of decline or distress by enabling local governments to undertake necessary community development programs. Mirroring the federal law, the overall

objective of the program is to create viable communities by eliminating slum and blight, fortifying communities in urgent need, providing adequate housing and suitable living environments, and expanding economic opportunities, principally for persons of low or moderate income.<sup>81</sup>

“Persons of low or moderate income” means any person who meets the definition established by the U.S. Department of Housing and Urban Development (HUD).<sup>82</sup> HUD defines “persons of low income” as families and individuals whose incomes do not exceed 50 percent of the median income of a service area, as determined by HUD. “Persons of moderate income” are defined as families and individuals whose incomes exceed 50 percent, but do not exceed 80 percent of a service area, as determined by HUD.<sup>83</sup>

### Section 108 Loan Guarantee Program

Section 108 is the loan guarantee provision of the CDBG program.<sup>84</sup> Section 108 provides communities with a source of financing for economic development, housing rehabilitation, public facilities, and large-scale physical development projects. It allows eligible communities to transform a small portion of their CDBG funds into federally guaranteed loans large enough to pursue physical and economic revitalization projects. Such public investment is often needed to encourage private economic activity, providing the initial resources that private firms and individuals may need to invest in distressed areas. Section 108 loans are not risk-free, however; the principle security for the loan guarantee is a pledge by the state of its current and future CDBG funds.<sup>85</sup>

Activities eligible for Section 108 financing include:<sup>86</sup>

- Economic development activities eligible under CDBG.
- Acquisition of real property.
- Rehabilitation of publicly owned real property.
- Housing rehabilitation eligible under CDBG.
- Construction, reconstruction, or installation of public facilities
- Related relocation, clearance, and site improvements.
- Payment of interest on the guaranteed loan and issuance costs of public offerings.
- Debt service reserves.
- Public works and site improvements.

DEO is authorized to pledge existing revenues on deposit or projected future revenues in the Florida Small Cities CDBG Program in order to guarantee the payment of principal or interest on a loan.<sup>87</sup>

Upon a determination by DEO that the application meets eligibility requirements and the applicant has submitted the proposed activity to a loan underwriter for documentation of financial feasibility, DEO is required to submit all applications to HUD for approval, in the order received.<sup>88</sup> The local government must provide evidence to DEO that alternative financing was investigated and determined to be unavailable or insufficient to meet the financing needs of the activity.<sup>89</sup>

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<sup>81</sup> Section 290.0411, F.S.

<sup>82</sup> Section 290.042(6), F.S.

<sup>83</sup> 42 U.S.C 5302 a.20.

<sup>84</sup> 24 C.F.R. 570, Subpart M, Loan Guarantees.

<sup>85</sup> U.S. Department of Housing and Urban Development, Section 108 Loan Guarantee Program, Loan Details, Security [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/communitydevelopment/programs/108](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/108) (last visited January 22, 2013).

<sup>86</sup> *Id.*

<sup>87</sup> Section 290.0455(3), F.S.

<sup>88</sup> Section 290.0455(4), F.S.

<sup>89</sup> Section 290.0455(7), F.S.

The maximum amount of loan guarantee commitments that any eligible local government may receive may be limited to \$7 million.<sup>90</sup> The maximum amount of loan guarantee commitments statewide may not exceed an amount equal to five times the amount of the most recent grant received by DEO under the Florida Small Cities CDBG Program.<sup>91</sup> Loans guaranteed by the program must be repaid within 20 years.<sup>92</sup>

### Current Section 108 Loans<sup>93</sup>

HUD has approved three Section 108 loans since the inception of Florida's Small Cities CDBG. In 2001, HUD approved the first Section 108 Loan for a major economic development project in the City of Alachua. This loan, in the amount of \$2,250,000, provided infrastructure for the development of a Dollar General Distribution Center that created 448 new jobs for low and moderate-income citizens. The City of Key West addressed critical housing needs with a \$16 million loan that was approved in 2003. The project funded the rehabilitation of 144 housing units at Poinciana Plaza, a former military base housing area.

In 2004, the City of Sebring received a loan for \$5,250,000 to restore a hotel, historic Harder Hall. In late 2006, the developer for the project, Joran Realty, experienced financial shortfalls, filed bankruptcy and work ceased on the project. The city, which now holds possession of the property, foreclosed on the loan. The value of the property is reported to exceed the loan amount owed. The hotel and accompanying property are currently being marketed for sale and proceeds will be used to pay back the loan. The city reports that it is current with interest payments to HUD.

