

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1214

INTRODUCER: Appropriations and Senator Latvala

SUBJECT: Economic Development

DATE: April 23, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	Recommended: Fav/CS
3.	<u>Gusky</u>	<u>Kynoch</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1214 makes a number of changes to the state's economic development and housing and community development programs to provide more flexibility in some programs, and to increase transparency and accountability across those programs.

Regarding economic development programs, the bill:

- Makes the following changes to the Qualified Target Industry Business Tax Refund (QTI) Program:
 - Permits businesses in brownfield or rural areas to receive 100 percent of the total tax refunds allowed, if the option to exempt local financial support is exercised; and
 - Permits businesses to receive a prorated award if at least 90 percent of agreed-to higher wage requirements are met.
 - Increases the amount of time that the Department of Economic Opportunity (DEO) can grant extensions for claims due on or after January 31, 2015.
 - Expands the definition of "target industry business" to include certain businesses that offer baccalaureate or higher degrees in the health care field that Enterprise Florida, Inc., and the local government agree will benefit the local economy.
 - Clarifies that the amount of taxes a business pays serves as a limitation on the amount of incentive payments a business may receive.
- Extends the date applicants can be certified under the Qualified Defense Contractor and Space Flight Business Tax Refund (QDSC) Program until June 30, 2020.
- Makes the following changes to the criteria for projects eligible for funding from the Quick Action Closing Fund (QAC) Program:

- The required economic benefit ratio is lowered from 5 to 1 to 4 to 1, and cannot be waived below 2:1; or below 1.5 to 1, for a corporate headquarters business as defined in s. 288.106, F.S.
- The contract may not waive the annual wage requirement below 100 percent of the wages in the local area;
- The contract may only waive two of the five program criteria;
- The contract may not waive the criteria that the incentive is an inducement to the project's location or expansion in this state; and
- Standardizes the economic development application and evaluation processes.
- Specifies incentive project approval based upon the amount of required funding. Projects requiring:
 - Less than \$2 million may be approved by the Governor without legislative consultation.
 - \$2 million up to \$7.5 million require 10-day notice to the Legislative Budget Commission (LBC) before the Governor can give approval.
 - \$7.5 million or more, and projects requiring \$5 million or more with a waiver of program requirements, must receive approval from the LBC before the Governor can give approval.
 - If the LBC does not act within 30 days, the project is deemed approved.
 - This application approval process applies to the:
 - Quick Action Closing (QAC) Fund;
 - High-Impact Business Performance Grants; and
 - Innovation Incentive Program.
- Creates the following requirements for contracts for economic development incentives:
 - Capital investment must remain in the state for the duration of the contract.
 - Contract terms cannot be longer than 10 years.
 - The business must use the Employ Florida Marketplace to post new jobs.
- Requires a 3-day advanced notice to the Legislature of certain proposed amendments to an economic development contract and a 10-day legislative consultation period for a proposed amendment that reduces the projected economic benefits below statutory levels. Amendments that reduce the project's economic benefits must include a proportionate reduction in the award amount.
- Prohibits any state or local funds from being counted toward a business' required capital investment, and clarifies that the state's investment for purposes of determining the project's economic benefits includes all state funds spent or forgone to benefit the business.
- Prohibits payments for a project until contracted performance goals have been achieved.
- Creates a \$50 million cap on the amount of funds that can be obligated for economic development incentive payments each fiscal year
- Requires DEO to provide the Legislature with the amount of estimated economic development payments, and the Legislature must annually appropriate in the GAA the amount estimated to be sufficient to satisfy scheduled payments.
- EFI must return any funds held in escrow on June 30, 2015, for current QAC projects to the State Board of Administration by July 10, 2015. Such funds will be held in a newly created "Quick Action Closing Fund Escrow Account."
- Prohibits the president of Enterprise Florida, Inc., (EFI) from engaging in lobbying efforts before the Legislature and Executive branch for two years after vacating the position; this change applies to presidents of EFI appointed or reappointed after July 1, 2015.

- Transfers the Office of Film and Entertainment from the DEO to Enterprise Florida, Inc.
- Revises the Entertainment Industry Program (tax credits) and creates a new Entertainment Action Fund.
- Permits businesses located in enterprise zones that have active economic development contracts entered between January 1, 2013, and December 31, 2015, to continue to apply for enterprise zone state tax programs and the child care facility property tax exemption for three years.
- Approves the four sports development project applications submitted by the DEO on January 23, 2015.

Regarding housing and community development programs, the bill:

- Expands the definition of “blighted area,” enabling community redevelopment areas to enter into voluntary contracts to redevelop properties damaged by sinkhole activity.
- Amends the State Apartment Incentive Loan (SAIL) Program to change the reservation requirements for the specified tenant groups to reflect projected need.
- Creates a program to provide incentives and authorize a process to provide affordable rental opportunities for essential services personnel in the Florida Keys.
- Amends provisions related to the State Office on Homelessness and the Challenge Grant Program.
- Expresses legislative intent to encourage homeless continuums of care to adopt the Rapid ReHousing approach to prevent homelessness.
- Amends the State Housing Initiatives Partnership (SHIP) Program to provide exceptions to the limitations on using SHIP funds for rent subsidies and provides that up to 25 percent of available SHIP funds may be used by counties and eligible municipalities for rental housing.

Fiscal impacts of the bill include:

- For Fiscal Year 2015-2016, appropriations of \$20 million from the State Economic Enhancement and Development Trust Fund and \$3.8 million from the Economic Development Trust Fund to make payments for economic development incentive programs.
- Prohibiting the practice of escrowing funds for future QAC payments will have a positive impact on state revenues and the state’s economy as a whole. Using a “pay-as-you-go” approach for QAC projects will enable the state to use funds that would be otherwise transferred outside the state treasury for other priorities each fiscal year.

The bill has other fiscal impacts to state and local governments. See Section V.

Except as otherwise expressly provided, the bill provides an effective date of July 1, 2015.

II. Present Situation:

The bill makes a number of changes to the state’s economic development, housing, and community development programs to provide more flexibility in some programs, and to increase

transparency and accountability across those programs. *For the purposes of this bill analysis, the Present Situation will be addressed in the Effect of Proposed Changes section below.*

III. Effect of Proposed Changes:

ECONOMIC DEVELOPMENT PROGRAMS

Economic Development Incentive Programs

Florida has a number of incentive programs intended to promote economic development in the state. These programs are collectively referred to as the economic development “toolkit” and come in a variety of forms including tax refunds, tax credits, tax exemptions, and cash grants.

Economic Development Programs with Tax Refunds

Qualified Target Industry Business Tax Refund

Present Situation

The Qualified Target Industry Business Tax Refund (QTI) was established in 1995 with the purpose of attracting high wage jobs to the state.¹ The tax refunds are made to qualified, pre-approved businesses creating jobs in target industries. The target industries are identified by the DEO for criteria including future growth, stability, high wages, market and resource independence, industrial base diversification, and positive economic impact. Approved QTI projects have contractual performance measures with specific milestones to be verified prior to payment of any tax refunds. This incentive requires 20 percent of the award to come from the local government. An applicant that is locating in a brownfield area, a rural city, or a rural community can exercise an option to be exempt from the 20 percent local financial support requirements of the program. Under current law, an applicant exercising the local financial support exemption option is not eligible for more than 80 percent of the total tax refunds allowed under the program.

Under current law, additional per-job tax refund payments are available to applicants for each job created if the applicant commits to paying an annual average wage greater than the minimum requirement of 115 percent of the average wage in the area. These “bonuses” are awarded at 150 percent of the average private sector wage (an additional \$1,000 tax refund per job) and at 200 percent of the average private sector wage (an additional \$2,000 tax refund per job), in the area. A prorated tax refund, with a 5 percent penalty, can be awarded if the business paid at least 90 percent of the wage specified in the contract.

The program is funded through a specific annual appropriation.² The program shares a \$35 million cap on tax refund payments, per fiscal year, with the Qualified Defense and Space Contractor Tax Refund. The DEO reported that \$55.3 million in maximum awards was approved in Fiscal Year 2013-14.³ Additionally the department reported that of the 1,110 contracts

¹ Section 288.106, F.S.

² Section. 288.095, F.S.

³ The amount approved in any fiscal year may exceed the statutory cap, but payments in any fiscal year will not exceed the cap.

executed from the beginning of the program to June 30, 2014, 322 contracts are active and 122 contracts were successfully completed.⁴

Effect of Proposed Changes

Section 12 of the bill amends the Tax Refund Program for Qualified Target Industry Businesses (QTI)⁵ to allow an applicant exercising the local financial support exemption option to be eligible for 100 percent of the total funds allowed under the program.

The bill clarifies when a business that commits to the higher wage it can receive the prorated tax refund:

- A business that commits to pay 150 percent of the average wage must pay an annual average wage of no less than 135 percent of the annual private sector wage.
- A business that commits to pay 200 percent of the average wage must pay an annual average wage of no less than 180 percent of the average private sector wage.

The bill also increases the period of time that the DEO may grant extensions to applicants applying for a tax refund. The bill authorizes the DEO to allow an extension for submission of refund claims and information for a refund for up to 60 days, rather than the 30 days allowed by current law, for claims due on or after January 31, 2015.

The bill expands the definition of “target industry business” to include a business within NAICS code 611310 (colleges, universities and professional schools) that *only* offer baccalaureate degrees or higher that address health care workforce demands to qualify as a “target industry business,” provided that EFI and the local government determines that such business is good for the local economy.

The bill clarifies that the program is not a refund of actual taxes paid, but that the amount of taxes a business pays serves as a limitation on the amount of incentive payments the business may receive.

Qualified Defense Contractor and Space Flight Business Tax Refund

Present Situation

Also known as the Qualified Defense and Space Contractor (QDSC) Tax Refund, the program was established in 1996 and is designed to attract high wage jobs in the space and defense industries.⁶ The QDSC tax refunds are made to qualified and approved businesses bidding on new or securing existing defense or space contracts. As with the QTI refund, 20 percent of the award comes from the local government. As with other programs, the QDSC tax refunds are awarded after contractual performance-based milestones are met and verified by the state. Since June 30, 2014, no new applicants may be certified as eligible under statute, but tax refund agreements in existence on that date are continued in accordance with their terms.

⁴ Florida Department of Economic Opportunity, *2014 Annual Incentives Report*, 11, 15 (Dec. 30, 2014) available at <http://sitefinity.floridajobs.org/docs/default-source/sbd-sports/2014-annual-incentives-report.pdf?status=Temp&sfvrsn=0.028032216409722532> (last visited March 3, 2015).

⁵ Section 288.106, F.S.

⁶ Section 288.1045, F.S.

The program is funded through a specific annual appropriation. The program shares a \$35 million cap on tax refund payments, per fiscal year with the QTI Tax Refund. The DEO reported that \$3.2 million in maximum rewards was approved in Fiscal Year 2013-2014. Additionally, the DEO reported that of the 28 contracts executed from the beginning of the program to June 30, 2014, five contracts are active and five contracts were successfully completed.⁷

Effect of Proposed Changes

Section 10 of the bill amends the Qualified Defense Contractor and Space Flight Business Tax Refund Program⁸ to allow the DEO to certify applicants for this program until June 30, 2020.

The bill also increases the period of time that the DEO may grant extensions to applicants applying for a tax refund. The bill authorizes the DEO to allow an extension for submission of refund claims and information for a refund for up to 60 days, rather than the 30 days allowed by current law.

Brownfield Redevelopment Bonus Refund

Present Situation

The Brownfield Redevelopment Bonus Refund was established in 1997 to improve economic activity in designated Brownfield areas.⁹ These areas are designated by the respective community for the presence or perceived presence of economic blight or environmental contamination. As with the QTI and QDSC programs, the Brownfield program requires 20 percent of the award to come from the local government. As with other programs, the Brownfield program requires performance-based contracts and specific milestones to be met in order for a project to receive awards. The Brownfield program offers a bonus for any tax refund awarded to a QTI qualified business for job creation, if that job creation occurred in a Brownfield area.

The program is funded through a specific annual appropriation. The DEO reported that \$2.6 million in maximum rewards was approved in Fiscal Year 2013-2014, with an additional \$875,000 in maximum awards for the Brownfield Bonus with QTI. Additionally, the department reported that of the 59 contracts executed from the beginning of the program to June 30, 2014, 33 contracts are active and 9 contracts were successfully completed. For the Brownfield Bonus with QTI, there are 103 contracts executed in the same timeframe with 40 active contracts and 6 completed.¹⁰

Effect of Proposed Changes

Section 13 of the bill amends s. 288.107, F.S., to provide that the term “fixed capital outlay” does not include state funds, including state funds appropriated to public and private entities, used for the capital investment required as a minimum criteria for program participation. The

⁷ *Id.*

⁸ Section 288.1045, F.S.

⁹ Section 288.107, F.S.,

¹⁰ *See supra* note 3.

section is further amended to conform to the changes made to the Economic Development Trust Fund in **section 10** of the bill.

Economic Development Programs with Tax Credits

Capital Investment Tax Credit

Present Situation

The Capital Investment Tax Credit (CITC) became effective in 1998 and its purpose is to attract and grow capital-intensive industries in Florida.¹¹ Eligible projects must be in designated high-impact portions of certain sectors, determined by the DEO, including clean energy, biomedical technology, financial services, information or silicon technology, or transportation equipment manufacturing. The project could also be a corporate headquarters facility. For purposes of this program, the term:

“Cumulative capital investment” means the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations.”¹²

The DEO reports that the value of credits claimed is often lower than the value of credits approved because the company’s tax liability may be lower than the value of the credits, and most often, because the credits can only be used to offset a portion of the incremental new tax liability attributable to a project. There is no cap for this program.

The DEO reported that \$7.2 million in tax credits were claimed in 2013. The DEO also reported that there have been 37 approvals or certifications for CITC projects through June 30, 2013 (numbers from 2014 were not reported), with 32 being active and five having been terminated.¹³

Effect of Proposed Changes

Section 6 of the bill amends the definition of “cumulative capital investment” to clarify that the term does not include any state or local funds, including funds appropriated to public or private entities, used for capital investment.

.Economic Development Programs with Cash Grants

High-Impact Business Performance Grants

Present Situation

Also known as the High-Impact Performance Incentive (HIPI), the program was established in 1997.¹⁴ HIPI is a grant reserved for projects operating in the same high-impact sectors as in the CITC program. The cash grant is performance based and paid in two installments. First, upon

¹¹ Section 220.191, F.S.

¹² Section 220.191(1)(b), F.S.

¹³ See *supra* note 3, at 12-13, 22.

¹⁴ Section 288.108, F.S.

operational commencement, and the second upon full operational commencement as determined in contract. The program has an annual cap of \$30 million.

The DEO reports that \$10.6 million in grant incentives was approved in Fiscal Year 2013-14. The DEO also reports that of the 14 contracts executed from the beginning of the program to June 30, 2014, seven contracts are active and three contracts were successfully completed.¹⁵ This program authorizes the recapture of funds if a business fails to meet its performance measures.

Effect of Proposed Changes

Section 14 of the bill amends s. 288.108, F.S., to remove the \$30 million annual cap and language related to annual payments for the HIPI program to conform to the creation of a cap for seven specified economic development programs, including the HIPI program.

Quick Action Closing Fund

Present Situation

The Quick Action Closing (QAC) Fund was established in 1999.¹⁶ The program is designed to be a competitive “deal closing” tool for negotiations where the state’s other incentives are not enough to incentivize a business to remain, locate, or expand in the state.

Under current law, in order to be eligible for QAC funds a project must meet 5 criteria:

- Be in a qualified target industry;
- 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;
- Pay an average annual wage of at least 125 percent of the area-wide or statewide private sector average wage; and
- Be supported by the local community in which the project is to be located.

The DEO is permitted to waive these criteria under certain conditions.

All QAC Fund projects have a performance based contract requiring specific scheduled milestones and annual compliance requirements. The program authorizes sanctions and penalties for failure to perform.

