HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7067 PCB EDTS 15-03 Economic Development

SPONSOR(S): Economic Affairs Committee, Economic Development & Tourism Subcommittee, La Rosa

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee	11 Y, 0 N	Collins	Duncan
1) Transportation & Economic Development Appropriations Subcommittee	11 Y, 2 N	Proctor	Davis
2) Economic Affairs Committee	12 Y, 4 N, As CS	Collins	Creamer

SUMMARY ANALYSIS

The bill contains provisions that modify the definitions, processes, and administration of economic development incentive tax refund and grant programs; assists small business development; encourages high-tech and second stage business development; modifies the New Markets Development Program to increase accountability; and creates a new state-administered enterprise zone certification program.

As it relates to economic development incentive programs, the bill:

- requires additional review and evaluation of a project following an incentive agreement amendment or modification and prohibits incentive agreements with terms longer than 10 years except under certain conditions;
- specifies that the average wage used to determine incentive eligibility is the average wage of the county or metropolitan area where the project is located;
- creates a new approval process for performance-based cash incentive programs;
- amends multiple incentive programs to standardize use of "rural areas of opportunity" to define rural areas;
- institutes an annual cap for economic development incentive programs of $60 million;
- creates new contract requirements for Quick Action Closing Fund projects;
- creates new incentive application submission and review requirements;
- reauthorizes the Qualified Defense Contractor and Space Flight Business Tax Refund program through June 30, 2017;
- repeals the International Game Fish Association World Center funding program; and
- increases reporting requirements within the Professional Golf Hall of Fame funding program.

The bill also:

- exempts certain new developments from having to comply with impact fee, concurrency, or proportionate share requirements for transportation impacts for three years;
- creates the Startup Florida Initiative directing EFI to foster and encourage high-tech startup and second stage business development;
- makes technical changes to the New Markets Development program, and requires that DEO submit an annual report on the program to the Legislature;
- makes changes to the Florida Development Finance Corporation (FDFC) relating to the need for FDFC to enter into interlocal agreements with public entities to fulfill its purposes, the FDFC's board of directors, and the FDFC's participation in the Property Assessed Clean Energy Program;
- extends and renews certain permit extensions previously authorized by the Legislature;
- creates a new state-administered enterprise zone certification program; and
- incorporates many of the recommendations contained in the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force final report.

See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

ECONOMIC DEVELOPMENT INCENTIVES

Enterprise Florida, Inc., (EFI) is the primary point of contact for businesses with relocation, expansion, or retention opportunities. As part of the early project development process, EFI sells the value of doing business in the state. When a business is contemplating an expansion or relocation, EFI evaluates the competitive nature of the project in order to determine if incentives are needed and, if so, the appropriate programs for the project. A strong commitment by the local community can also help define the level of commitment on behalf of the state.[1]

During the project evaluation process, the needs of the project are identified, and an incentive package is developed. It is during this stage that the Department of Economic Opportunity (DEO) analyzes the risk profile of the company involved, the particular project, and the recommended incentive package prepared by EFI to ensure it is in the best interest of the state. Once the incentive package is finalized, DEO and/or the other appropriate state bodies issue the formal approvals.[2]

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

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

Present Situation

Qualified Target Industry Tax Refund Program (QTI)

- QTI was established to serve to attract new high quality, high wage jobs for Floridians.[3]
- Tax refunds are made to qualifying, pre-approved businesses creating new jobs within Florida's target industries.
- All QTI projects include a performance-based contract with the state, which outlines specific milestones that must be achieved and verified by the state prior to payment of refunds.
- Local Financial Support: 20 percent of the award must come from the local city or county government.[4]
- Prior to June 30, 2014, DEO was authorized to reduce this requirement by one-half for a qualified target industry business located in the counties of Bay, Escambia, Franklin, Gadsden, Gulf, Jefferson, Leon, Okaloosa, Santa Rosa, Wakulla or Walton. The reduction in local match