### ***Effect of Proposed Changes***

The bill revises the provisions relating to the Section 108 Loan Guarantee Program to reduce the risk to the state and eligible local governments. The bill requires an applicant approved by HUD to receive a Section 108 loan to enter into an agreement with DEO, which requires the applicant to pledge half the amount necessary to guarantee the loan in the event of default.

The bill clarifies that DEO is directed to review all Section 108 loan applications in the order received, subject to a determination that each application meets all eligibility requirements and has been deemed financially feasible by a loan underwriter approved by DEO. If the statewide maximum available for loan guarantee commitments has not been committed, then DEO is authorized to submit the Section 108 loan application to HUD, with a recommendation that the loan be approved, with or without conditions, or be denied.

In order to reduce the state's risk, the bill reduces from \$7 million to \$5 million the maximum amount of an individual loan guarantee commitment that an eligible local government may receive and reduces the maximum amount of loan guarantee commitments statewide from 5 times to 2 times the amount of the most recent grant received by DEO under the Small Cities CDBG Program. The \$5 million loan guarantee limit does not apply to loans guaranteed prior to July 1, 2013, that may be financed. If a local government defaults on a Section 108 loan requiring DEO to reduce its annual grant award in order to pay the annual debt service on the loan, any future CDBG Program funds that the local government receives must be reduced in the amount equal to the amount of the state's grant award used in payment of the debt service on the loan.

Additionally, if a local government is a recipient of a Section 108 loan guarantee through the Small Cities CDBG Program and is granted entitlement status by HUD prior to paying the loan in full, the local government must pledge its CDBG entitlement allocation as a guarantee of its previous loan and request HUD to release DEO as the guarantor of the loan.

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<sup>90</sup> See 24 C.F.R., s. 570.705.

<sup>91</sup> Section 290.0455(5), F.S.

<sup>92</sup> Section 290.0455(6), F.S.

<sup>93</sup> Florida Department of Economic Opportunity, Division of Community Development, Email dated January 29, 2013.(On file with the House Economic Development & Tourism Subcommittee.)

## **Enterprise Zones in Rural Communities**

### ***Present Situation***

#### **Enterprise Zones**

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 65 enterprise zones.<sup>94</sup>

Sections 290.001-290.016, F.S., authorize the creation of enterprise zones and establish criteria and goals for the program. Prior to submitting an application for an enterprise zone, a local government body must determine that an area:

- Has chronic, extreme and unacceptable levels of poverty, unemployment, physical deterioration, and economic disinvestment.
- Needs rehabilitation or redevelopment for the public health, safety, and welfare of the residents in the county or municipality.
- Can be revitalized through the inducement of the private sector.

An area nominated by a county or municipality, or a county and one or more municipalities together, for designation as an enterprise zone must meet the following criteria:

- The selected area does not exceed 20 square miles.
- The selected area must have a continuous boundary, or consist of not more than three noncontiguous parcels.
- The selected area does not exceed the following mileage limitation:<sup>95</sup>

<b>Community Population</b>	<b>Mileage Limit</b>
150,000 or more	20 sq. mi.
50,000 - 149,999	10 sq. mi.
20,000 - 49,999	5 sq. mi.
7,500 - 19,999	3 sq. mi.
7,499 or less	3 sq. mi.

DEO is responsible for approving applications for enterprise zones, and also approves changes in enterprise zone boundaries when authorized by the Florida Legislature. As part of the application process for an enterprise zone, the county or municipality in which the designation will be located also is responsible for creating an Enterprise Zone Development Agency and an enterprise zone development plan.

As outlined in s. 290.0056, F.S., an Enterprise Zone Development Agency is required to have a board of commissioners of at least eight, and no more than thirteen, members. The agency has the following powers and responsibilities:

- Assisting in the development, implementation and annual review of the zone and updating the strategic plan or measurable goals.
- Identifying ways to remove regulatory burdens.
- Promoting the incentives to residents and businesses.
- Recommending boundary changes.

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<sup>94</sup> 2013 Fact Sheet, Florida Enterprise Zone Program, The Department of Economic Opportunity, on file with the Economic Development & Tourism Subcommittee.

<sup>95</sup> Section 290.0055(4)(a) and (b), F.S.

- Working with nonprofit development organizations.
- Ensuring the enterprise zone coordinator receives annual training and works with EFI.

Pursuant to s. 290.0057, F.S., an enterprise zone development plan (or strategic plan) must accompany an application. At a minimum this plan must:

- Describe the community's goal in revitalizing the area.
- Describe how the community's social and human resources—transportation, housing, community development, public safety, education, and environmental concerns—will be addressed in a coordinated fashion.
- Identify key community goals and barriers.
- Outline how the community is a full partner in the process of developing and implementing this plan.
- Describe the commitment from the local governing body in enacting and maintaining local fiscal and regulatory incentives.
- Identify the amount of local and private resources available and the private/public partnerships.
- Indicate how local, state, and federal resources will all be utilized.
- Identify funding requested under any state or federal program to support the proposed development.
- Identify baselines, methods, and benchmarks for measuring success of the plan.