The program is funded by a specific annual appropriation, and has no cap. The DEO reports that \$44.7 million in grant incentives was approved in Fiscal Year 2013-14. Additionally, the report stated that 144 contracts have been executed through June 30, 2014, with 106 active contracts and ten successfully completed contracts.¹⁷

Effect of Proposed Changes

Section 11 amends the criteria and the approval process for the Quick Action Closing (QAC) Fund Program.¹⁸

¹⁵ See *supra* note 3, at 12 and 17.

¹⁶ Section 288.1088, F.S.

¹⁷ See *supra* note 3, at 12 and 17.

¹⁸ Section 288.1088, F.S.

The bill requires that a request for a waiver and the granting of a waiver must be in writing and provide the specific justification for the waiver. Similar to the requirements of other economic development programs, the DEO may not grant a waiver for more than 2 of the 5 criteria. The bill also:

- Lowers the required economic benefit ratio from 5 to 1 to 4 to 1, and prohibits the ratio from being waived:
 - Below 2 to 1; or
 - Below 1.5 to 1, for a corporate headquarters business as defined in s. 288.106, F.S.
- Prohibits the average annual wage from being waived below 100 percent of the average private sector wage in the area.
- Prohibits waiver of the criteria that the incentive be an inducement to the project's location or expansion in this state.

If a contract contains an option to award additional funds if additional jobs are created above the minimum commitment, the bill clarifies that when the DEO is evaluating QAC proposals, the minimum and maximum number of full-time equivalent jobs created by the facility should be used for evaluation purposes. The bill specifies that the contract should include the minimum and maximum amount of funds that may be awarded and the minimum and maximum number of jobs that will be created.

The bill requires that payment may not be made to a business until the business has satisfied all contracted performance requirements.

Section 288.1088, F.S., is further amended to delete the current approval process for QAC projects since those projects will now be approved through the uniform process created in the bill.

Innovation Incentive Program

Present Situation

The Innovation Incentive Program (IIP) was created in 2006.¹⁹ The program is designed to empower the state to compete effectively for research and development, innovation business, or alternative and renewable energy projects. The program creates long-term investments, made by the state, in industry clusters critical to the state's future economic diversification. The projects have contractual performance measures and milestones that must be achieved before grant payment. The contracts also include a reinvestment portion, requiring recipients to reinvest a portion of royalty revenues earned back to the state for investment in existing state trust funds. The DEO reports that as of 2013, nine companies have been awarded funds of \$455.7 million, not including the Scripps Florida Grant (\$310 million).²⁰

Effect of Proposed Changes

Section 18 of the bill amends s. 288.1089, F.S., to delete the current approval process for IIP projects since those projects will now be approved through the uniform process created in the bill.

¹⁹ Section 288.1089, F.S.

²⁰ See *supra* note 3, at 19.

Local Government Distressed Area Matching Grant Program

The Local Government Distressed Area Matching Grant (LGDAMG) Program was established in 2010.²¹ The program goal is to improve economic activity and enhance job creation in distressed communities. The grant is administered as a contract between the state and the local government. The state's funds, a \$50,000 maximum, are passed through to the business.²²

Economic Development Incentive Program Administration

The primary purpose of each incentive program is to attract and grow businesses in Florida, which includes promoting job creation and capital investment. In addition, several programs have other goals, such as revitalizing economically distressed areas and encouraging emerging technology cluster development.

Businesses that receive incentives from these programs enter into multi-year agreements with the state. These agreements include a schedule for meeting performance requirements such as job creation and capital investment; for some programs, businesses have as many as 20 years to meet these requirements.

Several entities have roles in administering the state's economic development incentive programs. Enterprise Florida, Inc. (EFI), a public-private partnership between businesses and the state, acts as the principal economic development organization for Florida. EFI's role includes:

- Advertising and marketing the state's incentive programs;
- Assisting businesses that apply for incentives;
- Working with community partners to gather information that would be useful to applicants (e.g., potential sites, area demographics, and local incentives);
- Reviewing applications for completeness; and
- Recommending projects to the Department of Economic Opportunity (DEO) for approval to receive incentives.²³

The DEO is responsible for:

- Overseeing the application/certification approval process;
- Administering, reviewing, and approving incentive claims;
- Monitoring businesses' compliance with program agreements, which specify the required number of jobs, average wage, capital investment, and other performance goals; and
- Decertifying/terminating businesses that do not meet performance requirements.²⁴

The Department of Revenue (DOR) is responsible for:

- Reviewing and approving enterprise zone tax credits and refund applications;
- Providing enterprise zone data to the DEO for annual reporting; and

²¹ Section 288.0659, F.S.

²² See *supra* note 3, at 12.

²³The Florida Legislature, Office of Program Policy Analysis and Government Accountability (OPPAGA) & Office of Economic and Demographic Research (EDR), *Florida Economic Development Program Evaluations – Year 1, Report No. 14-01*, (January 1, 2014).

²⁴ *Id.*

- Upon request, verifying information in any claim submitted for tax credits with regard to employment, wage levels, or payment of sales, corporate, or property taxes.²⁵

The Department of Financial Services (DFS) is responsible for:

- Reviewing, approving, and issuing incentive payments;
- Examining information provided by the DEO, including the request for payment and supporting documentation (e.g., incentive agreement and evidence of meeting performance requirements; and
- Authorizing payments and issuing warrants.²⁶

In addition, the Department of Environmental Protection (DEP) provides information to the DEO to ensure that a project receiving a Brownfield Redevelopment Bonus Refund is within a designated brownfield area.²⁷

Economic Development Incentive Application and Approval Processes

Present Situation

Businesses interested in expanding or relocating in Florida learn about the state's economic incentive programs through several channels, including EFI, state and local economic development organizations, and private site selection consultants. EFI provides businesses a variety of services prior to application filing, including evaluating businesses' needs, identifying potential site locations, and providing information on state and local incentives that might aid businesses with expansion or relocation projects. EFI also helps businesses complete the incentive application, which may require coordination with local economic development organizations and consultants. Businesses can apply for more than one incentive to support their expansion or relocation projects.²⁸

Once a company begins the application process, EFI notifies the DEO so that the department may begin its formal due diligence process to determine the business's statutory eligibility and financial standing. DEO's due diligence process has two levels. Level one due diligence is conducted for all incentive applications and includes determining whether the company satisfies statutory criteria for program participation and if the business is in good financial and legal standing. Level two due diligence is used for grant incentive programs (e.g., Quick Action Closing Fund) and considers the business's credit risk and other factors that could affect its ability to repay the state should it be unable to meet incentive performance requirements.²⁹

Once due diligence is complete, DEO staff review the application for completeness; if the application is not complete, the applicant is notified, and additional information is requested. The DEO is required to review and evaluate each economic development incentive application for the "economic benefits" of the proposed award of state incentives proposed for the project. As used in ch. 288, F.S., the term "economic benefits" means the direct, indirect, and induced

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

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.³⁰

Under current law, the Office of Economic and Demographic Research (EDR) establishes the methodology and model used to calculate the economic benefits.³¹ Current law also allows the EDR to develop an amended definition of the term "economic benefits" for purposes of DEO's internal model.³²

Once the application is deemed complete, the department determines what state incentives and associated amounts may be available to the applicant, and a recommendation is made to DEO's executive director to approve or disapprove the application. With the exception of applications for the Quick Action Closing Fund and Innovation Incentive programs, the executive director will approve or disapprove the application within 10 business days after receipt and issue a letter of certification to the applicant. The Innovation Incentive Program requires that projects must be approved by the Legislative Budget Commission (LBC). The Quick Action Closing Fund (QAC) program allows projects receiving under \$2 million in funding to be approved by the Governor; projects receiving between \$2 million and \$5 million require legislative consultation; and projects exceeding \$5 million in funding are subject to approval by the LBC.

Effect of Proposed Changes

Section 8 of the bill amends the definition of "economic benefits" to clarify that the "state's investment" includes *all* state funds spent or forgone to benefit the business, including state funds appropriated to public and private entities, in addition to state grants, tax exemption, tax refunds, tax credits, and other state incentives.

The bill also directs the EDR to include guidelines for the appropriate application of the DEO's internal model. The bill requires that, for the amended definition of "economic benefits," the state's investment must include all state funds spent or forgone to benefit the business, including state funds appropriated to public and private entities but excluding state funds spent for economic development transportation projects under s. 339.2821, F.S., to the extent that such funds "should reasonably be known to the department at the time of approval." The bill provides that the economic benefits evaluation must account for all capital investment related to the project.

Section 9 of the bill amends s. 288.061, F.S., to create uniform methods for the application and evaluation of all economic development projects, and uniform approval process for certain economic development incentives projects.

The bill directs the Department of Economic Opportunity (DEO or department) to create a uniform application form for incentive applications beginning January 1, 2016, which must include, at minimum:

- The applicant's federal employee identification number, reemployment assistance account number, and state sales tax registration number (if these are unavailable at the time of

³⁰ Section 288.005, F.S.

³¹ Section 266.061(3), F.S.

³² *Id.*

application, they must be submitted before DEO disburses any incentive payments or grants any tax credits or refunds);

- The applicant's signature;
- The location in the state where the project will be located;
- The anticipated commencement date of the project;
- A description of the business activity, product, or research and development undertaken by the applicant, and the 6-digit North American Industry Classification System (NAICS) code for all activities included in the project; and
- An attestation verifying that the information in the application is true and accurate.

The bill creates a uniform evaluation process for the DEO to review and evaluate each incentive application. The department's evaluation of an application must include the following:

- A financial analysis of the company including information on liens, pending or ongoing litigation, credit ratings, and regulatory filings;
- A review of any independent evaluations of the company;
- A review of the historical market performance of the company;
- A review of the latest audit of the company's financial statement and related auditor management letter;
- A review of any other audits related to the internal controls or management of the company;
- A review of performance in connection with past incentives; and
- Any other review deemed necessary by the department.

The bill creates a uniform tiered approval process for economic development incentive applications for the following programs:

- The High-Impact Business Performance Grants (HIPI);
- The Quick Action Closing Fund (QAC); and
- The Innovation Incentive Program (IIP).

Within 10 days of receiving a complete HIPI, QAC, or IIP application, the DEO must recommend a project for approval or disapproval to the Governor. Recommendations must include a justification for the recommendation and the proposed performance conditions the project must meet to receive incentive funds. The approval process for a project is dependent upon the amount of funds that the project is awarded. Projects requiring:

- Less than \$2 million may be approved by the Governor without Legislative consultation.
- \$2 million and up to \$7.5 million require the Governor to provide a written description and evaluation to the Legislative Budget Commission (LBC) at least 10 days before final approval of the project. If the chair or vice chair of the LBC, the President of the Senate, or the Speaker of the House of Representatives advises the Governor in writing that the action exceeds executive authority or is contrary to legislative intent, the Governor and the DEO shall suspend all actions until the LBC or the Legislature makes a determination on the project.
- \$7.5 million or more must be approved by the LBC before final approval by the Governor.
- \$5 million or more that also waive program requirements also must be approved by the LBC before final approval by the Governor.

Under the new approval process, a project is deemed approved by the LBC if a meeting of the LBC is not held or the project is not objected to as described above within 30 calendar days of the submission of the project's written description and evaluation and the department's recommendation to the chair and vice chair of the LBC. The written description and evaluation must include proposed payment and performance conditions.

Sections 15 and 17 amend, in relevant parts, s. 288.1088, F.S., relating to the Quick Action Closing Fund, and s. 288.1089, F.S., relating to the Innovation Incentive Program, respectively, to conform to the changes in the approval process for those incentive programs.

Economic Development Incentive Agreements and Contracts

Present Situation

For all incentive programs, the DEO develops an agreement or contract with the applicant that specifies the total incentive amount, the performance conditions that must be met to receive payment, the schedule for payment, the sanctions for failure to meet performance conditions; the contracts may also include representations, warranties and other covenants. Current law does not require that an agreement or contract:

- Dictate the length of term for incentive agreements between a business and the state;
- Require the applicant to use the workforce information systems implemented under s. 445.011, F.S., to advertise job openings created; and
- Require any capital investment made by the business to remain in the state for the duration of the agreement or contract.

Current law does not provide specific authority for agreements or contracts executed for the QAC or HIPI programs to be amended. Agreements or contracts for the Innovation Incentive Program may be amended under certain circumstances.

Effect of Proposed Changes

Also in **Section 9**, the bill clarifies that upon DEO's certification, the department and the applicant must enter into an agreement or contract. The duration of a contract may not exceed 10 years. The bill provides that the DEO may enter into successive agreements or contracts for a project to extend the first 10-year term, providing that each successive agreement or contract is contingent upon the successful completion of the previous agreement or contract. Contracts for projects under s. 220.191, F.S., the Capital Investment Tax Credit Program and s. 288.1089, F.S., the Innovation Incentive Program, are not subject to the restriction on the duration of the agreement or contract.

The bill also requires that:

- Any contract that requires capital investment to be made by the applicant must also require that capital investment remain in this state for the duration of the contract.
- The contract must require the applicant to use the Employ Florida Marketplace³³ to advertise job openings created as a result of the state incentive.

³³ The DEO and CareerSource Florida, Inc., (formerly Workforce Florida, Inc.) implement the workforce information systems required under s. 445.011, F.S.

The DEO must provide the Legislature with notice of each executed and finalized contract. The notice must include an updated description and evaluation of the project.

The bill requires the DEO to provide a 3-day advanced notice to the Legislature of any proposed amendment to a contract that reduces the projected economic benefits calculated at the time the contract was executed by 0.50 or more or changes any performance conditions or other statutorily required criteria. A 10-day legislative consultation period is required for amendments that reduce the projected economic benefit ratio:

- Below a statutorily required level for receipt of funds; or
- If already below the statutorily required level, by 0.50 or more.

An amendment that reduces the economic benefits as described above must also include a proportionate reduction in the award amount. As with the original contract approval process, the chair or vice-chair of the LBC, the Senate President, or the Speaker of the House of Representatives may object to the changes in writing. If there is an objection, the Governor and the DEO must suspend all action until the LBC or the Legislature makes a determination on the project.

Economic Development Incentive Obligations, Appropriations, and Escrow

Present Situation

Under current law, there is a limitation on applications that may be certified for the QTI and QDSC tax refund programs. The state share of tax refund payments under these two programs may not exceed \$35 million per fiscal year.³⁴

Each year, funds are appropriated in the General Appropriations Act (GAA) to make tax refunds and payments to qualifying businesses under the QTI, QDSC, HIPI and Brownfield Redevelopment Bonus programs in the year following the year in which a business meets its contractual performance requirements. In contrast, funds are currently appropriated up front in the GAA to obligate for proposed QAC and IIP projects that have been approved. The funds are initially placed in reserve and are released for disbursement upon approval of the proposed project. Funds approved for projects under these programs must either be disbursed to the business in the same fiscal year or are subject to reversion.³⁵

In order to retain undisbursed funds, EFI initiated the practice of transferring undisbursed funds associated with projects that were under an executed agreement on June 30th of the fiscal year to an escrow account outside of the state treasury and budget system. Funds are held in escrow until such time that a business meets performance requirements that trigger a payment or the project is terminated. Upon termination, EFI returns the funds to the state treasury. Each quarter, EFI transfers interest earnings from the escrow account to the state treasury. Since fiscal year 2005-2006, and to date:

- Over \$157 million has been transferred to EFI's escrow account for future QAC performance payments.

³⁴ Section 288.095(3)(a), F.S.

³⁵ Section 216.301, F.S.

- Approximately \$33.7 million has been disbursed to businesses from the escrow account after performance requirements have been met.
- Approximately \$37.2 million has been returned to the state for projects that didn't move forward or were terminated.
- The current balance in EFI's escrow account is approximately \$86.1 million. An additional \$39.1 million has been released in the current fiscal year for approved QAC projects. None of those funds have been disbursed or transferred to EFI's escrow account to date.