[1] Florida Department of Economic Opportunity, *2014 Annual Incentives Report,* pg. 3, (Dec. 30, 2014).
[2] *Id*.
[3] *See* s. 288.061(1), F.S.
[4] *See* s. 288.106(1)(j), F.S.

was determined by DEO and based on a determination that the project facilitates economic development, growth, or new employment within the previously referenced counties, and was in the best interest of the state.[5]

- Economic Recovery Extension: For the period of January 2, 2009, through June 30, 2012, a qualified target industry business could submit a request to DEO for an economic recovery extension. The request was required to provide quantitative evidence that negative economic conditions in the business's industry, the effects of a named hurricane or tropical storm, or specific acts of terrorism have affected the business and prevented it from complying with the terms and conditions of its incentive agreement with the state. An approved economic recovery extension allowed DEO to prorate a business's tax refund and renegotiate the terms of the incentive agreement. Additionally, DEO was authorized to extend the duration of the incentive agreement up to two years.[6]
- Job and Wage Requirements: A project must propose to create at least 10 new jobs, or in the case of a business expansion must result in a net increase in employment of at least 10 percent at that business. The jobs proposed to be created or retained must pay an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage.
- The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is $3,000 per employee, and the maximum amount is $11,000 per employee over the term of the incentive agreement. Jobs created in rural communities and enterprise zones, as well as those paying higher annual average wages, are eligible for more incentives.
- Since the inception of the QTI program, 1,264 applications have been approved, 1,110 contracts have been executed, and 122 agreements have been completed. Of those 1,264 projects, 322 remain active, meaning they are eligible to receive refunds through the QTI program. In fiscal year 2013-2014, $55,324,300 in QTI incentives were awarded.[7]
- Annual Cap: Current law limits the total amount of QDSC and QTI tax refunds that may be approved by DEO to not exceed $35 million combined.[8]

Qualified Defense Contractor and Space Flight Tax Refund Program (QDSC)

- QDSC was established to attract new high quality, high wage jobs for Floridians in the defense and space industries.[9]
- Tax refunds are made to qualifying, pre-approved businesses bidding on new competitive contracts or consolidating existing defense or space contracts.[10]
- Local Community Support: This incentive is a partnership between the state and local community - 20 percent of the award comes from the local city or county government.[11]
- All QDSC projects include a performance-based contract with the state, which outlines specific milestones that must be achieved and verified by DEO prior to payment of refunds.[12]
- Jobs and Wages: The program requires that jobs created by a QDSC project have an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage.

  The amount of the QDSC tax refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or

[5] Section 288.106(4)(f), F.S.
[6] Section 288.106(5)(b), F.S.
[7] *See supra* note 1 at 11.
[8] Section 288.095(3)(a), F.S.
[9] *See* s. 288.1045, F.S.
[10] *See* s. 288.1045(2), F.S.
[11] Section 288.1045(1)(j), F.S.
[12] Section 288.1045(4), F.S. *See supra* note 1 at 9.

expand. The minimum tax refund is $3,000 per employee, and the maximum amount is $8,000 per employee over the term of the incentive agreement.[13]

- Since the program's inception 33 QDSC applications have been approved. Of those 33 approved applications 5 remain active. In fiscal year 2013-2014, $3,208,000 in program incentives were awarded.[14] Approved applicants may receive up to 25 percent of their total tax refund, not to exceed $2.5 million, in any given fiscal year.[15]
- Applicants may no longer be certified as eligible for the program as of June 30, 2014.[16]
- Annual Cap: Current law limits the total amount of QDSC and QTI tax refunds that may be approved by DEO to not exceed $35 million combined.[17]

Quick Action Closing Fund (QAC)