#### *Available Incentives*

Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities. Examples of local incentives include: utility tax abatement, reduction of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.

Available state sales tax incentives for enterprise zones include:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone - Provides a refund for sales taxes paid on the purchase of certain building materials, up to \$5,000 or 97 percent of the tax paid.
- Business Equipment Used in an Enterprise Zone - Provides a refund for sales taxes paid on the purchase of certain equipment, up to \$5,000 or 97 percent of the tax paid.
- Rural Enterprise Zone Jobs Credit against Sales Tax - Provides a sales and use tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.
- Urban Enterprise Zone Jobs Credit against Sales Tax - Provides a sales and use tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.
- Business Property Used in an Enterprise Zone - Provides a refund for sales taxes paid on the purchase of certain business property, up to \$5,000 or 97 percent of the tax paid per parcel of property, which is used exclusively in an enterprise zone for at least 3 years.
- Community Contribution Tax Credit - Provides 50 percent sales tax refund for donations made to local community development projects.
- Electrical Energy Used in an Enterprise Zone - Provides 50 percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy.

Available state corporate income tax incentives for enterprise zones include:

- Rural Enterprise Zone Jobs Credit against Corporate Income Tax - Provides a corporate income tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.

- Urban Enterprise Zone Jobs Credit against Corporate Income Tax - Provides a corporate income tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.
- Enterprise Zone Property Tax Credit - Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
- Community Contribution Tax Credit - Provides a 50 percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects.

### Rural Areas of Critical Economic Concern

Rural Areas of Critical Economic Concern (RACEC) are a collection of rural communities, or a region composed of rural communities, that have been adversely affected by extraordinary economic events or natural disasters. RACECs are designated based on measures of economic interdependence among the rural counties in the following geographic regions: northwest Florida, north central Florida, and south central Florida.

A RACEC designation establishes each region as a priority assignment for state agencies and allows the Governor to waive criteria for certain economic development incentives including, but not limited to: the Qualified Target Industry Tax Refund Program, the Quick Response Training Program, the Rural Job Tax Credit Program and certain transportation projects.<sup>96</sup> RACEC counties in each region also partner in creating catalyst sites that will attract key businesses.

### ***Effect of Proposed Changes***

The bill amends s. 290.0055 (6)(d)1, F.S., to allow for any enterprise zone that is at least 15 square miles and less than 20 square miles and includes a portion of the state designated as a RACEC to expand the boundary of the enterprise zone up to 3 miles. Also, any enterprise zone that is at least 20 square miles and includes a portion of the state designated as a RACEC to expand the boundary of the enterprise zone up to 5 miles.

An application to expand the boundary of an enterprise zone under the new criteria must be submitted by December 31, 2013.

### **The Brownfields Redevelopment Act**

#### ***Present Situation***

In 1995, the U.S. Environmental Protection Agency (EPA) initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields.<sup>97</sup> The federal brownfields program was significantly expanded on January 11, 2002, when President Bush signed into law the Small Business Relief and Liability and Brownfields Revitalization Act,<sup>98</sup> also known as the “Brownfields Amendments.”

The main purpose of this new law was to create incentives for the redevelopment of brownfield properties and Superfund sites and provide grants to assess or cleanup a brownfields property.

Florida followed federal law in 1997<sup>99</sup> when the Legislature enacted the Brownfields Redevelopment Act<sup>100</sup> (Act) to provide incentives for the private sector to redevelop abandoned or underused real property, the development of which was complicated by real or perceived environmental contamination. The Act provides for a brownfield area designation process, environmental cleanup criteria, eligibility criteria and liability protections, and economic incentives.

<sup>96</sup> Section 288.0656(7)(a), F.S.

<sup>97</sup> U.S. Environmental Protection Agency, Brownfields and Land Revitalization, Community Reinvestment Fact Sheet, <http://www.epa.gov/swerosps/bf/laws/cra.htm> (last visited February 20, 2013).

<sup>98</sup> Public Law No. 107-118, 115 stat. 2356.

<sup>99</sup> Chapter 97-277, L.O.F.

<sup>100</sup> Sections 376.77 – 376.86, F.S., are known as the “Brownfields Redevelopment Act.”