Proposed Changes

Section 9 of the bill amends s. 288.061, F.S., to authorize the DEO to execute contracts and agreements that obligate the state to make payments from appropriations in the current or a future fiscal year for incentive programs for the following economic development programs:

- The Local Government Distressed Area Matching Grant Program.³⁶
- The Qualified Defense Contractor and Space Flight Business Tax Refund Program.³⁷
- The Qualified Target Industry (QTI) Business Tax Refund Program.³⁸
- The Brownfield Redevelopment Bonus Refund Program.³⁹
- The High-Impact Business Performance (HIPI) Grant Program.⁴⁰
- The Quick Action Closing Fund (QAC) Program.⁴¹
- The Innovation Incentive Program (IIP).⁴²

The total amount of actual or projected payments in any fiscal year cannot exceed \$50 million. Quick Action Closing Fund projects with funds held in escrow as of June 30, 2015, will be paid from the Quick Action Closing Fund Escrow Account established at the State Board of Administration (SBA). Payments for QAC projects executed on or after July 1, 2015, will be subject to the cap. This limitation may be waived in the General Appropriations Act (GAA).

Annually, the DEO must provide the Legislature with the amount of estimated payments for the upcoming fiscal year (due January 2) and then the list of claims filed for payment in the upcoming fiscal year (due March 1). Using this information, the Legislature must annually appropriate in the GAA an amount estimated to be sufficient to satisfy scheduled payments in the upcoming fiscal year. If the amount appropriated is insufficient to make all payments, the DEO must pay the unfunded claims from the next year's appropriation. The DEO is required to notify the Legislature of any anticipated shortfalls by March 1 of each year. However, if any funds remain unexpended by June 30, those funds will revert and may not be transferred to an escrow account.

The DEO may not make payments under an economic development incentive contract until it has validated that the contractual performance conditions have been met by the business.

³⁶ Section 288.0659, Florida Statutes.

³⁷ Section 288.1045, Florida Statutes.

³⁸ Section 288.106, Florida Statutes.

³⁹ Section 288.107, Florida Statutes.

⁴⁰ Section 288.108, Florida Statutes.

⁴¹ Section 288.1088, Florida Statutes.

⁴² Section 288.1089, Florida Statutes.

As to the funds presently held in escrow by EFI for current Quick Action Closing Fund contracts, **section 17** of the bill directs EFI to return any funds held on June 30, 2015, to the SBA by July 10, 2015, for deposit in a newly created “Quick Action Closing Fund Escrow Account.”

Section 15 of the bill creates s. 288.10881, F.S., to provide a process for making QAC payments from this account. After the independent third-party has verified that an applicant has satisfied all of the requirements of the contract and the DEO has determined that an applicant has met the required project performance criteria and a payment is due, the DEO will request that the SBA transfer the funds for that payment to the department for deposit in the State Economic Enhancement and Development Trust Fund. A continuing appropriation category will be established to make QAC payments from this fund. If a project with funds in the escrow account is terminated, the SBA must transfer the reverted funds to the DEO within 10 calendar days from the date the department notifies the SBA of the termination. These funds will be deposited in the State Economic Enhancement and Development (SEED) Trust Fund. Any interest earned in this escrow account must be transferred quarterly to the DEO for deposit in the SEED Trust Fund. The bill provides that, subject to specific appropriation, funds transferred from the SBA for terminated projects and interest earnings may be used to fund Enterprise Florida’s business brand marketing activities.

Section 22 of the bill amends s. 288.1201, F.S., to provide for the deposit of reverted funds into the SEED Trust Fund.

Section 10 of the bill amends s. 288.095, F.S., to clarify that the Economic Development Incentives Account in the Economic Development Trust Fund consists of local financial support funds required under the QTI, QDSC, and Brownfield Redevelopment Bonus programs. This section is further amended to conform to other substantive changes made in the bill.

Economic Development Program Evaluations

Present Situation

The Office of Economic Development and Research (EDR) and the Office of Public Policy Analysis and Government Accountability (OPPAGA) are required to provide a detailed analysis of state economic development programs according to a recurring schedule established in law.⁴³

EDR must evaluate and determine the economic benefits, as defined in s. 288.005(1), F.S., of each program over the previous three years. For the purposes of EDR’s analysis, the calculation of economic benefits is the same as the state’s return on investment. The analysis will also identify the number of jobs created, the increase or decrease in personal income, and the impact on state gross domestic product from the direct, indirect, and induced effects of the state’s investment in each program over the previous three years.

OPPAGA must evaluate each program over the previous three years for effectiveness and value to the state’s taxpayers and include recommendations for consideration by the Legislature. The analysis may include relevant economic development reports or analyses prepared by the DEO,

⁴³ Section 288.0001, F.S.

EFI, or local or regional economic development organizations; interviews with parties involved; or any other relevant data.

To date, EDR and OPPAGA have completed two review cycles. In 2013, the following programs were evaluated:

- The Capital Investment Tax Credit Program (CITC);
- The Qualified Target Industry Tax Refund Program (QTI);
- The Brownfield Redevelopment Bonus Refund Program;
- The High Impact Performance Incentive Grant Program (HIPI);
- The Quick Action Closing Fund Program (QAC);
- The Innovation Incentive Program; and
- The Enterprise Zone Program.⁴⁴

In 2014, the following programs were evaluated:

- The Office of Film and Entertainment administered Entertainment Industry Financial Incentive Program and the Entertainment Industry Sales Tax Exemption Program;
- The VISIT FLORIDA and its programs; and
- The Florida Sports Foundation and related programs.⁴⁵

The Sports Development Program, established under s. 288.11625, F.S., provides state funding to pay for a facility for a professional sports franchise, under certain circumstances. Local governments, non-profit and for-profit entities may apply to the program. The program is scheduled for recurring review by EDR and OPPAGA beginning January 1, 2018. The retention of Major League Baseball spring training baseball franchises program, established under section 288.11631, F.S., provides state funds to pay for construction and renovation of spring training baseball facilities under certain circumstances. This program is currently not included in the list of economic development programs that must be analyzed by EDR and OPPAGA.

The state has two separate microfinance programs, the Microfinance Loan Program⁴⁶ and the Microfinance Guarantee Program.⁴⁷ The loan program is designed to make short-term, fixed-rate microloans for business management training, business development training, and technical assistance to entrepreneurs and newly established or growing small businesses for startup costs, working capital, and the acquisition of materials, supplies, furniture, fixtures, and equipment. The intent of the program is to enable entrepreneurs and small businesses to access private financing after completing the program. The guarantee program is intended to stimulate access to credit for entrepreneurs and small businesses by providing targeted guarantees to their loans.

⁴⁴ The Florida Legislature, Office of Program Policy Analysis and Government Accountability (OPPAGA) & Office of Economic and Demographic Research (EDR), *Florida Economic Development Program Evaluations – Year 1, Report No. 14-01*, (January 1, 2014).

⁴⁵ The Florida Legislature, OPPAGA, *Florida Economic Development Program Evaluations – Year 2, Report No. 15.01*, (January 1, 2015) and The Florida Legislature, EDR, *Return on Investment for the Entertainment Industry Incentive Programs, Return on Investment for VISIT FLORIDA, and Return on Investment for Florida Sports Foundation Grants and Related Programs*, (January 2015).

⁴⁶ Section 288.9934, F.S.

⁴⁷ Section 288.9935, F.S.

These programs are currently not included in the list of economic development programs that must be analyzed by EDR and OPPAGA.

Effect of Proposed Changes

Section 7 of the bill adds the Major League Baseball spring training franchises program under s. 288.11631, F.S., to the list of economic development programs that must be analyzed by EDR and OPPAGA. The first evaluation must be completed by January 1, 2018, and every 3 years thereafter.

Section 38 of the bill amends s. 288.9377, F.S., to require OPPAGA, in addition to EDR, to evaluate the Microfinance Loan Program and Microfinance Guarantee Program. Because multiple reports (e.g., the reports described above) are due January 1, 2018, the bill changes the submission date for these reports to January 15, 2018. This report is not included in the recurring review cycle and s. 288.9937, F.S., expires January 31, 2018.

The bill also directs the EDR to include guidelines for the appropriate application of the DEO's internal model. The bill requires that, for the amended definition of "economic benefits," the state's investment must include all state funds spent or forgone to benefit the business, including state funds appropriated to public and private entities but excluding state funds spent for economic development transportation projects under s. 339.2821, F.S., to the extent that such funds "should reasonably be known to the department at the time of approval." The bill provides that the economic benefits evaluation must account for all capital investment related to the project.

Qualified Job Training Organizations / Self-Insurance Funds

Present Situation

Qualified Job Training Organizations

A "qualified job training organization" is an organization that meets all of the following criteria:

- Is accredited by the Commission for Accreditation of Rehabilitation Facilities.
- Collects Florida state sales tax.
- Operates statewide and has more than 100 locations within the state.
- Is exempt from income taxation under s. 501(c)(3) or (4) of the Internal Revenue Code of 1986, as amended.
- Specializes in the retail sale of donated items.
- Provides job training and employment services to individuals who have workplace disadvantages and disabilities.
- Uses a majority of its revenues for job training and placement programs that create jobs and foster economic development.⁴⁸

Regulation of Self-Insurance Funds

The Office of Insurance Regulation (OIR) regulates the activities of insurers and other risk-

⁴⁸ Section 288.1097, F.S.

bearing entities.⁴⁹ As an alternative to traditional insurance from a licensed insurance company, the Legislature created various self-insurance funds to cover specific liabilities for specific groups or purposes.⁵⁰ The self-insurance funds may be classified as a commercial self-insurance fund, which may cover commercial property, casualty risk, or surety insurance liabilities;⁵¹ a group self-insurance fund, which may cover worker's compensation liabilities;⁵² or a specific purpose self-insurance fund that is created to address the needs of a specific group, e.g. local governments or not for profit corporations. While the types of insurance provided and membership eligibility requirements vary among the different types of self-insurance funds, all members of self-insurance funds share the common characteristic that they agree by virtue of their membership in a self-insurance fund to assume the risk of loss among themselves, rather than transferring the risk in its entirety to an insurance company.⁵³ Therefore, members generally see a lower annual cost for insurance in a self-insurance fund, but have a risk of higher assessment or cost in the case of a loss experienced either by themselves or a fellow member.

Not For Profit Self-Insurance Funds

Section 624.4625, F.S., governs not for profit self-insurance funds, and provides that two or more not for profit corporations⁵⁴ located in Florida and organized under Florida law may form a self-insurance fund with the purpose of pooling and spreading the property and casualty liabilities between its group members. The operating fund must:

- Have at least \$5 million in annual normal premiums;
- Use a qualified actuary to determine an actuarially-sound rate, level of reserves, and loss adjustment expenses and submit annual certifications thereof to the OIR;
- Maintain excess insurance coverage and reserve evaluation;
- Submit to the OIR an annual audited fiscal year-end financial statement performed by an independent CPA;
- Have a governing body that consists of officers of its member not for profit corporations, which must submit an annual certification that the fund meets all statutory operating requirements;
- Be operated by Florida-licensed personnel who have at least 5 years' experience with commercial self-insurance funds or domestic insurers; and
- Use contracts that clearly delineate the fund's members' liabilities and obligations.

⁴⁹ Section 20.121(3)(a)1., F.S.

⁵⁰ See, ss. 624.460-624.488, F.S.

⁵¹ Section 624.462, F.S.

⁵² Section 624.4621, F.S.

⁵³ The Commercial Self-Insurance Fund Act (ss. 624.460-624.488, F.S.), authorizes certain groups and associations to form a commercial self-insurance fund, subject to the approval of OIR. Under s. 624.4621, F.S., two or more employers may pool their workers' compensation liabilities and form a self-insurance fund for workers' compensation purposes, referred to as a group self-insurance fund. Such funds must comply with administrative rules adopted by the Financial Services Commission. Pursuant to s. 624.4622, F.S., any two local governments may enter into interlocal agreements to create a self-insurance fund for securing the payment of benefits under the workers' compensation law. Under s. 624.4623, F.S., any two or more independent non-profit colleges or universities may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any property or casualty risk or surety insurance or securing the payment of benefits under the workers' compensation law.

⁵⁴ Section 617.01401, F.S., defines the term, "corporation not for profit" to mean a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under this chapter.

The members of a corporation not for profit self-insurance fund must receive at least 75 percent of their revenues from government funding.⁵⁵

A corporation not for profit self-insurance fund may not participate in or be covered by any guaranty association established under ch. 631, F.S. Additionally, these funds are neither subject to rules and regulations promulgated by the Financial Services Commission under s. 624.4621, F.S., nor required to file any report with the Department of Financial Services under s. 440.38(2)(b), F.S.

Florida Insurance Trust

The Florida Insurance Trust (FIT) is the only corporation not for profit self-insurance fund operating in Florida.⁵⁶ Created in 2007, the FIT provides property, general liability, professional liability, employment practice liability, workers compensation, health insurance, and commercial automobile coverage to its members. According to representatives of the FIT, 9,000 not for profit social service entities are eligible for FIT membership under current law, but only 175 are currently members.⁵⁷

The FIT must ensure that all members are eligible pursuant to s. 624.4625, F.S. Potential members are required to submit a notarized certification, signed by the members' corporate officer, which states that at least 75 percent of its funding comes from governmental sources as required under s. 624.4625, F.S. Each member must submit a Form 990 for review and, if necessary, audited financial statements to confirm compliance with eligibility requirements.⁵⁸ Recently, the FIT noted during an OIR inquiry into eligibility of the FIT's members that four entities did not meet statutory eligibility requirements because they received less than 75 percent of their funding from government sources.⁵⁹ The FIT represents that these accounts have been nonrenewed. Based on the results of its inquiry, the OIR does not object to the FIT's eligibility review process.

In the event premiums fail to cover a loss, the trustees of the FIT, or an agency or court of competent jurisdiction, may assess members of the FIT for payment of the obligations of the FIT as necessary based proportionately on premiums earned from each member. If one or more members fail to pay the assessment, the other members are proportionately liable for an additional assessment.

⁵⁵ Section 624.4625(1)(b), F.S.

⁵⁶ Florida Insurance Trust, *SB 830: Regulation of Not For Profit Self-Insurance Funds* (March 30, 2015) (on file with the Senate Commerce and Tourism Committee).

⁵⁷ Florida Insurance Trust, *Florida Insurance Trust Current Membership Overview* (February 27, 2015) (on file with the Senate Commerce and Tourism Committee).

⁵⁸ Office of Insurance Regulation letter to the Florida Insurance Trust (July 25, 2014) (on file with the Senate Banking and Insurance Committee).

⁵⁹ *Id.*

Section 501(c)(3) Tax Exempt and Publicly Supported Organizations

Corporations not for profit, defined in s. 617.01401, F.S., as corporations that do not distribute any part of their income or profit to members, directors, or officers, are distinct from tax exempt organizations, and more specifically, publicly supported organizations.

To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes⁶⁰ set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual.⁶¹ Only limited exceptions to this requirement for section 501(c)(3) organizations exist. Generally, exempt organizations described in section 501(c)(3) must file their annual information returns on Form 990 or 990-EZ, unless excepted from filing and must also complete Schedule A. Schedule A is used to report and substantiate information about an organization's public charity status and public support.

A publicly supported organization is a tax exempt organization that meets one of the following requirements:

- The organization receives a substantial part of its support in the form of contributions from publicly supported organizations, governmental units, or the general public; or
- The organization receives one-third or less of its support from gross investment income and more than one-third of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions.⁶²

Effect of Proposed Changes

Section 19 of the bill amends s. 288.1097, F.S., relating to qualified job training organizations, to provide that, notwithstanding s. 624.4625(1)(b), F.S.,⁶³ a qualified job training organization that has been certified is eligible to participate in a self-insurance fund authorized by s. 624.4625, F.S., and is not subject to the requirements of s. 624.4621, F.S.

Professional Golf Hall of Fame Facility

Present Situation

The World Golf Hall of Fame is a 501(c)(3) nonprofit institution located in St. Augustine, Florida. The hall of fame's mission is to preserve the history of the game of golf and the legacies

⁶⁰ The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term *charitable* is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency. See [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Purposes-Internal-Revenue-Code-Section-501\(c\)\(3\)](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Purposes-Internal-Revenue-Code-Section-501(c)(3)) (last accessed April 9, 2015).