A “brownfield area” is a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by local government 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.<sup>101</sup>

The Act also created the Brownfields Redevelopment Bonus Refund. This provision in the Act authorizes from the Economic Development Incentives Account a bonus refund of \$2,500 to any qualified target industry business for each new Florida job created in a brownfield and claimed on the business’s annual refund claim.<sup>102</sup> As an economic incentive, current law authorizes a sales tax exemption on building materials in a housing project or mixed use housing project in a redevelopment area such as a designated brownfield area.<sup>103</sup>

### ***Effect of Proposed Changes***

The bill amends the definition of “housing project” and “mixed-use project” 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 DEP has been executed under the Brownfields Redevelopment Act and any abutting real property parcel within a brownfield area is eligible for the sales tax exemption.

The bill also amends the brownfield redevelopment bonus refund to specify that in order to be eligible for the bonus refund for a qualified target industry agreement, jobs must be created in a brownfield area eligible for bonus refunds. The term “brownfield area eligible for bonus refunds” is amended to specify that an eligible area is a brownfield site for which a rehabilitation agreement with DEP or a local government delegated by DEP has been executed under the Brownfields Redevelopment Act and any abutting real property parcel within a brownfield area which has been designated by a local government.

The bill further provides that the amendments to ss. 212.08(5)(o) and 288.107, F.S., made by this act do not apply to building materials purchased before the effective date of the act or to contracts for brownfield redevelopment bonus refunds executed by DEO or EFI prior to the effective date of this act.

### **Reemployment Assistance**

#### ***Present Situation***

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own, as determined by state law, and meet other requirements. The program is administered as a partnership of the federal government and the states.

Florida’s Reemployment Assistance (RA) Program is funded solely by employers who pay quarterly state reemployment taxes provided in ch. 443, F.S., and annual payroll taxes under the Federal Unemployment Tax Act (FUTA).<sup>104</sup> State reemployment taxes are deposited into the Unemployment Compensation Trust Fund (UC Trust Fund), which are then used to pay reemployment benefits at no cost to eligible workers. Taxes collected from employers pursuant to FUTA fund the administrative costs of the RA Program. A portion of these funds are used to finance the federal share of the Extended Benefits program, which is available during periods of high unemployment.

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<sup>101</sup> Section 376.79(4), F.S. “Brownfield sites” are real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination. Section 376.79(3), F.S.

<sup>102</sup> Section s. 288.107, F.S.

<sup>103</sup> Section 212.08(5)(o), F.S.

<sup>104</sup> Federal Unemployment Tax Act is codified at 26 U.S.C. §3301-3311.

In general, states are permitted to set eligibility conditions for benefit recipients, the amount and duration of benefits, and the state tax structure, so long as state provisions are not in conflict with FUTA or the Social Security Act.<sup>105</sup>

### Program Administration

The Department of Economic Opportunity is the agency responsible for administering the RA program.<sup>106</sup> DEO contracts with the Department of Revenue (DOR) to provide reemployment tax collection services. The United States Department of Labor (USDOL) provides DEO with administrative resource grants from the taxes collected from employers pursuant to FUTA. These funds finance the processing of claims by DEO, state reemployment tax collections performed by DOR, appeals conducted by DEO and the Unemployment Appeals Commission, and related administrative functions.

DEO administers Florida's RA laws through the Office of Reemployment Assistance within the Division of Workforce Services. The Office is divided into two sections, the Claims and Benefits Office, and the Appeals Office. The Claims and Benefits Office handles initial claims, questions about reemployment assistance benefits, and monitors the payment of unemployment benefits in an effort to detect and deter overpayment and to prevent fraud. The Appeals Office holds hearings and issues decisions to resolve disputes related to eligibility, claims, and the payment and collection of reemployment taxes compensation taxes.

### *Reemployment Appeals Commission*

Administratively housed in DEO, the Commission is a quasi-judicial administrative appellate body independent of DEO. The Commission is 100 percent federally funded and consists of a three member panel that is appointed by the Governor. It is the highest level for administrative review of contested reemployment cases decided by appeals referees.

### Benefit Structure

Qualified claimants may receive state reemployment benefits equal to 25 percent of their wages, not to exceed \$6,325 in a benefit year.<sup>107</sup> Benefits range from a minimum of \$32 to a maximum weekly benefit amount of \$275 for up to 23 weeks, depending on the claimant's length of prior employment and wages earned.<sup>108</sup>

The number of benefit weeks and total benefit amount is subject to the "Florida average unemployment rate," which is used to determine the maximum benefit weeks a claimant may receive. If the Florida average unemployment rate is 10.5% or higher, a claimant is eligible for up to a maximum of 23 weeks. If the Florida average unemployment rate is 5% or below, the maximum number of available weeks is 12. Each 0.5% increment in the unemployment rate above 5% adds an additional week of benefits.