⁶¹ See Internal Revenue Service, *Frequently Asked Questions about Applying for Tax Exemption* accessible at: <http://www.irs.gov/Charities-&-Non-Profits/Frequently-Asked-Questions-About-Applying-for-Tax-Exemption> (last accessed April 9, 2015).

⁶² Internal Revenue Service, *Publicly Supported Charities*, (March 31, 2015) available at <http://www.irs.gov/Charities-%26-Non-Profits/Charitable-Organizations/Publicly-Supported-Charities>, (last accessed April 9, 2015).

⁶³ Section 624.4625(1)(b), F.S., requires that each participating member must receive at least 75 percent of its revenues from local, state, or federal governmental sources or a combination of such sources.

of its players. Originally, formed in 1974 in Pinehurst, North Carolina, the hall of fame relocated to Florida in 1998⁶⁴ and was certified as a professional golf hall of fame facility pursuant to s. 288.1168, F.S., by the Governor's Office of Tourism, Trade, and Economic Development (OTTED)⁶⁵ that same year. It is the only golf hall of fame in the U.S. recognized by the Professional Golfers' Association Tour, Inc. (PGA). In addition to serving as a golf museum, the facility provides educational programs for local K-12 schools and has a collaborative relationship with several universities in northeast Florida. The hall of fame also works closely with St. Johns County on various community events, including golf festivals and farmers markets. The hall of fame facility is located on privately-owned land and the facility is privately owned and managed.⁶⁶

Section 288.1168, F.S., establishes the Professional Golf Hall of Fame Facility funding program which allows the DEO to screen applicants and certify one applicant as the professional golf hall of fame facility. Before certifying the facility, the DEO must determine that the applicant meets statutory criteria, including but not limited to:

- The applicant facility must be the only professional golf hall of fame in the U.S. recognized by the PGA;⁶⁷
- Projections demonstrate that the facility will attract a paid attendance of more than 300,000 annually;⁶⁸
- An independent analysis demonstrates that the amount of sales tax generated by sales at the facility will at least equal \$2 million annually;⁶⁹
- The applicant has submitted an agreement to provide \$2 million in national and international media promotion of the hall of fame facility, Florida, and Florida tourism, through the PGA, or its affiliates during the period of time that the facility receives state funds;⁷⁰ and
- Documentation exists that demonstrates the applicant has provided, or is capable of providing, more than one-half of the costs associated with the improvement and development of the facility.⁷¹

Certified applicants are eligible to receive monthly disbursements from the state in amount equal to \$166,667 for up to 300 months (a total of \$50,000,100 for 25 years).⁷²

Every ten years, the professional golf hall of fame facility must be recertified by demonstrating that it is open, continues to be the only professional golf hall of fame in the country recognized by the PGA, and is meeting at least one of the minimum projections established at the time of original certification: 300,000 annual visitors or \$2 million in annual sales tax revenue.

The professional golf hall of fame facility submitted its first 10-year recertification application and reported that annual attendance from 1998 through 2009 had varied between 230,000 and

⁶⁴ World Golf Hall of Fame, *Our History*; available at: <http://www.worldgolfhalloffame.org/about-the-museum/our-history/> (last accessed on Feb. 14, 2015)

⁶⁵ DEO assumed the responsibilities of OTTED in 2011 pursuant to ch. 2011-142.

⁶⁶ Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 2, Report No. 15-01*, pg. 51; Jan. 1, 2015

⁶⁷ Section 288.1168(1)(a), F.S.

⁶⁸ Section 288.1168(1)(d), F.S.

⁶⁹ Section 288.1168(1)(e), F.S.

⁷⁰ Section 288.1168(1)(f), F.S.

⁷¹ Section 288.1168(1)(g), F.S.

⁷² Section 212.20(6)(d)6.c., F.S.

290,000 visitors, and the facility did not exceed the \$2 million sales tax threshold until 2005. Because the facility did not meet the statutory requirements for recertification in 2009, OTTED required the PGA to increase its required annual advertising contribution from \$2 million to \$2.5 million, in lieu of a reduction in state funds. The additional \$500,000 in advertising was to be allocated for generic Florida advertising as determined by the department.⁷³

Current law does not provide for the decertification of the professional golf hall of fame facility. If the facility is not open to the public or is no longer the only professional golf hall of fame recognized by the PGA Tour, Inc., the entire \$2.5 million must be used for generic Florida advertising.

Effect of Proposed Changes

Section 20 of the bill amends s. 288.1168, Florida Statutes, to require an annual recertification of the professional golf hall of fame facility, beginning in 2016. If the facility is not certified, the PGA must increase the required advertising contribution from \$2 million to \$3 million for that year. The bill requires the DEO to consult with the Florida Tourism Industry Marketing Corporation (VISIT FLORIDA) regarding the allocation of the additional \$1 million for generic Florida advertising. The facility must be prominently featured in at least ten percent, but no more than 25 percent, of such advertising. The bill provides that if the facility is not open to the public or is no longer the only professional golf hall of fame recognized by the PGA Tour, Inc., the DEO must decertify the facility.

International Game Fish Association World Center Facility

Present Situation

The International Game Fish Association (IGFA) is a nonprofit organization founded in 1939 that focuses on the conservation of game fish and the promotion of responsible and ethical angling practices. The association is housed at the IGFA Museum and Hall of Fame in Dania Beach, Florida. The facility was certified by the state as an IGFA World Center facility in February 2000.

Section 288.1169, F.S., establishes the IGFA World Center facility funding program which allows the DEO to approve applicants and certify one applicant as the IGFA World Center facility. Before certifying the facility, the DEO must determine that the applicant meets statutory criteria, including but not limited to:

- The IGFA World Center must be the only fishing museum, hall of fame, and international administrative headquarters in the U.S. recognized by the IGFA, and that one or more private sector entities have committed to donate to the IGFA land upon which the facility will operate;⁷⁴
- IGFA is a nonprofit Florida corporation that has contracted to construct and operate the facility;⁷⁵

⁷³ *Id.*

⁷⁴ Section 288.1169(2)(a), F.S.

⁷⁵ Section 288.1169(2)(b), F.S.

- Existing projections demonstrate that the facility and co-located privately-owned facilities will attract an attendance of more than 1.8 million annually;⁷⁶
- An independent analysis demonstrates that the amount of sales tax generated by sales at the facility will at least equal \$1 million annually;⁷⁷
- Existing projections show that the project will attract more than 300,000 out-of-state visitors annually;⁷⁸
- The applicant has submitted an agreement to provide \$500,000 annually in national and international media promotion of the facility during the period of time that it receives state funds;⁷⁹ and
- Documentation exists that demonstrates the applicant has provided, or is capable of providing, more than one-half of the cost related to the improvements and the development of the facility.⁸⁰

Every ten years the world center facility must be recertified by demonstrating that it is open, continues to be the only international administrative headquarters, fishing museum, and hall of fame in the country recognized by the IGFA, and is meeting at least one of the minimum projections established at the time of original certification: 300,000 annual visitors or \$1 million in annual sales tax revenue. The facility reported an average of \$3.8 million in annual sales tax revenues generated from 2000 through 2010, and it was recertified in 2011.⁸¹ Certified applicants are eligible to receive monthly disbursements from the state in amount equal to \$83,333 for up to 168 months (a total of \$13,999,944 for 14 years).⁸² The state made its last disbursement to the facility in February 2014.⁸³

Effect of Proposed Changes

Section 21 of the bill repeals s. 288.1169, F.S., to remove the expired International Game Fish Association World Center facility program from the statutes. **Section 4** of the bill amends s. 212.20(6)(d), F.S., to delete an obsolete cross reference.

Enterprise Florida, Inc. (EFI) Board Composition

Present Situation

The board of directors of EFI is comprised of 19 members from the public and private sectors. There are seven members who are appointed based on the position the member holds: the Governor, the Commissioner of Education, the Chief Financial Officer, the Attorney General, the

⁷⁶ Section 288.1169(2)(d), F.S.

⁷⁷ Section 288.1169(2)(e), F.S.

⁷⁸ Section 288.1169(2)(f), F.S.

⁷⁹ Section 288.1169(2)(g), F.S.

⁸⁰ Section 288.1169(2)(h), F.S.

⁸¹ *Id.*

⁸² Section 212.20(6)(d)6.d., F.S.

⁸³ Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 2, Report No. 15-01*, pg. 52; Jan. 1, 2015

Commissioner of Education, the chairperson of the board of directors for CareerSource Florida, Inc., and the Secretary of State. These seven members may appoint a designee on their behalf. Twelve members of the board are appointed from the private sector as follows: six members are appointed by the Governor; and the President of the Senate and the Speaker of the House of Representatives each appoint three members. Board members who are appointed by the Governor are subject to Senate confirmation.⁸⁴

In making their appointments, the Governor, the President of the Senate, and the Speaker of the House of Representatives must ensure that the board of directors reflects the diversity of Florida's business community and includes at least one director for each of the following areas of expertise: international business; tourism marketing; the space or aerospace industry; managing or financing a minority-owned business; manufacturing; finance and accounting; and sports marketing.⁸⁵ Appointed members serve four year terms and may be reappointed, but may not serve more than two terms.

The board of directors may also appoint at-large members to the board from the private sector, each of whom may serve a term of up to three years. At-large members have the same powers and duties of the appointed board members. At-large members may annually provide contributions to EFI, in an amount determined by the board of directors. These contributions must be used to defray EFI's operating expenses and help meet the required private match to the state's annual appropriation.⁸⁶ Each corporate sponsor currently contributes \$50,000 annually to support the activities of the public-private partnership. Currently, the EFI Board of Directors has 64 voting members.⁸⁷

In addition to the appointed members and the at-large members described above, the board also consists of a member of the Senate and a member of the House of Representatives, each appointed by the respective chamber's presiding officer. These members serve as ex-officio members.⁸⁸ The following organizations currently have representatives serving as ex-officio members on EFI's board of directors: Florida Chamber of Commerce, Florida Council of 100, Florida Economic Development Council, Florida Tax Watch, and PowerSouth Energy Cooperative.⁸⁹

EFI's board must meet at least four times each year, upon the call of the chairperson, at the request of the vice chairperson, or at the request of a majority of the membership. A majority of the total number of current voting members constitutes a quorum.⁹⁰

⁸⁴ Section 288.901(5)(a), F.S.

⁸⁵ Section 288.901(5)(b), F.S.

⁸⁶ Section 288.901(6), F.S.

⁸⁷ <http://www.enterpriseflorida.com/about-efi/board-of-directors/> (last visited April 21, 2015)

⁸⁸ Section 288.901(7), F.S.

⁸⁹ Id.

⁹⁰ Section 288.901(8), F.S.

Effect of Proposed Changes

Section 31 amends s. 288.901, F.S., to require that at least one of the twelve private sector representatives appointed by either the Governor, the President of the Senate, or the Speaker of the House of Representatives possess expertise in the field of rural economic development.

The President of Enterprise Florida, Inc.

Present Situation

The president of Enterprise Florida, Inc. (EFI), is appointed by the Board of Directors, serves at the pleasure of the Governor, and is the “chief administrative and operational officer” of the board and EFI. Additionally, the president may be known as the ‘secretary of commerce’ and serves as the Governor’s chief negotiator for business recruitment and business expansion.”⁹¹

Section 288.92, F.S., authorizes Enterprise Florida to create and dissolve divisions as necessary to carry out its mission. That section also requires Enterprise Florida to have certain divisions. The law also provides for hiring of officers and members of the divisions of Enterprise Florida and subjects certain officers and members to several standards of conduct in the Code of Ethics for Public Officers and Employees.⁹² The law currently does not contain any post-employment or post-service restrictions.

Effect of Proposed Changes

Section 32 amends s. 288.905, F.S., to prohibit a former president of EFI, for a period of two years following vacation of office, from receiving compensation for personally representing before the legislative or executive branch of state government an entity that:

- Applied for funding;
- Received state funds; or
- Negotiated with EFI for the receipt of state funds, regardless of whether the entity actually received any state funds.

Section 33 provides that the change made to s. 288.905, F.S., described above only applies to EFI presidents who are appointed or reappointed on or after July 1, 2015.

Florida Opportunity Fund

Present Situation

In 2007, the Legislature found that there was a need to increase the availability of seed capital and early stage venture equity capital for emerging Florida companies in targeted industries. In response to this need, the Legislature passed the Capital Formation Act. The act provided for the creation of the Florida Opportunity Fund (FOF), which was launched in 2008, initially as a fund of funds program. In 2009, the Legislature expanded the FOF’s mandate under the Capital Formation Act to create direct investment programs that invest in businesses and infrastructure

⁹¹ Section 288.905, F.S.

⁹² Part III, Chapter 112, Florida Statutes.

projects. The fund supports three programs: Fund of Funds, Clean Energy Investment, and Florida Venture Capital.

To participate, the emerging business must be in a technology sector that is strategic to Florida, including, but not limited to, enterprises in:

- Life sciences,
- Information technology,
- Advanced manufacturing processes,
- Aviation and aerospace, and
- Homeland security and defense,
- Other strategic technologies.⁹³

Effect of Proposed Changes

Sections 35 and 36 amend ss. 288.9622 and 288.9624, F.S., respectively, to add two additional technology sectors that may participate in the Florida Opportunity Fund:

- Improvement of water quality and safety, and
- Agricultural enhancements and protections.

Defense Grant Programs

Present Situation

Section 288.980, F.S., establishes grant programs designed to aid defense-dependent communities throughout the state, administered by Enterprise Florida, Inc., (EFI) and the Department of Economic Opportunity (DEO). Among these programs are the Florida Defense Reinvestment Grant Program (DRG)⁹⁴ and the Defense Infrastructure Grant Program (DIG).⁹⁵

The DRG program competitively funds projects proposed by defense-dependent communities to develop and implement strategies to help support the missions of a community's military installation, or diversify the defense-dependent community's economy. The DRG-funded activities can include studies, presentations, analyses, plans, marketing, modeling, and reasonable travel costs. For Fiscal Year 2014-2015, the Legislature provided an \$850,000 recurring appropriation from the State Economic Enhancement and Development Trust Fund to the DEO to fund the DRG program. Twelve DRG projects were approved for Fiscal Year 2014-2015, totaling \$850,000.

The DIG program competitively funds local infrastructure projects deemed to have a positive impact on the military value of installations within the state. Authorized DIG projects include, but are not limited to, those relating to encroachment, transportation and access, utilities, communications, housing, environment, and security. For Fiscal Year 2014-2015, the Legislature provided a \$1.6 million recurring appropriation from the State Economic Enhancement and Development Trust Fund to the DEO to fund the DIG program. Ten DIG projects were approved for Fiscal Year 2014-2015, totaling \$1.6 million.

⁹³ Sections 288.9622 and 288.9624, F.S.

⁹⁴ Section 288.980(4), F.S.

⁹⁵ Section 288.980(5), F.S.

The Legislature created the DIG program in 2004 in s. 288.980(4), F.S, with a provision that the now-defunct Office of Tourism, Trade, and Economic Development (OTTED) *could require* a match by the county or local community grant applicants.⁹⁶ However, s. 288.980(2)(c)2., F.S., was needed in 2004 to provide that OTTED *must require*, with one exception, that a grant applicant agree to match at least 30 percent of any grant awarded.⁹⁷ This apparent conflict between the required grant match and permissive grant match for DIG projects has therefore existed since 2004. According to EFI, in administering the two programs, the DEO and EFI require the 30 percent match for DRG projects only, and the 30 percent match requirement is appropriate for the DRG program, not the DIG program.

Effect of Proposed Changes

Section 39 of the bill amends s. 288.980, F.S., to remove the 30 percent match requirement for grants awarded under the Defense Infrastructure Grant Program. The bill clarifies that the 30 percent match requirement applies only to the Defense Reinvestment Grant Program for applicants that are defense-dependent counties and cities and local economic development councils located in those communities.