To receive unemployment compensation benefits, claimants must meet certain monetary and non-monetary eligibility requirements.<sup>109</sup> Key eligibility requirements include a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.

### Monetary Eligibility

Pursuant to s. 443.111(2), F.S., in order to establish a benefit year from which RA benefits can be paid, an individual must:

- Have been paid wages in two or more calendar quarters in the base period.
- Have minimum total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period.

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<sup>105</sup> Title III, Title IX, and Title XII of the Social Security Act.

<sup>106</sup> Sections 20.60(5)(c)(3) and 443.171, F.S.

<sup>107</sup> Section 443.111(5), F.S.

<sup>108</sup> Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday.

<sup>109</sup> Section 443.091(1), F.S.,

The base period is the first four of the last five completed calendar quarters immediately before the individual filed a valid claim for benefits.<sup>110</sup> The most recent quarter of work (or fifth completed calendar quarter) is not used to determine monetary eligibility and cannot be credited toward the two-quarter requirement or the \$3,400 requirement.

### Non-monetary Eligibility

The state's RA laws contemplate that a claimant was employed in the capacity of an employee, and not an independent contractor. A claimant must be unemployed due to layoffs or otherwise through no fault of their own to be eligible for benefit payments. An individual may be disqualified from receiving RA benefits for voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct.

#### *Good Cause*

The term "good cause" means only that cause attributable to the employer which would compel a reasonable employee to cease work or which consists of illness or disability of the individual requiring separation from work. An individual who voluntarily quits work for a cause not related to any of the conditions specified in statute will be disqualified from receiving benefits.<sup>111</sup>

#### *Misconduct*

Florida law provides several provisions of what constitutes misconduct for the purpose of non-monetary eligibility. Under s. 443.036(30), F.S., Florida disqualifies claimants that demonstrate the following:

- Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior.
- Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations.
- Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand related to such absences.
- Willful and deliberate conduct that causes the employer to be sanctioned or have its license or certification suspended by this state.
- A violation of an employer's rule. A violation is not considered misconduct if the claimant can demonstrate that the rule is unlawful or not reasonably related to the job, enforced inconsistently or unfairly, or if such rule's requirements were not reasonably known to the claimant.

#### *Initial Skills Review*

After RA benefits eligibility has been established, a claimant must complete an initial skills review as a reporting requirement under s. 443.091, F.S. As established by the DEO, the online initial skills review assessment contains three required sections: applied mathematics, reading for information, and locating information. Test scores measure skill level by dividing each section into three proficiency levels, ranging from a minimum of three to a maximum of five.<sup>112</sup> The initial skills review administrator reports the results of the review to DEO and the appropriate workforce board or one-stop career center. The workforce board must develop a plan for referring individuals to training and employment opportunities.

#### *Work Search Requirements*

To maintain eligibility for benefits, an individual must also be ready, willing, and able to work and actively seeking work.<sup>113</sup> Claimants are required to contact at least five prospective employers for each

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<sup>110</sup> Section 443.036(7), F.S.

<sup>111</sup> Section 443.101, F.S.

<sup>112</sup> Scoring a "5," indicates foundational career readiness skills for on average 90 percent of jobs. Conversely, scoring a "3," indicates foundational career readiness skills for on average 30 percent of jobs.

<sup>113</sup> Section 443.036(1) and (6), F.S., provide the meaning of the phrases "able to work" and "available for work" as:

week of unemployment claimed. For claimants residing in a small county as defined by s. 120.52(19), F.S., the number of required weekly employer contacts is reduced to three.<sup>114</sup> DEO may require the claimant to provide proof of such efforts to the one-stop center and may conduct random audits of work search information provided by claimants. As an alternative to contacting at least five prospective employers each week, a claimant may report once-a-week in person to a one-stop center to meet with a representative and access reemployment services.

Claimants are automatically registered with their local One-Stop Career Center when their claims are filed online. The One-Stop Career Centers provide job search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from the Employ Florida Marketplace with information about employment services or available jobs.<sup>115</sup> Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).<sup>116</sup>

Other circumstances under which an individual would be disqualified from receiving unemployment compensation benefits include:<sup>117</sup>

- Failing to apply for available suitable work when directed by DEO, to accept suitable work when offered, or to return to suitable self-employment when directed to do so.
- Receiving remuneration in the form of wages, severance pay, or compensation for temporary total disability or permanent total disability under the workers' compensation law of any state with a limited exception.<sup>118</sup>
- Receiving benefits from a retirement, pension, or annuity program with certain exceptions.
- Receiving unemployment compensation from another state.
- Terminated for any crime committed in connection with work for which the employee was convicted or entered a plea of guilty or nolo contendere, or any dishonest act in connection with his or her work.
- Making false or fraudulent representations in filing for benefits.
- Discharge from employment due to drug use or rejected for offered employment due to a positive confirmed drug test.
- Involvement in an active labor dispute which is responsible for the individual's unemployment.
- Illegal immigration status.
- Unavailable for work due to incarceration or imprisonment.

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- "Able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought.
  - "Available for work" means actively seeking and being ready and willing to accept suitable employment.
  - Additionally, DEO has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work in Rule 60BB-3.021, F.A.C.

<sup>114</sup> "Small county" means any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

<sup>115</sup> Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and DEO. It provides job-matching and workforce resources. <https://www.employflorida.com>, (last visited May 6, 2013).

<sup>116</sup> REAs are in-person interviews with selected UC claimants to review the claimants' adherence to state UC eligibility criteria, determine if reemployment services are needed for the claimant to secure future employment, refer individuals to reemployment services, as appropriate, and provide labor market information which addresses the claimant's specific needs. Florida administers the REA Initiative through local One-Stop Career Centers. Rule 60BB-3.028, F.A.C., further sets forth information on reemployment services and requirements for participation.

<sup>117</sup> Section 443.101, F.S. The statute specifies the duration of the disqualification depending on the reason for the disqualification.

<sup>118</sup> Wages in lieu of notice is income deemed to have been earned in connection with employment. If the employee has received severance pay from an employer, an employee is disqualified from benefits in an amount based on the formula provided in s. 443.101(3)(b), F.S.

## *Determinations and Appeals*

Based upon information provided with filed claims for benefits, DEO makes an initial determination on entitlement to benefits. Unless a party to a claim files a request for reconsideration within 20 days of the date the determination is mailed, such determination becomes final.<sup>119</sup> The Department is required to review the information on which the request is based and issue a redetermination.

If a claimant or employer is not satisfied with the initial determination or redetermination, either party may file, within 20 days, a request for an administrative hearing before an appeals referee. Appeals referees in DEO's Appeals Section hold hearings and issue decisions to resolve disputes related to eligibility, claims, and the payment and collection of reemployment taxes.

A party may request the Reemployment Assistance Appeals Commission to review a referee's decision. The Commission can affirm, reverse, or remand the referee's decision for further proceedings. A review of the Commission's order can be sought through a Florida district court of appeal.

### Tax Structure

Through the FUTA, the IRS levies an unemployment tax of 6.0% on employers.<sup>120</sup> This tax is applied to a taxable wage base of \$7,000 per employee. Federal law provides employers up to a 5.4% credit against that tax. Due to having outstanding federal advances for more than two years, Florida had its FUTA tax credit reduced by 0.6% for the 2012 tax year.

In addition to FUTA, Florida employers pay a state reemployment tax which funds the UC Trust Fund, an account used to pay weekly benefits. Currently, employers pay quarterly state reemployment taxes on the first \$8,000 of each employee's annual wages.<sup>121</sup>

An employer's initial state tax rate is 2.7 percent.<sup>122</sup> After an employer is subject to benefit charges for 8-calendar quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 1.0 percent.<sup>123</sup> The adjustment in the tax rate is determined by calculating a statutory formula that incorporates an employer's experience rating,<sup>124</sup> size of the UC Trust Fund, and other socialized costs.

### Interest Assessments

When persistent high unemployment causes state UC Trust Funds to fall into deficit, states are authorized to seek advances from the federal government in order to continue the payment of reemployment benefits. Since 2009, Florida has borrowed \$3.5 billion and, of this total, \$647 million remains outstanding. According to the Revenue Estimating Conference (REC), all federal advances should be repaid by June of 2013 and a final interest payment of \$9.6 million will be due on September 30, 2013.

Section 443.131(5), F.S., imposes an additional assessment on employers to pay the interest on federal advances. Using the interest estimate provided by the REC, the Department of Revenue is required to calculate and bill the assessment before February 1st of this year. An employer has until June 30th to pay this assessment. Current law provides that any remaining assessments on deposit in the Audit and Warrant Clearing Trust Fund are to be credited to employer accounts after all federal advances and associated interest due has been paid.

### Fraudulent Claims

Under current law, claimants found to be collecting benefits fraudulently are disqualified from receiving benefits from the date the fraudulent claim was made. This disqualification may continue up to one year from the date DEO discovers a fraudulent claim and until any fraudulent

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<sup>119</sup> Section 443.151(3), F.S.

<sup>120</sup> The FUTA surcharge of .02% expired on June 30, 2011. The current federal tax rate for employers is 6.0%.

<sup>121</sup> Section 443.1217(2), F.S.