The bill also expands eligibility for purposes of the Florida Defense Reinvestment Grant Program to include businesses in the defense and space industry. Grant awards may be provided to businesses to support “technological competitiveness activities,” which includes equipment purchases, upgrades, or replacement. Grant applications from businesses must include a plan of action delineating how the eligible project will be administered and accomplished.

The Office of Film and Entertainment

Present Situation

The Office of Film and Entertainment (OFE) in the DEO develops, markets, promotes, and provides services to Florida’s entertainment industry, including serving as a liaison between the industry and government entities and facilitating access to filming locations.⁹⁸ The OFE gathers statistical information related to the state’s entertainment industry; provides information and services to businesses, communities, organizations, and individuals engaged in entertainment industry activities; administers field offices outside the state; and coordinates with regional offices maintained by counties and regions of the state. The OFE is also required to develop a 5-year strategic plan to guide its activities, which is updated on an annual basis and aligns with the DEO’s Strategic Plan for Economic Development.⁹⁹ The OFE’s mission is to build, support, and market the entertainment industry in Florida.

The head of the OFE is the Commissioner of Film and Entertainment. The executive director of the DEO hires the commissioner, after conducting a statutorily required national search to find a

⁹⁶ Chapter 2004-230, L.O.F.

⁹⁷ This 30 percent match requirement has remained in law since 2004, and is currently codified at s. 288.980(3)(c)2., F.S.

⁹⁸ Section 288.1251, F.S. See also OFE website, available at <http://www.filminflorida.com/about/vm.asp> (last visited Mar. 3, 2015).

⁹⁹ The OFE’s Film and Entertainment Industry Strategic Plan for Economic Development is available at http://www.filminflorida.com/about/OFE_Plan_V11.pdf (last visited Mar. 3, 2015).

qualified person to fill the position. For Fiscal Year 2014-2015, the OFE has an operating budget of approximately \$758,000, five full-time-equivalent (FTE) positions and three temporary other personal services (OPS) positions.¹⁰⁰ The OFE's budget supports a field office in Los Angeles.

The OFE is assisted by the Florida Film and Entertainment Advisory Council (advisory council), which is composed of 17 members, of which seven members are appointed by the Governor, and five members each are appointed by the President of the Senate and the Speaker of the House of Representatives.¹⁰¹ In addition, Enterprise Florida, Inc., Workforce Florida, Inc., and the Florida Tourism Industry Marketing Corporation (commonly referred to as "VISIT Florida") each have a representative that serves as an ex-officio nonvoting member of the advisory council. The advisory council provides the OFE and the DEO with industry insight and assists in the creation of the 5-year strategic plan.

Additionally, over 60 local film offices have been established across the state, organized predominately by county and municipal governments, local chambers of commerce, economic development councils, convention and visitors' bureaus, and tourist development councils.¹⁰²

Effect of Proposed Changes

EFI's Division of Film and Entertainment

Section 24 of the bill transfers s. 288.1251, F.S., renumbers it as s. 288.913, and amends that section to transfer the Department of Economic Opportunity's Office of Film and Entertainment to EFI. The office is established as the Division of Film and Entertainment (division) in EFI and given additional duties with regards to the evaluation of applicants for tax credits, and applicants for funds from the Entertainment Action Fund created in Section 7 of the bill. The bill also subjects the film commissioner to conflict of interest provisions applicable to senior managers of EFI.

The Division of Film and Entertainment is established for the purpose of developing, recruiting, marketing, promoting, and providing services to the state's entertainment industry. The division will serve as a liaison between the entertainment industry and other state and local governmental agencies, local film commissions, and labor organizations. The division must develop and update a 5-year strategic plan that must include specified information. EFI's board of directors must annually review and approve the plan.

Section 25 of the bill transfers s. 288.1252, renumbers it as s. 288.914, and amends that section to transfer the Florida Film and Entertainment Advisory Council (council) to EFI. The bill reduces the council membership from 17 to 11 members, five appointed by the Governor and three each appointed by the President of the Senate and Speaker of the House of Representatives.

¹⁰⁰ E-mail from Dean M. Izzo, Chief Financial Officer, Department of Economic Affairs, to Kristin Pingree Gusky, Chief Legislative Analyst, Florida Senate (March 27, 2015) (on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).

¹⁰¹ Section 288.1252, F.S.

¹⁰² A list of Florida film commissions is provided at the OFE website, available at http://www.filminflorida.com/lr/local_film_commissions.asp (last visited Mar. 3, 2015).

A council member serving as of July 1, 2015, may finish his or her term but upon vacancy, appointments may not be made that would result in more than 11 council members.

Section 26 of the bill transfers s. 288.1253, renumbers it as s. 288.915, and amends that section to continue the department's oversight and rule-making responsibilities regarding the travel and entertainment expenses incurred by the staff of EFI's Division of Film and Entertainment. Division employees may not accept complimentary travel, accommodations, meeting space, meals, equipment, transportation, or any other goods or services from any entity, including an employee, designee, or representative of such entity, seeking funds from the Entertainment Action Fund.

Sections 25, 36, and 51 amend ss. 288.125, 288.92, and 477.0135, F.S., respectively, and make conforming changes to reflect the creation of the division and the department's responsibilities.

Entertainment Industry Financial Incentive Program¹⁰³

Present Situation

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program (incentive program).¹⁰⁴ The incentive program's dual purposes are to:

- Promote Florida as a site for filming, creating, or producing movies, television series, commercials, digital media and other types of entertainment productions; and
- Sustain and develop the state's entertainment workforce, studios, and other related infrastructure.

The incentive program is administered by the OFE, subject to the policies and oversight of the DEO. Currently, the incentive program is a 6-year program, which began July 1, 2010, and sunsets June 30, 2016. The incentive program provides tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits may be applied against the corporate income tax or sales and use taxes. Additionally these tax credits may be transferred or sold one time.¹⁰⁵

Over the 6 year period, a total of \$296 million in tax credits were authorized. Annual limitations for tax credits are set at:

- \$53.5 million in Fiscal Year 2010-11;
- \$74.5 million in Fiscal Year 2011-12; and
- \$42 million in each Fiscal Year 2012-13, 2013-14, 2014-15, and 2015-16.¹⁰⁶

The law provides that if the total tax credits applied for in a fiscal year is greater than the amount available for that year, then the excess credits are to be treated as if they had been applied for in

¹⁰³ Information about the incentive program is also available on OFE's website, available at <http://filminflorida.com/ifi/incentives.asp> (last visited Mar. 3, 2015).

¹⁰⁴ Section 288.1254, F.S. See ch. 2003-81, L.O.F. In 2010, the incentive program was changed from a cash reimbursement type program to the current form. See ch. 2010-147, L.O.F.

¹⁰⁵ Also, tax credits may be relinquished to the DOR for 90 percent of the amount of the relinquished tax credit.

¹⁰⁶ Section 288.1254(7), F.S. In 2012, an additional year was added to the program. See s. 15, ch. 2012-32, L.O.F.

the next fiscal year. The OFE reports that all of the tax credits authorized for the six-year period have been certified (or allocated to certified productions).¹⁰⁷

Eligibility and Application

Generally, a production company that plans to engage in a production in Florida can apply to the OFE prior to beginning production for a certification of tax credits based upon estimated qualified expenditures planned for the production. A “production” is defined in s. 288.1054, F.S., as a:

- Theatrical, direct-to-video, or made-for-television motion picture;
- Visual effects or digital animation sequences produced in conjunction with a motion picture;
- Commercial or infomercial;
- Music video;
- Industrial, educational, or documentary film;
- Television pilot program or presentation for a television pilot program;
- Digital media project; or
- Television series, including but not limited to a: drama, reality show, comedy, soap opera, telenovela, game show, awards show, or miniseries production. One season of a television series is considered one production.

A production does not include a: weather or market program; sporting event or sporting event production; gala; production that solicits funds; home shopping program; political program, documentary, or advertising; gambling-related project or production; concert production; a local, regional, or Internet-distributed-only news show or current-events show; a sports news or sports recap show; a pornographic production; or any production deemed obscene under ch. 487, F.S.

A “qualified production” must meet the requirements above, plus two additional criteria:

- Depending on the type of production and period of time in the incentive program, most of the production cast and below-the-line production crew¹⁰⁸ must be Florida residents, or students enrolled full-time in a film and entertainment-related course of study at a Florida university or college.; and
- The production does not contain obscene content, as defined in s. 847.001(10), F.S.¹⁰⁹

Queues

Priority for tax credit certifications is made on a first-come, first-served basis within the appropriate “queue.”¹¹⁰ There are three queues of qualified productions eligible for tax credit certification: general production, commercial and music video, and independent and emerging media production. State incentive funding is allocated to the queues as follows:

¹⁰⁷ Office of Economic and Demographic Research, The Florida Legislature, *Return on Investment for the Entertainment Industry Incentive Programs* (January, 2015).

¹⁰⁸ “Below-the-line production crew” excludes actors, directors, producers, and writers.

¹⁰⁹ Pursuant to this section, “‘obscene’ means the status of material which: (a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; (b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value. A mother’s breastfeeding of her baby is not under any circumstance ‘obscene.’”

¹¹⁰ Section 288.1254(4), F.S.

- General production queue - 94 percent (no more than 45 percent of which can be certified for television series);
- Commercial and music video queue – 3 percent; and
- Independent and emerging media production queue – 3 percent.

First priority in the general production queue for tax credits not yet certified is given to “high-impact television series” and “high-impact digital media projects,”¹¹¹ in alternating order, depending on the type of application first received by the OFE. OFE may certify a project out of order (ex: two high-impact television series productions in a row) if an application by the next appropriate type of production is not received within 5 business days.¹¹²

Characteristics of Production Queues

	General Production	Commercial & Music Video	Independent and Emerging Media Production Queue
Minimum amount of qualified expenditures	\$625,000	\$100,000 per commercial or video <u>and</u> exceeds \$500,000 combined per fiscal year	At least \$100,000, but not more than \$625,000
Amount of basic incentive	20% of qualified expenditures, up to \$8 million	20% of qualified expenditures, up to \$500,000	20% of qualified expenditures, up to \$125,000

There are additional tax credits, also referred to as “bonuses,” available for general production queue projects. A five percent additional tax credit is available for:

- Feature films, independent films, or television series or pilots that are “off-season certified,” including those that are not able to complete 75 percent of their principal photography due to a hurricane or tropical storm. Off-season certified means that the production films 75 percent or more of its principal photography from June 1 to November 30.
- Productions that incur at least 65 percent of its principal photography days in an underutilized region. An “underutilized region” is one with a regional tax credit ratio for a fiscal year that is lower than its regional population ratio that year.¹¹³
- Productions which conduct at least 50 percent of their principal photography at a qualified production facility. This additional 5 percent may be applied to any qualified expenditures related to production activity at that facility.

¹¹¹ Section 288.1254(1), F.S., provides that: a “high-impact digital media project” means a digital media project that has qualified expenditures greater than \$4.5 million; a “high-impact television series” means a production created to run in multiple production seasons and having an estimated order of at least seven episodes per season and qualified expenditures of at least \$625,000 per episode.

¹¹² This rotating schedule was created in ch. 2012-32, L.O.F.

¹¹³ “Underutilized region” is defined in s. 288.1254(1)(p), F.S. The definition establishes five regions and every county is assigned to a region.

- Qualified digital media projects or digital animation components of productions which have at least 50 percent of their qualified expenditures related to a qualified digital media production facility. This additional 5 percent may be applied to any qualified expenditures related to production activity at that facility.

A 15 percent additional tax credit is available for productions that employ students enrolled full-time in a film and entertainment-related or digital media-related course of study or recent graduates of such a course of study. The course of study must have occurred at an institution of higher education in Florida. This additional 15 percent may be applied to any qualified expenditures related to wages, salaries, or other compensation paid to such students or graduates.

Further, family-friendly certified theatrical or direct-to-video movies and video games are eligible for an additional tax credit of 5 percent of its actual qualified expenditures. The determination for “family-friendly” is made by the OFE, with the advice of the advisory council. A family friendly production is one that:

- Has cross-generational appeal;
- Is considered suitable for viewing by children aged 5 years or older;
- Is appropriate in theme, content and language for a broad family audience;
- Responsibly resolves issues raised in the film; and
- Does not include any act of smoking, sex, nudity, or vulgar or profane language.

A qualified production in the general production queue is limited to a total tax credit of 30 percent of its actual qualified expenditures.¹¹⁴

Current law defines “qualified expenditures” as production expenditures incurred by a qualified production in Florida for:¹¹⁵

- Goods purchased or leased from, or services provided by, a vendor or supplier in Florida that is registered with the Department of State or the Department of Revenue (DOR) and is doing business in Florida. Eligible production goods and services include:
 - Sound stages, back lots, production editing, digital effects, sound recordings, sets, and set construction;
 - Entertainment-related rental equipment, including cameras and grip or electrical equipment;
 - Newly purchased computer software and hardware, up to \$300,000; and
 - Meals, travel, and accommodations.
- Salary, wages, or other compensation paid to Florida residents, up to a maximum of \$400,000 per resident.

Additionally, for a qualified production involving an event, such as an awards show, the term “qualified expenditures” excludes expenditures solely associated with the event itself and not directly required by the production. The term also excludes expenditures prior to certification, with the exception of those incurred for a commercial, a music video, or the pickup of additional episodes of a television series within a single season.

¹¹⁴ A qualified production in the commercial and music video queue is not eligible for any bonuses. A qualified production in the independent and emerging media production queue may be eligible for the family-friendly bonus.

¹¹⁵ See s. 288.1254(1)(i), F.S.

Award of Credits

After production ends and all certified expenditures are made in Florida, the production company must have an independent certified public accountant licensed in Florida conduct a compliance audit. The OFE is required to review the audit and report to the DEO the final verified amount of actual qualified expenditures. The DEO then must review and approve the final tax credit award, and notify the DOR. Tax credit awards are based on the production queue and are subject to the limitations discussed above. In order to be eligible for tax credits, the production must include, when appropriate, the placement of a “Filmed in Florida” or “Produced in Florida” logo in the end credits.

Additionally after production ends, the company must make an irrevocable election to apply the tax credits to the corporate income taxes or sales and use taxes or a stated combination of both. This decision is binding on any distributee, successor, transferee, or purchaser. Tax credits that are unused in any year may be carried forward to the next for a maximum of 5 years.

Section 288.1254(9), F.S., authorizes the DOR to conduct audits related to the tax credits, and to revoke or forfeit tax credits under certain circumstances. Fraudulent applications for tax credits may also result in penalties and other costs in addition to repayment of the tax credits.

Effect of Proposed Changes

Section 27 of the bill amends s. 288.1254, F.S., to rename the Entertainment Industry Financial Incentive Program as the “Entertainment Industry Program” and makes several changes to the renamed program.

Definitions and Eligibility

The bill makes numerous changes to definitions section, including:

- Moving an existing definition of “family-friendly production” from the tax credit eligibility subsection to the definitions subsection.
- Amending the definition for “high-impact television series” to include telenovelas that have qualified expenditures of more than \$6 million, at least 45 principal photography days in the state, cast and crews that are at least 90 percent state residents, and have at least 90 percent of production occurring in the state. The required amount of qualified expenditures per episode for a television series is increased from \$625,000 to \$1 million.
- Including direct-to-Internet motion pictures and television series in the definition of “production.”
- Eliminating definitions for high-impact digital media project, off-season certified production, qualified digital media production facility, qualified production facility, regional population ratio, regional tax credit ratio, and underutilized region.

Application Procedure and Approval Process

The bill requires a production company to include additional information in its application. Currently, applications must include production-related information concerning employment of residents, a detailed budget of planned qualified expenditures, and the applicant’s signed

affirmation that the information provided is correct. The bill requires additional information related to the planned aggregate nonqualified expenditures, including capital investment, and proof of financing for the production. Under current law, a production has 90 days from the date it submits the application to provide proof of financing. The bill requires such proof to be submitted as part of the application.