<sup>122</sup> Section 443.131(2)(a), F.S.

<sup>123</sup> Section 443.131(2)(b), F.S.

<sup>124</sup> Section 443.131(3)(b), F.S.

overpayments are repaid in full.<sup>125</sup> Federal law requires states to assess a penalty, equal to at least 15 percent of the amount overpaid, on any claimant who fraudulently receives benefits.<sup>126</sup> Currently, Florida does not apply a penalty for fraudulent overpayments.

### Confidential Information

Federal regulations require Florida to provide penalties for the unlawful disclosure of confidential information related to the RA Program.<sup>127</sup> Florida's penalties were inadvertently removed from statute in 2012.

### Reemployment Assistance Claims and Benefits Information System

Section 443.1113, F.S., provides for DEO to create a unified internet portal to replace several outdated electronic processing systems. The system is required to be fully operational by June 30, 2013.<sup>128</sup> According to DEO, the vendor deploying the system will be unable to meet this deadline.

### ***Effect of Proposed Changes***

#### Non-Monetary Eligibility

##### *Employment Related Licenses*

The bill provides that DEO may disqualify a claimant for reemployment benefits, if the Department finds the claimant was discharged from employment for failure to maintain a license, registration, or certification. The license, registration and certification must be required by law and necessary for the claimant to perform his or her job duties. Further, if a claimant can provide good cause for failing to possess required documentation, the claimant is entitled to reemployment benefits. The bill stipulates that good cause in this instance includes, but is not limited to:

- Failure of the employer to submit information required for license, registration or certification.
- Short-term physical injury which prevents an employee from completing or taking a required test.
- Inability to take or complete a required test due to a circumstance that is outside of the employee's control.

##### *Misconduct*

The bill adds the following examples of misconduct to s. 443.036, F.S.:

- Willful damage to an employer's property that results in damage of more than \$50.
- Theft of an employer's property or property of a customer or invitee of an employer.
- Criminal assault or battery on an employee, customer, or invitee of the employer.
- Abuse or neglect of a patient, resident, disabled person, elderly person, or child under his or her professional care.

Misconduct under this statute is not limited to the conduct provided in the examples above. In addition, the examples specified in this bill clarify but do not affect the function of the statute.

##### *Work Search Requirements and Initial Skills Review*

Related to a claimant's proof of work search efforts, the bill provides that a claimant may not include a single employer for three consecutive benefit weeks, unless after the initial contact the employer indicates the intention to hire additional employees. Further, the bill exempts claimants participating in reemployment services from work search requirements in s. 443.091, F.S. The bill exempts individuals

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<sup>125</sup> Section 443.101(6), F.S.

<sup>126</sup> The Trade Adjustment Assistance Extension Act of 2011, P.L. 112-40.

<sup>127</sup> 20 C.F.R. part 603.

<sup>128</sup> Section 443.1113(4)(b), F.S.

that are illiterate or have a language impediment, physically or mentally impaired, or legally prohibited from using a computer from online registration requirements and the initial skills review.

#### Appeals Referees

Effective January 1, 2014, the bill requires a practicing appeals referee to be admitted to the Florida Bar within eight months after commencement of employment. The bill stipulates that DEO must implement this requirement by attrition.

#### Fraudulent Claims

The bill assesses a penalty, equal to 15 percent of the amount overpaid, on any claimant who fraudulently acquires reemployment benefits. Any recovered penalties must be deposited into the Unemployment Compensation Trust Fund.

#### Interest Assessments

The bill authorizes DOR to use assessments on deposit in the Audit and Warrant Clearing Trust Fund and any earned interest to pay the interest on advances received from the federal government. Further, the bill provides that no additional assessment on employers may occur if remaining assessments on deposit, plus any earned interest, is at least 80 percent of the estimated amount of the interest due on federal advances. The bill also provides that any excess assessments will be transferred to the Unemployment Compensation Trust Fund four months after all federal advances are repaid. The provisions related to interest assessments on federal advances will sunset on July 1, 2014.

#### Confidential information

The bill provides penalties for the unlawful disclosure of confidential information.<sup>129</sup> This provision aligns s. 443.1715, F.S., with federal requirements and corrects a drafting error in 2012 legislation.

#### Reemployment Assistance Claims and Benefits Information System

The bill extends the deadline by which the system must be operational to June 30, 2014.

#### Effective Date

Unless otherwise provided in the bill, CS/CS/HB 7007, takes effect upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See FISCAL COMMENTS.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

See FISCAL COMMENTS.

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<sup>129</sup> The bill provides that a violation under s. 443.1715(1), F.S., is a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

2. Expenditures:  
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Machinery & Equipment Sales Tax Exemption

By reducing the tax burden of existing manufacturers, the bill may encourage capital investment and new job opportunities in Florida's manufacturing sector. The bill may also encourage prospective manufacturers to relocate to the state.

Gulf Coast Restoration

Subject to the amount of damages awarded to Florida and the period of time necessary to collect such damages, the restoration provisions of this bill should have a positive impact on the private sector. If Triumph Gulf Coast, Inc., can identify and allocate awards to projects and programs with a verifiable benefit to the region's communities and businesses, the bill may encourage long-term economic growth in northwest Florida.

Small Business Development Center Network

To the extent that small businesses receive improved assistance through a more effective network and regional centers, the private sector will benefit.

Brownfield Redevelopment Act

To the extent that the definitions of "housing project" and "mixed-use project" are narrowed, the number of businesses that qualify for the sales tax exemption under s. 212.08(5)(o), F.S., will decrease.

To the extent that the eligibility requirements for the brownfield redevelopment bonus refunds are narrowed, there will be a decrease in the number of businesses eligible to receive such refunds.

Enterprise Zones

The bill has the potential to positively impact the economy of select designated enterprise zone areas through job growth and capital investment.

D. FISCAL COMMENTS:

Economic Development Incentives Evaluation

It is anticipated that EDR and OPPAGA will incur costs associated with implementing the provisions in the bill related to developing the model and conducting the economic development program evaluations and analysis.

Machinery & Equipment Sales Tax Exemption

The Revenue Estimating Conference adopted a negative fiscal impact of \$18.1 million on the General Revenue Fund and \$4.1 million on local government revenues for fiscal year 2013-14. The fiscal impact in future fiscal years is as follows:

FY 2014-15: \$111.9 General Revenue	\$25.2 million local government revenues
FY 2015-16: \$116.9 General Revenue	\$26.3 million local government revenues
FY 2016-17: \$122.1 General Revenue	\$27.5 million local government revenues

There is no impact to state or local government revenues past the 2016-17 fiscal year.

Florida Small Cities Community Development Block Grant Loan Guarantee Program

The provisions of the bill relating to the Small Cities CDBG Loan Program will require DEO to revise the program; however, it is anticipated that the costs associated with the revisions are minimal and will be absorbed by DEO.

## Enterprise Zones

On February 22, 2013, the Revenue Estimating Conference estimated the provision of the bill relating to enterprise zones will have a negative fiscal impact on state revenues of \$120,000 for FY 2013-14, \$100,000 for FY 2014-15, and \$200,000 for FY 2015-16 due to the potential expansion for select enterprise zone boundaries.

## Brownfields Redevelopment Act

The Revenue Estimating Conference has not determined the fiscal impact these provisions may have on state revenue. However, it is anticipated that the provisions in the bill will have a positive impact on state revenues because the brownfield eligibility requirements are narrowed.

## Reemployment Assistance

### *The Unemployment Compensation Trust Fund*

The collection of penalties related to fraudulent claims may have a positive impact on the balance of the Unemployment Compensation Trust Fund. In FY 2011-12, DEO issued 25,294 fraud determinations totaling \$33.2 million in overpaid benefits. If these benefits had been subject to the 15 percent penalty, up to an additional \$4.9 million would have been directed to the Unemployment Compensation Trust Fund. However, in FY 2011-12, only 25 percent of the \$33.2 million in overpaid benefits were recovered by DEO.

The bill provides that when all federal advances are repaid, any excess assessments on deposit in the Audit and Warrant Clearing Trust Fund will be transferred to the Unemployment Compensation Trust Fund. While the amount of funds transferred will likely be minimal, this provision may have a positive impact on the balance of the Unemployment Compensation Trust Fund.

The bill sunsets the statutory provision authorizing an additional assessment on employers for paying interest on federal advances which continue the payment of re-employment benefits. In the event the federal government advances funds for this purpose in the future, the legislature would need to either reauthorize this subsection or find an alternative funding mechanism for paying this interest.

### *Department of Economic Opportunity*

According to DEO, a recurring cost would result from the higher salaries that DEO would need to pay attorneys for their service as appeals referees. DEO expects that the average salary and benefits of a referee would increase from \$58,870 to \$73,688 per year if they become attorneys or are replaced by attorneys through attrition. DEO has indicated that a portion of the funds available through administrative grants will be used to implement this provision. Due to the requirement that this provision be implemented through attrition, the total cost of implementation would be spread over several years.

The bill's provision extending the deadline for the Reemployment Assistance Claims and Benefits Information System to be operational will not have a fiscal impact on the state, but may result in additional administrative costs for DEO that can be absorbed within existing resources.