The bill creates two application periods per year for tax credits, and specifies criteria by which the division is to review, evaluate, and rank the applications. The criteria must be evaluated in the following order of priority:

- Number of state residents to be employed, both full-time and part-time, by the project;
- Amount of qualified and nonqualified expenditures in Florida;
- Duration of the project in Florida, including whether production will occur in an underutilized county;
- Amount of preproduction and postproduction in Florida;
- Amount of capital investment, especially fixed capital investment, to be made directly by the production company and the amount of any other capital investment to be made related to the project in Florida; and
- Local support and amount of any financial commitment for the project.

After review and ranking of the applicants, the division must provide the applications and rankings to the Department of Economic Opportunity (DEO) for review and certification.

Every fiscal year, one half of the allocated tax credits are available during each application period. Applications remaining in the queue at the end of a period are denied and applicants may reapply in the next period. The bill clarifies the denial process.

High-impact television series productions may apply and be certified for a tax credit for a future fiscal year allocation for one additional successive season of a series. The applicant must affirm that the additional season is likely to be ordered, and must notify the DEO within 10 days if the second season is not ordered or is cancelled. The department may not certify tax credits in an amount greater than the allocation for a specified year, with the exception of one additional season of a high-impact television series. The bill clarifies the certification process in regards to the changes made to the Division of Film and Entertainment.

Upon certification, the production is required to provide the DEO and the division with information related to the production's needs for cast, crew, contractors, and vendors. The production must also provide a single point of contact. The division will publish this information online and include relevant information such as the starting date of the production and its location. The DEO and division may adopt procedures for a production to post such information itself within a week of certification.

Current law permits the DEO to withdraw the eligibility of a production for tax credits if the production does not continue on a reasonable basis, or if the production does not provide proof of financing. The bill clarifies when the DEO may deny a certified production. The DEO may deny a certified production upon finding any circumstance that affects the reasonable schedule or timely completion of the production, including a break in production or loss of financing. The certified production must notify the DEO within 5 days after any circumstance affecting the

timely completion of the production. However, a certified production that has lost financing may avoid denial by the DEO if it provides the DEO with proof of replacement financing within 10 days of the original loss.

The bill makes clarifying changes to the DEO's verification process. A certified production must submit the required documentation within 180 days of the completion of the production. All production-related information on full and part-time employment and wages paid to state residents is required in the documentation. The DEO must require a certified production to submit data substantiating aggregate nonqualified expenditures in this state, including capital investment.

The Division of Film and Entertainment is required to give the Florida Tourism Industry Marketing Corporation (VISIT Florida) contact information for each qualified production. Qualified productions are required to work with VISIT Florida to develop marketing materials that promote the state. The "VISIT Florida" logo is required to be shown in the end credits of a production, along with other currently required logos.

Section 28 provides that all applications on file with the DEO to receive a tax credit through the entertainment industry program that have not been certified on July 1, 2015, are deemed denied.

General Production Queue

The bill amends several of the additional tax credit bonuses. The bill:

- Amends an existing tax credit bonus for "underutilized counties" to require that 70 days (up from 67 days) of principal photography must occur in the county to receive the bonus.
- Repeals the tax credit bonus for "underutilized regions" and related definitions.
- Repeals the tax credit bonus for "off-season" productions and related definitions.
- Repeals the tax credit bonus for productions that occur at certain production facilities and related definitions.
- Creates a tax credit bonus of 5 percent for productions that complete a permanent capital investment of at least \$2 million before the completion of the qualified production. The capital investment may be the basis of an application only once.
- Expands the 15 percent tax credit bonus currently provided to productions that employ students enrolled in certain film and entertainment-related or digital media-related studies to also include: individuals participating in the Road to Independence Program and individuals with developmental disabilities and veterans that reside in the state.

The bill reduces the total tax credits a qualified production in the General Production queue is eligible for from 30 to 25 percent of qualified expenses.

Commercial and Music Video Queue

Currently, production companies that produce national or regional commercials or music videos may be eligible for a tax credit award if it demonstrates a minimum of \$100,000 of qualified expenditures for each commercial or music video. The bill reduces the expenditure level for a music video to \$25,000.

The bill makes clarifying changes to the tax credit carry forward process, at the suggestion of the Department of Revenue¹¹⁶ and extends the program until July 1, 2021.

Florida Entertainment Action Fund

Section 7 creates in s. 288.1256, F.S., the Entertainment Action Fund. The fund is created to respond to extraordinary opportunities, to compete effectively with other states to attract and retain production companies, and to provide favorable conditions for the growth of the entertainment industry in this state.

The Entertainment Action Fund will function similarly to other state economic development programs. A production company may apply for funds from the fund and the Division of Film and Entertainment, along with the DEO, will review and evaluate applications to determine eligibility.

In their review and evaluation of applications, the division and the DEO must consider the following criteria, with priority given in descending order:

- The number of state residents that will be employed in full-time and part-time positions related to the project, the duration of employment, and the average wages paid;
- The amount of qualified and nonqualified expenditures that will be made in-state;
- Planned or executed contracts with facilities in Florida, and the percentage of principal photography or production activity that will occur at in-state facilities or locations;
- Preproduction and postproduction planned to occur in-state;
- The amount of direct capital investment, especially fixed capital investment, to be made by the production company in this state related to the project and the amount of other capital investment made in-state related to the project;
- The duration of the project in this state, including any production occurring in the off-season;
- The amount and duration of principal photography or production activity that will occur in an underutilized county;
- The amount of promotion of Florida that the production company will provide for the state;
- The employment of full-time students in entertainment-related courses of study and recent graduates from in-state institutions of higher education;
- Any plans the production company has to work with entertainment-related courses of study at an in-state institution of higher education;
- Any local support and financial commitment for the project;
- The project is about this state or shows the state in a positive light;
- A review of the production company's past activities in this or other states;
- The length of time, number, and history of commitment the production company has made in the state;
- Expected contributions to the state's economy; and
- The expected effect of the award on the viability of the project and the probability that the project will occur in Florida if funds are granted.

¹¹⁶ Florida Department of Revenue, *2014 Legislative Bill Analysis SB 1734* (April 22, 2014) available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=4671> (last visited Mar 3, 2015).

A production company must have financing in place for a project before it applies to receive an award from the fund. The DEO must prescribe an application form with information required by similar economic development programs. Any awards funded may not be more than 30 percent of in-state qualified expenditures, and may not fund wages paid to nonresidents.

The approval process is required to be conducted as follows:

- The DEO makes a project recommendation to the Governor within one week after the review and evaluation of an application.
- The recommendation must include the performance conditions that the project must meet to obtain funds.
- The Governor may approve projects:
 - Requiring funding less than \$2 million in funding without consulting the Legislature; and
 - Requiring funding between \$2 million and \$5 million, after providing a written description and evaluation of a project recommended for approval to the chair and vice chair of the Legislative Budget Commission (LBC) at least 10 days before giving final approval. If the chair or vice chair of the LBC or the President of the Senate or the Speaker of the House of Representatives object, the Governor must void the release of funds until the LBC or Legislature addresses the issue.
- Projects requiring funding exceeding \$5 million must be approved by the LBC.
- Production must start within 1 year after the date a project is approved.

Once a project has been approved, the DEO and the production company will enter into an agreement that specifies at minimum:

- The total funds awarded and schedule of payment;
- The performance conditions required for payment of funds awarded;
- The methodology for validating the performance conditions and the date by which a production company must submit proof of performance to the DEO;
- That the DEO may review and verify any records of the production company to determine compliance with the agreement;
- Sanctions for failure to meet performance conditions; and
- That the payment of fund awards is contingent upon an appropriation by the Legislature.

The agreement must be signed and finalized within 90 days of the Governor's approval.

The DEO may not approve awards exceeding the amount appropriated in a fiscal year. The department must set aside 50 percent of the appropriated amount each fiscal year, which becomes available to be awarded after 6 months.

Section 1 amends s. 288.1201, F.S., to create the Entertainment Industry Quick Action Account in the State Economic Enhancement and Development Trust Fund to make for payments authorized under the Entertainment Industry Quick Action Fund. In addition, all repayments are deposited into the Entertainment Industry Quick Action Account.

The bill creates a penalty for fraudulent claims. The penalty is a reimbursement for any payment amounts plus an amount double the payment amount.

The DEO may not waive any provision or provide any extension of time to meet requirements, of the new Entertainment Action Fund statute.

The Entertainment Industry Quick Action Fund expires on July 1, 2025.

Sales Tax Exemption Certificate for a Qualified Production Company

Present Situation

Entertainment industry qualified production companies are eligible for several exemptions from taxes under ch. 212, F.S. A qualified production company can obtain a certificate to avoid paying tax at the point of sale, rather than claiming a refund after paying the tax.¹¹⁷ Qualified production companies are exempt from paying sales tax for the following:

- *Lease or rental of real property* that is used as an integral part of an activity or service performed directly in connection with the production of a qualified motion picture (the term “activity or service” includes photography, casting, location scouting, and designing sets).¹¹⁸
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.¹¹⁹
- *Purchase or lease of motion picture and video equipment and sound recording equipment* used in Florida for motion picture or television production or for the production of master tapes or master records.¹²⁰
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*¹²¹

The OFE reviews and approves applications for the exemptions, while the DOR issues certificates of exemption to the production companies. The estimated cost of these exemptions was \$51.1 million for Fiscal Year 2014-2015.¹²²

Effect of Proposed Changes

Section 30 clarifies that a production can receive a sales tax exemption certificate for purchases made *after* filing a complete application.

The bill clarifies a portion of the certificate application process, including that:

- A production company may annually renew the 1-year certificate for up to 5 years without submitting a new application;
- A production company may quarterly renew the 90-day certificate for up to 1 year without submitting a new application;

Upon surrender or expiration of a tax certificate, a production company must report additional production-related information for inclusion in the DEO’s annual report.

¹¹⁷ Section 288.1258, F.S. See also DOR, Film in Florida Sales Tax Exemption, available at http://dor.myflorida.com/dor/taxes/film_in_florida.html (last visited Mar. 3, 2015).

¹¹⁸ Section 212.031(1)(a)9., F.S.

¹¹⁹ Section 212.06(1)(b), F.S. The term “qualified motion picture” is defined in the statute.

¹²⁰ Section 212.08(5)(f), F.S.

¹²¹ Section 212.08(12), F.S.

¹²² Florida Revenue Estimating Conference, 2015 Florida Tax Handbook.

Limitation

A production company is prohibited from receiving benefits from more than one entertainment industry incentive program at a time (the tax credit, sales tax exemption, or entertainment action fund).

Enterprise Zones

Present Situation

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, of which 29 are rural and 36 are urban.¹²³

Local governments are responsible for zone administration and monitoring activities, creating enterprise zone development agencies, and employing zone coordinators. Zone coordinators serve as local contacts and assist businesses applying for state tax credits and refunds, certify incentive applications to the Department of Revenue (DOR), educate the public about the program, and submit data on zone activities to the DEO for inclusion in the enterprise zone annual report. The DEO oversees the program at the state level and approves zone designation applications and zone boundary changes. The DEO also provides technical support to local zone coordinators and submits annual program reports to the Governor and Legislature.¹²⁴

As outlined in s. 290.0056, F.S., each enterprise zone must have an Enterprise Zone Development Agency, which 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;
- Working with nonprofit development organizations; and
- Ensuring the enterprise zone coordinator receives annual training and works with Enterprise Florida, Inc.

Available Incentives

Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities.¹²⁵ The DEO reported that \$15.8 million in state incentives were approved by the Department of Revenue (DOR) during the period of July 1, 2014 through June 30, 2014, for all state enterprise zones. During that same time period, \$11 million in incentives were provided by local governing bodies. Examples of local incentives include: utility tax abatement, reduction

¹²³ The Florida Legislature, OPPAGA, *OPPAGA Research Memorandum – Florida's Enterprise Zone Program* (January 5, 2015)

¹²⁴ *Id.*

¹²⁵ Section 290.007, F.S.

of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.¹²⁶

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 paid¹²⁷
- Business Equipment Used in Enterprise Zones: Provides a refund for sales taxes paid on the purchase of certain equipment, up to \$5,000 or 97 percent of the tax paid¹²⁸
- 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 county¹²⁹
- 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 zone¹³⁰
- 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 years¹³¹
- Community Contribution Tax Credit: Provides a 50 percent sales tax refund for donations made to local community development projects¹³²
- Electrical Energy Used in an Enterprise Zone: Provides a 50 percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy¹³³

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 county¹³⁴
- 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 zone¹³⁵
- 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 property¹³⁶

¹²⁶ DEO, Florida Enterprise Zone Program Annual Report, November 1, 2014, available at http://www.floridajobs.org/docs/default-source/reports-and-legislation/2014_floridaenterprisezoneprogramannualreport.pdf?sfvrsn=2

(last visited April 23, 2015).

¹²⁷ Section 9 of ch. 2010-147, L.O.F., removed the eligibility of condominium parcels or property, as defined in s. 718.103, F.S., for the sales tax exemption for building materials, pursuant to s. 212.08(5)(g), F.S.

¹²⁸ Section 212.08(5)(h), F.S.

¹²⁹ Section 212.096, F.S.

¹³⁰ Id.

¹³¹ *Supra*, note 3.

¹³² Section 212.08(5)(p), F.S.

¹³³ Section 212.08(15), F.S.

¹³⁴ Section 220.181, F.S.

¹³⁵ Id.

¹³⁶ Section 220.182, F.S.

- 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.¹³⁷

The Enterprise Zone Program is scheduled to sunset on December 31, 2015.

Effect of Proposed Changes

Section 53 of the bill of the bill creates an unnumbered section of law which preserves state incentives for certain businesses with incentive agreements with the state that are currently located within enterprise zones. The bill defines the term “eligible business” to mean a business that entered into a contract with the DEO between January 1, 2013, and December 31, 2015, for a project that is located in an enterprise zone¹³⁸ under the following programs:

- The Local Government Distressed Area Matching Grant Program.¹³⁹
- The Qualified Defense Contractor and Space Flight Business Tax Refund Program.¹⁴⁰
- The Qualified Target Industry (QTI) Business Tax Refund Program.¹⁴¹
- The Brownfield Redevelopment Bonus Refund Program.¹⁴²
- The High-Impact Business Performance (HIPI) Grant Program.¹⁴³
- The Quick Action Closing Fund (QAC) Program.¹⁴⁴
- The Innovation Incentive Program (IIP).¹⁴⁵

The bill provides that an eligible business may apply for the following incentives, if the contract with the DEO is still deemed active by the department and has not expired or terminated:

- Exemption for a Licensed Child Care Facility operating in an Enterprise Zone.
- Sales Tax Refund for Building Materials.
- Sales Tax Refund for Business Machinery and Equipment.
- Sales Tax Exemption for Electrical Energy.
- Enterprise Zone Jobs Tax Credit (Sales & Use Tax).
- Enterprise Zone Jobs Tax Credit (Corporate Income Tax).
- Enterprise Zone Property Tax Credit (Corporate Income Tax).

Since July 1, 2012, a total of 40 economic development incentives have been approved by the DEO for 39 projects located in enterprise zones.¹⁴⁶

This section of law is effective January 1, 2016, and expires on December 31, 2018.

¹³⁷ See ss. 220.183 and 624.5105, F.S.

¹³⁸ Enterprise zone as designated pursuant to s. 290.0065, Florida Statutes 2014, on December 31, 2015.

¹³⁹ Section 288.0659, Florida Statutes.

¹⁴⁰ Section 288.1045, Florida Statutes.

¹⁴¹ Section 288.106, Florida Statutes.

¹⁴² Section 288.107, Florida Statutes.

¹⁴³ Section 288.108, Florida Statutes.

¹⁴⁴ Section 288.1088, Florida Statutes.

¹⁴⁵ Section 288.1089, Florida Statutes.

¹⁴⁶ See copy of email from the DEO Office of Strategic Business Development to Senate staff dated April 17, 2015. On file in the Senate Appropriations Subcommittee on Transportation, Tourism and Economic Development.

HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

Community Redevelopment Act

Present Situation

The Community Redevelopment Act of 1969,¹⁴⁷ authorizes a county or municipality to create community redevelopment areas (CRAs) as a means of redeveloping slums and blighted areas. In accordance with a community redevelopment plan,¹⁴⁸ CRAs can:

- Enter into contracts,
- Disseminate information,
- Acquire property within a slum or blighted area by voluntary methods,
- Demolish and remove buildings and improvements,
- Construct improvements, and
- Dispose of property at fair value.¹⁴⁹

CRAs are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund that is funded through tax increment financing (TIF).¹⁵⁰ Taxing authorities must annually appropriate an amount representing the calculated increment revenue to the redevelopment trust fund. This revenue is used to repay bonds issued to finance redevelopment projects. School district revenues are not subject to the tax increment mechanism.

Counties and municipalities are prohibited from exercising the community redevelopment authority provided by the Community Redevelopment Act until they adopt an ordinance that declares an area to be a slum or a blighted area.¹⁵¹

A “blighted area” is defined as an area in which there are a substantial number of deteriorated or deteriorating structures in which conditions are leading to economic distress or endangering life or property, as indicated by government-maintained statistics or other studies, and in which two

¹⁴⁷ Chapter 163, F.S., part III.

¹⁴⁸ Section 163.360, F.S.

¹⁴⁹ Section 163.370, F.S.

¹⁵⁰ Through tax increment financing, a baseline tax amount is determined and any taxes generated in future years above that baseline amount are transferred into the trust fund. *See* Section 163.387(1)(a), F.S.

¹⁵¹ Sections 163.355(1) and 163.360(1), F.S.

or more of the 14 statutorily enumerated factors are present.¹⁵² Examples of these factors include:

- Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
- Unsanitary or unsafe conditions;
- Incidence of crime in the area higher than in the remainder of the county or municipality;
- Governmentally owned property with adverse environmental conditions caused by a public or private entity; and
- A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality.

The term “blighted area” also means any area in which at least one of the 14 factors is present and all taxing authorities agree, either by inter-local agreement or agreements with the agency or by resolution, that the area is blighted.¹⁵³

Sinkholes

A sinkhole has been defined as “a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. A sinkhole forms by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved.”¹⁵⁴ Sinkholes are a common feature in Florida’s landscape, due to erosional processes associated with the chemical weathering and dissolution of carbonate rocks.¹⁵⁵ Over geologic periods of time, persistent erosion created extensive underground voids and drainage systems throughout Florida.¹⁵⁶ A sinkhole forms when sediments overlying such a void collapse. Because “groundwater that feeds springs is recharged . . . through direct conduits such as sinkholes,” the Florida Legislature has expressed a desire to promote good stewardship, effective planning strategies, and best management practices with respect to sinkholes and the springs they recharge, which may be “threatened by actual and potential flow reductions and declining water quality.”¹⁵⁷

The two most commonly recommended stabilization techniques for sinkholes are grouting and underpinning.¹⁵⁸ Under the grouting procedure, a grout mixture (either cement-based or a chemical resin that expands into foam) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by increasing the density of the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling.¹⁵⁹ Underpinning consists of steel piers drilled or pushed into the ground to stabilize the building’s foundation.¹⁶⁰ One end of the steel pipe connects to the foundation of the structure with the other

¹⁵² Section 163.340(8), F.S.

¹⁵³ *Id.*

¹⁵⁴ Section 627.706(2)(h), F.S.

¹⁵⁵ Such as limestone and dolomite. See, Florida Dep’t of Environmental Protection, *Sinkholes*, available at <http://www.dep.state.fl.us/geology/geologictopics/sinkhole.htm> (last visited Feb. 6, 2015).

¹⁵⁶ *Id.*

¹⁵⁷ Section 369.315, F.S.

¹⁵⁸ Citizens Property Insurance Corporation, *Sinkhole Repairs: Underpinning and Grouting*, (Oct. 30, 2012) available at <https://www.citizensfla.com/shared/sinkhole/documents/GroutVersusUnderpinning.pdf> (last visited on Mar. 24, 2015).

¹⁵⁹ See *id.*

¹⁶⁰ See *id.*

end resting on solid limestone. Underpinning repairs, when performed, are usually combined with grouting.

Effect of Proposed Changes

Section 1 of the bill amends s 163.340, F.S., to add certain sinkhole activity to the list of factors that define a “blighted area.” Specifically, the definition is expanded to account for land that has a “substantial number or percentage of properties” that have been damaged by sinkhole activity and have not been adequately repaired or stabilized. The bill would enable a CRA focused on redeveloping land with properties damaged by sinkholes to establish a community redevelopment trust fund that is funded through tax increment financing. **Section 2** amends s. 163.524, F.S., to conform a cross-reference.

Housing for the Individuals with Lower Incomes

In 1986¹⁶¹ the Legislature found that:

- Decent, safe, and sanitary housing for individuals of very low income, low income, and moderate income is a critical need in the state;
- New and rehabilitated housing must be provided at a cost affordable to such persons in order to alleviate this critical need;
- Special programs are needed to stimulate private enterprise to build and rehabilitate housing in order to help eradicate slum conditions and provide housing for very-low-income persons, low-income persons, and moderate-income persons as a matter of public purpose; and
- Public-private partnerships are an essential means of bringing together resources to provide affordable housing.¹⁶²

As a result of these findings, the Legislature determined that legislation was urgently needed to alleviate crucial problems related to housing shortages for individuals with very low,¹⁶³ low¹⁶⁴ and moderate¹⁶⁵ incomes. In 1986, part VI of ch. 420, F.S., was titled as the “Florida Affordable Care Act of 1986”¹⁶⁶ and programs and funding mechanisms were created over the years to help remedy low income housing issues.

¹⁶¹ Chapter 86-192, Laws of Fla.

¹⁶² Section 420.6015, F.S.

¹⁶³ “Very-low-income persons” means one or more persons or a family, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the person or family resides, whichever is greater.

¹⁶⁴ “Low-income persons” means one or more persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the person or family resides, whichever is greater.

¹⁶⁵ “Moderate-income persons” means one or more persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the household is located, whichever is greater.

¹⁶⁶ Chapter 86-192, Laws of Fla. Part VI was subsequently renamed the “Affordable Housing Planning and Community Assistance Act.” Chapter 92-317, Laws of Fla.

State Apartment Incentive Loan (SAIL) Program

Present Situation

The SAIL program was created by the Legislature in 1988¹⁶⁷ for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.¹⁶⁸

The SAIL program provides low-interest loans on a competitive basis to affordable housing developers each year. This funding often serves to bridge the gap between the development’s primary financing and the total cost of the development and is available to individuals, public entities, not-for-profit or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families.¹⁶⁹

SAIL program funds must be distributed in a manner that meets the need and demand for very low-income housing throughout the state. The need and demand must be determined by using the most recent statewide low income rental housing market studies available. SAIL program funding is reserved for use within statutorily defined counties (large, medium, and small)¹⁷⁰ and for properties providing units for specified tenant groups. The University of Florida’s Shimberg Center for Housing Studies prepares the rental housing market study for the Florida Finance Housing Corporation (FHFC).¹⁷¹ Below is a comparison of the actual need based on the 2013 Rental Market Study compared to the current statutory reservation requirements for the specified tenant groups.

Specified Tenant Group	Actual Percentage of Total Households in Need	Current Statutory Reservation Requirements
Commercial fishing workers and farmworker households	4 percent	Not less than 10 percent
Persons who are homeless	10 percent	Not less than 5 percent
Persons with special needs	13 percent	Not more than 10 percent
Elder persons	20 percent	Not less than 10 percent
Families	53 percent	Not less than 10 percent

During the first 6 months of loan or loan guarantee availability, SAIL program funds are required to be reserved for use by sponsors who provide the required housing set-aside for specified tenant groups. Under current law, the statutory requirement to reserve funds for the commercial fishing worker and farmworker household tenant group significantly exceeds the actual housing need for this group. The current statutory “cap” on the reservation for the persons with special

¹⁶⁷ Chapter 88-376, Laws of Florida.

¹⁶⁸ Section 420.5087, F.S.

¹⁶⁹ Florida Housing Finance Corporation, *State Apartment Incentive Loan Program*, available at: http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0173. (last visited Mar. 10, 2015).

¹⁷⁰ Section 420.5087(1), F.S., provides that funds must be allocated to the following categories of counties: counties that have a population of 845,000 or more (“large”); counties that have a population of more than 100,000 but less than 825,000 (“medium”); and counties that have a population of 100,000 or less (“small”).

¹⁷¹ Shimberg Center for Housing Studies, University of Florida, *2013 Rental Market Study: Affordable Rental Housing Needs*, April 7, 2013.

needs (no more than 10 percent) does not allow the program to address the actual housing need for this group (13 percent) during the first 6 months of loan or loan guarantee availability.

Funding for the SAIL Program is subject to an annual appropriation.¹⁷²

Effect of Proposed Changes

Section 41 amends s. 420.5087, F.S., relating to the SAIL Program, to change the reservation requirements for three of the five tenant groups. The set-aside for the persons who are homeless tenant group is increased from not less than 5 percent to at least 10 percent. The cap of “may not be more than 10 percent” for the persons with special needs tenant group is replaced with at least 10 percent. The bill requires that at least 10 percent of SAIL Program funds available must be reserved for four of the five tenant groups. At least five percent of available SAIL Program funds must be reserved for the commercial fishing workers and farmworkers tenant group.

Affordable Housing in the Florida Keys

Present Situation

Currently, there is not a low interest loan program for qualified developers who provide affordable rental and home ownership opportunities for essential services personnel in the Florida Keys.

Section 420.507, F.S., delineates the powers of the Florida Housing Finance Corporation, which include adopting rules to prescribe a priority to fund affordable housing projects in the Florida Keys and City of Key West areas of critical state concern.

Proposed Changes

Section 42 creates s. 420.57, F.S., to provide incentives and authorize a process for providing affordable rental opportunities for essential services personnel in the Florida Keys who are affected by the area’s uniquely high housing costs.

As used in the section, the bill provides definitions for the following terms: “corporation,” “essential services personnel,” “Florida Keys” or “Keys,” “project,” and “workforce housing.” “Essential services personnel” mean persons in need of affordable housing who are considered essential services personnel as defined by Monroe County in its local housing assistance plan pursuant to s. 420.9075(3)(a), F.S.

“Workforce housing” means multifamily rental housing affordable to persons or households whose income does not exceed 140 percent of the area median income (AMI) for Monroe County established by the United States Department of Housing and Urban Development.

The bill authorizes the Florida Housing Finance Corporation (FHFC or corporation) to provide low-interest loans for the construction or rehabilitation of workforce housing in the Florida Keys Area of Critical State Concern, provided that the loans:

¹⁷² Section 420.5087, F.S.

- Do not exceed the lesser of 50 percent of development costs as defined in s. 420.503(13), F.S., or the minimum amount required to make the project economically feasible; and
- Bear interest rates of 1 to 3 percent, where long-term affordability is provided and guaranteed for units set aside for workforce housing for essential services personnel.

The FHFC shall select projects for funding by competitive solicitation as provided in s. 420.507(48), F.S., including consideration of factors contained in s. 420.5087, F.S.

All eligible applications must demonstrate the following:

- Rents for all workforce housing serving those with incomes at or below 140 percent of AMI at the appropriate income level using the restricted rents for the federal income low-income housing tax credit program. Such residences may not be used for transient occupancy, tourist housing, or vacation rentals.
- The applicant proves it has site control of the proposed project site or sites and provides evidence that infrastructure sufficient to support the project is in place at the time of application.

The bill requires that priority consideration for funding must be given to projects that meet certain criteria related to meeting workforce housing needs and objectives, funding and financial feasibility, developer experience and ability, local government support, and design features that enhance efficiency and reduce long-term costs.

The bill gives the FHFC the authority to adopt rules necessary to implement the program and the corporation may use up to 2 percent of any funds appropriated for costs of administration.

State Office on Homelessness

Present Situation

In 2001, the Florida Legislature created the State Office on Homelessness (office) within the DCF to serve as a central point of contact within state government on homelessness. The office is responsible for coordinating resources and programs across all levels of government, and with private providers that serve the homeless. It also manages targeted state grants to support the implementation of local homeless service continuum of care plans.¹⁷³

Council on Homelessness

The inter-agency Council on Homelessness (council) was also created in 2001. The 17-member council is charged with developing recommendations on how to reduce homelessness statewide and advising the State Office on Homelessness.¹⁷⁴

Local Coalitions for the Homeless

The DCF is required to establish local coalitions to plan, network, coordinate, and monitor the delivery of services to the homeless.¹⁷⁵ Groups and organizations provided the opportunity to

¹⁷³ Section 420.622(1), F.S.

¹⁷⁴ *Id.*

¹⁷⁵ Section 420.623, F.S.

participate in such coalitions include: organizations and agencies providing mental health and substance abuse services; county health departments and community health centers; organizations and agencies providing food, shelter, or other services targeted to the homeless; local law enforcement agencies; regional workforce boards; county and municipal governments; local public housing authorities; local school districts; local organizations and agencies serving specific subgroups of the homeless population such as veterans, victims of domestic violence, persons with HIV/AIDS, runaway youth; and local community-based care alliances.¹⁷⁶

“Challenge Grants”

The office is authorized to accept and administer moneys appropriated to it to provide “Challenge Grants” annually to designated lead agencies of homeless assistance continuums of care.¹⁷⁷ The office may award grants in an amount of up to \$500,000 per lead agency.¹⁷⁸ A lead agency may spend a maximum of eight percent of its funding on administrative costs. To qualify for the grant, a lead agency must develop and implement a local homeless assistance continuum of care plan for its designated area.¹⁷⁹

Pursuant to s. 420.624, F.S., the DCF provides funding for local homeless assistance continuum of care, which is a framework for providing an array of emergency, transitional, and permanent housing and services to address the various needs of homeless persons and persons at risk of becoming homeless. There is no statutorily identified funding source for this program.¹⁸⁰

Pursuant to s. 420.606(3), F.S., the DEO provides training and technical assistance to staff of state and local government entities, community-based organizations, and persons forming such organizations for the purpose of developing new housing and rehabilitating existing housing that is affordable for very-low-income persons, low-income persons, and moderate-income persons. There is no statutorily identified funding source for this program.¹⁸¹

Homeless Housing Assistance Grants

The office is authorized to accept and administer moneys appropriated to it to provide Homeless Housing Assistance Grants annually to lead agencies of local homeless assistance continuum of care. The grants may not exceed \$750,000 per project and an applicant may spend a maximum of five percent of its funding on administrative costs. The grant funds must be used to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons. The funds available for the eligible grant activities may be appropriated, received from donations, gifts, or from any public or private source.¹⁸²

¹⁷⁶ *Id.*

¹⁷⁷ “Section 420.621(1), F.S., defines “Continuum of Care” to mean the community components needed to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximum self-sufficiency. It includes action steps to end homelessness and prevent a return to homelessness.”

¹⁷⁸ Section 420.622, F.S.

¹⁷⁹ *Id.*

¹⁸⁰ Department of Economic Opportunity, *House Bill 379 Analysis*, (January 22, 2015.)

¹⁸¹ *Id.*

¹⁸² *Id.*

Effect of Proposed Changes

Section 43 amends s. 420.622, F.S., relating to the State Office on Homelessness (office) and the Council on Homelessness (council), to:

- Require the office, in coordination with other entities, to produce an inventory of state homeless programs instead of the currently required program and financial plan.
- Require the office to establish a task force to make recommendations related to the implementation of a statewide HMIS. The task force must make its recommendations to the council by December 31, 2015.
- Require, rather than allow, the office and the council to accept and administer moneys appropriated for annual “Challenge Grants.”
- Remove the requirement that award levels for “Challenge Grants” be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the catchment planning areas.
- Provide requirements related to expenditures of leveraged funds or resources. They may only be used for eligible activities committed on one project which have not been used as leverage or match for any other project.
- Require the office, in conjunction with the council, to establish performance measures and specific objectives to evaluate the performance and outcomes of lead agencies that receive grant funds.
- Require any funding distributed to the lead agencies be based on overall performance and achievement of specified objectives, including the number of persons or households that are no longer homeless, the rate of recidivism to homelessness, and the number of persons who obtain gainful employment.

Continuum of Care

Present Situation

The local coalition serves as the lead agency for the local homeless assistance continuum of care (CoC).¹⁸³ A local CoC is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of the homeless and those at risk of homelessness.¹⁸⁴ The purpose of a CoC is to help communities or regions envision, plan, and implement comprehensive and long-term solutions.¹⁸⁵

The department interacts with the state’s 28 CoCs through the office, which serves as the state’s central point of contact on homelessness. The office has designated local entities to serve as lead agencies for local planning efforts to create homeless assistance CoC systems. The office has made these designations in consultation with the local homeless coalitions and the Florida offices of the federal Department of Housing and Urban Development (HUD).

The CoC planning effort is an ongoing process that addresses all subpopulations of the homeless. The development of a local CoC plan is a prerequisite to applying for federal housing grants

¹⁸³ *Id.*

¹⁸⁴ Section 420.624, F.S.

¹⁸⁵ *Id.*

through HUD. The plan also makes the community eligible to compete for the state's Challenge Grant and Homeless Housing Assistance Grant.¹⁸⁶

Effect of Proposed Changes

Section 44 amends s. 420.624, F.S., relating to the local homeless assistance continuum of care, to require the office and the council to include a methodology for assessing performance and outcomes and data reporting in the plan that communities seeking to implement a local homeless assistance continuum of care are encouraged to develop. The bill also requires Rapid ReHousing to be added to the components of a continuum of care plan.

Rapid Re-Housing

Present Situation

Rapid re-housing is a model for providing housing for individuals and families who are homeless. The model places a priority on moving a family or individual experiencing homelessness into permanent housing as quickly as possible, hopefully within 30 days of a client becoming homeless and entering a program. While originally focused primarily on people experiencing homelessness due to short-term financial crises, programs across the country have begun to assist individuals and families who are traditionally perceived as more difficult to serve. This includes people with limited or no income, survivors of domestic violence, and those with substance abuse issues. Although the duration of financial assistance may vary, many programs find that, on average, four to six months of financial assistance is sufficient to stably re-house a household.¹⁸⁷

Since federal funding for rapid re-housing first became available in 2008, a number of communities, including Palm Beach County, Florida, that prioritized rapid re-housing as a response to homelessness have seen decreases in the amount of time that households spend homeless, less recidivism, and improved permanent housing outcomes relative to other available interventions.¹⁸⁸

There are three core components of rapid re-housing: housing identification, rent and move-in assistance (financial), and rapid re-housing case management and services. While all three components are present and available in effective rapid re-housing programs, there are instances where the components are provided by different entities or agencies, or where a household does not utilize all three.¹⁸⁹ A key element of rapid re-housing is the "Housing First" philosophy, which offers housing without preconditions such as employment, income, lack of a criminal

¹⁸⁶ Florida Department of Children and Families, *Lead Agencies*, available at: <http://www.myflfamilies.com/service-programs/homelessness/lead-agencies>. (last visited Mar. 16, 2015).

¹⁸⁷ National Alliance to End Homelessness, *Rapid Re-Housing: A History and Core Components*, (2014), available at: <http://www.endhomelessness.org/library/entry/rapid-re-housing-a-history-and-core-components> (last visited Mar. 11, 2015).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

background, or sobriety. If issues such as these need to be addressed, the household can address them most effectively once they are in housing.¹⁹⁰

Effect of Proposed Changes

Section 45 creates s. 420.6265, F.S., relating to Rapid ReHousing, to express legislative intent to encourage homeless continuums of care to adopt the Rapid ReHousing approach to preventing homelessness for individuals and families who do not require the intense level of supports provided in the Permanent Supportive Housing model.¹⁹¹ The bill also statutorily prescribes the Rapid Rehousing Methodology.

State Housing Initiatives Partnership (SHIP) Program

Present Situation

The State Housing Initiatives Partnership (SHIP) Program, was created in 1992¹⁹² to provide funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The program was designed to serve very low, low and moderate income families and is administered by the Florida Housing Finance Corporation (corporation). A dedicated funding source for this program was established by the passage of the 1992 William E. Sadowski Affordable Housing Act. The SHIP Program is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund. Subject to specific appropriation, funds are distributed quarterly to local governments participating in the program under an established formula.¹⁹³

Effect of Proposed Changes

Section 46 amends s. 420.9071(26), F.S., relating to the definition of “rent subsidies”, to allow initial assistance for tenants, such as grants or loans for security and utility deposits.

Section 47 amends s. 420.9072, F.S., relating to the SHIP Program, to provide that counties or eligible municipalities may not spend its portion of the local housing distribution to provide ongoing rent subsidies with the exception of:

- Security and utility deposit assistance.
- Eviction prevention not to exceed rent for 6 months.
- A rent subsidy program for very low income households that meet specified qualifications.

¹⁹⁰ The Florida Legislature expressed the intent to encourage homeless continuums of care to adopt the Housing First approach to ending homelessness for individuals and families in 2009. See s. 420.6275, F.S.

¹⁹¹ Permanent Supportive Housing is for individuals who need long-term housing assistance with supportive services in order to stay housed. Individuals and families living in supportive housing often have long histories of homelessness and face persistent obstacles to maintaining housing, such as a serious mental illness, a substance use disorder, or a chronic medical problem. Many supportive housing tenants face more than one of these serious conditions. See United States Interagency Council on Homelessness, *Permanent Supportive Housing*, available at http://usich.gov/usich_resources/solutions/explore/permanent_supportive_housing/. (last visited Mar 11, 2015).

¹⁹² Chapter 92-317, Laws of Fla.

¹⁹³ Section 420.9073, F.S.

Section 48 amends s. 420.9073, F.S., relating to local housing distributions, to distribute four percent of the total amount appropriated to the FHFC for the SHIP Program from the Local Government Housing Trust Fund as follows:

- Ninety-five percent of the four percent is to be provided to the DCF to provide operating and other support to the designated lead agency in each continuum of care; and
- Five percent of the four percent is to be provided to the DEO to provide training and technical assistance to lead agencies that received funding from DCF. The training and technical assistance must be provided by a nonprofit entity that meets the specific requirements.

Section 49 amends s. 420.9075, F.S., relating to local housing assistance plans and partnerships, to:

- Add “Lead agencies of local homeless assistance continuums of care” as part of the partnership process to participate in the SHIP Program.
- Add language to encourage eligible municipalities to develop a strategy for providing program funds to reduce homelessness.
- Provide that up to 25 percent of the SHIP Program funds made available in a county or municipality may be reserved for rental housing.
- Require a county or eligible municipality to include a description of efforts to reduce homelessness in the annual report that must be submitted to the FHFC.

National Housing Trust Fund

Present Situation

In July 2008, the Housing and Economic Recovery Act was signed into law,¹⁹⁴ establishing a National Housing Trust Fund (NHTF or trust fund), among other housing-related provisions. Although the National Housing Trust Fund has been established, a permanent funding stream has not been secured.¹⁹⁵

The goal of the trust fund is to provide ongoing, permanent, dedicated, and sufficient sources of revenue to build, rehabilitate, and preserve 1.5 million units of housing for the lowest-income families, including people experiencing homelessness, over the next 10 years. The NHTF particularly aims to increase and preserve the supply of rental housing that is affordable for extremely¹⁹⁶ and very low-income households, and increase homeownership opportunities for those households. To prevent funding for the NHTF from competing with existing U.S. Department of Housing and Urban Development programs, this revenue is expected to be generated separately from the current appropriations process.¹⁹⁷

¹⁹⁴ Public Law 110-289.

¹⁹⁵ The National Alliance to End Homelessness. *National Housing Trust Fund*, available at: http://www.endhomelessness.org/pages/national_housing_trust_fund. (last visited Mar. 15, 2015).

¹⁹⁶ “Extremely-low-income persons” means one or more persons or a family, the total annual adjusted gross household income of which does not exceed 30 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the person or family resides, whichever is greater.

¹⁹⁷ The National Alliance to End Homelessness, *National Housing Trust Fund*, available at: http://www.endhomelessness.org/pages/national_housing_trust_fund. (last visited Mar. 15, 2015).

Effect of Proposed Changes

Section 50 creates s. 420.9089, F.S., relating to the National Housing Trust Fund (NHTF), to express legislative intent to encourage the state entity that administers funds from the NHTF to propose an allocation plan that includes strategies to reduce statewide homelessness.

OTHER ECONOMIC DEVELOPMENT PROVISIONS

Section 52 of the bill provides that effective July 1, 2015, the four sports development project applications that the DEO reviewed and recommended to the Legislature for approval pursuant to s. 288.11625, F.S., on January 23, 2015, are approved pursuant to s. 288.11625(4)(e), F.S. The DEO shall certify the applicants for sports development projects no later than August 15, 2015.

Section 53 of the bill provides nonrecurring appropriations of \$20 million from the State Economic Enhancement and Development Trust Fund and \$3.8 million from the Economic Development Trust Fund within the DEO to make payments during Fiscal Year 2015-2016 for economic development incentive programs. Claims for payment must be verified by an independent third-party auditor before payment can be made

Section 55 provides an effective date of July 1, 2015, except as otherwise expressly provided in the act.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The extension of the Qualified Defense Contractor and Space Flight tax refund program to allow the Department of Economic Opportunity (DEO) to certify applications through June 30, 2020, will have a negative impact to state revenues. Funds to make payments for this refund program are appropriated in the General Appropriations Act each year. The bill permits businesses located in enterprise zones that have active economic development contracts entered into between January 1, 2013, and December 31, 2015, to continue to apply for enterprise zone state tax programs and the child care facility

property tax exemption for three years. The Revenue Estimating Conference has not yet reviewed this provision.

B. Private Sector Impact:

The fiscal impact to the private sector is indeterminate.

C. Government Sector Impact:

CS/SB 1214 provides nonrecurring appropriations of \$20 million from the State Economic Enhancement and Development Trust Fund and \$3.8 million from the Economic Development Trust Fund within the DEO to make payments during Fiscal Year 2015-2016 for economic development incentive programs. SB 2500, 1st Engrossed, the Senate's General Appropriation Bill for Fiscal Year 2015-2015, includes an identical appropriation for this purpose (Specific Appropriation 2246).

The provisions of the bill that eliminate the practice of the DEO disbursing funds to Enterprise Florida, Inc. (EFI), upon execution of a Quick Action Closing Fund (QAC) contract or agreement will have a positive impact on state revenues and the state's economy as a whole. Currently, the return on investment (ROI) for a QAC project is calculated from the time that the DEO disburses an award to EFI for deposit into an escrow account. Because the ROI Model accounts for the time value of money, the return on investment will increase for projects when funds are no longer held in escrow. Additionally, using a "pay-as-you-go" approach for QAC projects will enable the state to use funds that would otherwise reside in an escrow account for other priorities each fiscal year.

The provisions of the bill that revise the Qualified Targeted Industry Business Tax Refund Program may increase state tax refunds awarded to businesses. Specifically these provisions permit businesses in brownfield or rural areas to receive 100 percent of the total tax refunds allowed if the local financial support is waived; and permit businesses to receive a prorated award if certain wage requirements are met. The impact is dependent on the use of these incentives and is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DEO is authorized to adopt rules to prescribe a form for applications for economic development and other changes made in s. 288.061, F.S.; and for the administration of the Quick Action Closing Fund Escrow Account.

The Florida Housing Finance Corporation is authorized to adopt rules to implement the affordable housing program for the Florida Keys Critical Area of State Concern that is created in the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.340, 163.524, 212.08, 212.20, 220.1899, 220.191, 288.0001, 288.005, 288.061, 288.095, 288.1045, 288.106, 288.107, 288.108, 288.1088, 288.1089, 288.1097, 288.11625, 288.11631, 288.1168, 288.1201, 288.125, 288.913 (288.1251), 288.914 (288.1252), 288.915 (288.1253), 288.1254, 288.1258, 288.901, 288.905, 288.92, 288.9622, 288.9624, 288.980, 288.9937, 420.5087, 420.622, 420.624, 420.9071, 420.9072, 420.9073, 420.9075, and 477.0135.

This bill creates the following sections of the Florida Statutes: 288.10881, 288.1256, 420.57, 420.6265, and 420.9089.

This bill repeals section 288.1169 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 21, 2015:

The committee substitute:

- Creates a cap (\$50 million) on the amount of funds that can be obligated for payment each fiscal year for specified economic development incentive programs, which may be waived in the General Appropriations Act (GAA).
- Requires the Department of Economic Opportunity (DEO) to annually provide the Legislature with the amount of estimated and scheduled payments for the upcoming fiscal year. The Legislature will use this information to appropriate in the GAA the amount estimated to be sufficient to satisfy scheduled payments in the upcoming fiscal year.
- Excludes state funded economic development transportation projects from the “economic benefits” calculation (return on investment or ROI).
- Provides that projects requiring Legislative Budget Commission (LBC) approval are deemed approved after submission after 30 days if the LBC does not meet and an objection is not made.
- Removes the \$20 million exemption for the 10-year contract duration limitation and provides that the limitation does not apply to the Innovation Incentive Program or the Capital Investment Tax Credit Program.
- Removes the Senate confirmation requirement for future EFI presidents.
- Requires that notice be provided to the Legislature for proposed amendments to executed economic development contracts as follows:
 - 3-day notification for any proposed amendment that reduces the ROI calculation by .050 or more or changes any performance conditions or other statutorily required criteria; and
 - 10-day notification and objection procedure for any proposed amendment if the ROI calculation is reduced to be below 4 to 1, or if already below 4 to 1, the ROI calculation is reduced by 0.50 or more.

- Provides a “floor” of 1.5 to 1 for ROI calculations involving corporate headquarter businesses.
- Removes provision that only allowed payments to be made to the applicant business.
- Creates the “Quick Action Closing Fund Escrow Account” at the State Board of Administration (SBA) for investment of funds held in Enterprise Florida, Inc.’s (EFI) escrow account as of June 30, 2015. Requires EFI to transfer all funds to the SBA no later than July 10, 2015.
- Provides a transparent process for making payments to businesses from SBA’s escrow account and provides for transfers of reverted funds and interest earnings to the State Economic Enhancement and Development (SEED) Trust Fund.
- Provides that interest earnings and funds reverted for terminated projects may be used to fund Enterprise Florida, Inc. (EFI) marketing activities, subject to specific appropriation.
- Expands the definition of “target industry business” to include certain businesses that offer baccalaureate or higher degrees in the health care field that Enterprise Florida, Inc., and the local government agree will benefit the local economy.
- Transfers the Office of Film and Entertainment from the DEO to Enterprise Florida, Inc., effective October 1, 2015.
- Revises the Entertainment Industry Program (tax credits) and creates a new Entertainment Action Fund, effective October 1, 2015.
- Permits businesses located in enterprise zones that have active economic development contracts entered into between January 1, 2013, and December 31, 2015, to continue to apply for enterprise zone state tax programs and the child care facility property tax exemption for three years, effective January 1, 2016.
- Approves the four sports development project applications submitted by the DEO on January 23, 2015.
- Amends the State Apartment Incentive Loan (SAIL) Program to change the reservation requirements for the specified tenant groups to reflect projected need.
- Creates a program to provide incentives and authorize a process to provide affordable rental opportunities for essential services personnel in the Florida Keys.
- Amends provisions related to the State Office on Homelessness and the Challenge Grant Program.
- Expresses legislative intent to encourage homeless continuums of care to adopt the Rapid ReHousing approach to prevent homelessness.
- Amends the State Housing Initiatives Partnership (SHIP) Program to provide exceptions to the limitations on using SHIP funds for rent subsidies and provides that up to 25 percent of available SHIP funds may be used by counties and eligible municipalities for rental housing.
- Appropriates nonrecurring funds from the State Economic Enhancement and Development Trust Fund (\$20 million) and the Economic Development Trust Fund (\$3.8 million) to the DEO to make payments for economic development incentive programs during Fiscal Year 2015-2016.
- Makes conforming and clarifying changes.

B. Amendments:

None.

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