- The Legislature created QAC in 1999 as a discretionary "deal closing" tool in highly competitive negotiations where the state's traditional incentives are not enough to win the deal. The program was created in reaction to the announcement that the space shuttle program was being discontinued by NASA with expected job losses that would negatively impact families, companies, the state and regional economies.[18]
- Jobs and Wages: To be eligible to receive a QAC award, an applicant must be a business that operates within a targeted industry,[19] must propose a project that has a positive return on investment (ROI) of at least five to one,[20] must be induced by the award to locate or expand within the state[21] and must pay an average annual wage of at least 125 percent of the average private sector average in the area or state.[22]
- Local Community Support: The project must be supported by the local community in which the project will be located.[23]
- DEO and EFI jointly review applications[24] and determine the eligibility of each project. Waivers of eligibility criteria may be granted based on extraordinary circumstances,[25] in order to mitigate the impact of the conclusion of the space shuttle program,[26] or if the project would significantly benefit the local or regional economy in a rural area of opportunity.[27]
- DEO is required to evaluate proposals for high-impact business facilities based on the following criteria:[28]
    - a description of the type of facility or infrastructure, its operations, and the product or service associated with the facility;[29]
    - the number of full-time equivalent jobs that will be created by the facility and the total estimated average annual wages of those jobs;[30]
    - the cumulative amount of capital investment to be made in the facility;[31]

[13] Section 288.1045(2)(b), F.S.
[14] *See supra* note 1 at 11.
[15] Section 288.1045(2)(b), F.S.
[16] Section 288.1045(7), F.S.
[17] Section 288.095(3)(a), F.S.
[18] *See* s. 288.1088(1)(b), F.S.
[19] As identified by s. 288.106(2)(q), F.S.
[20] Section 288.1088(2)(b), F.S.
[21] Section 288.1088(2)(c), F.S.
[22] Section 288.1088(2)(d), F.S.
[23] Section 288.1088(2)(e), F.S.
[24] *See* s. 288.061, F.S.
[25] Section 288.1088(3)(a)1., F.S.
[26] Section 288.1088(3)(a)2., F.S.
[27] Section 288.1088(3)(a)3., F.S.
[28] Privately developed rural infrastructure projects are evaluated on the types of business activities and jobs stimulated by the state's investment, not for the number of jobs created or average annual wages. S. 288.1088(3)(b)2., F.S.
[29] Section 288.1088(3)(b)1., F.S.
[30] Section 288.1088(3)(b)2., F.S.

- a statement of any special impacts the facility is expected to stimulate in a particular business sector in the state or region or in the state's universities or colleges;[32]
- a statement of the role the award will play in the decision of the company to locate or expand in the state; and[33]
- a report evaluating the quality and value of the company submitting the proposal.[34]

- Performance-Based Approval Process
  - Within seven business days of evaluating a project, DEO must recommend to the Governor that a project be approved or disapproved for an award. Approved projects may be awarded as follows:[35]
    - The Governor is authorized to award projects less than $2 million without Legislative approval.
    - For project awards between $2 million and $5 million, the Governor must provide a written description and evaluation of a project award to the chair and vice chair of the Legislative Budget Commission (LBC) at least 10 days prior to giving final approval for a project award.
    - For project awards over $5 million must be approved by the LBC prior to funds being released.
  - Following approval, DEO is required to enter into a contract with the business, which specifies the conditions for payment of funds.[36]
  - The contract must include the total amount of funds awarded, the performance conditions for the project,[37] a baseline of current service with a measure of enhanced capability following the project, methodology for measuring performance, the schedule of payments, and sanctions for failure to meet performance conditions.[38]

Innovation Incentive Program (IIP)

- IIP was established to provide financial resources so that the state can "respond expeditiously to extraordinary economic opportunities and to compete effectively for high-value research and development, innovation business, and alternative and renewal energy projects."[39]
- To be eligible for consideration to receive an IIP award, an innovation business, a research and development entity, or an alternative and renewable energy company must submit a written application to DEO before making a decision to locate new operations in the state or expand an existing operation in the state.[40]
- Jobs and Wages: To qualify for review by DEO, the applicant must establish that the jobs created by the project must pay an estimated annual wage of at least 130 percent of the average private sector wage in the county, metropolitan area, or state.[41]
- Waiver of Wage Requirement: DEO is authorized to waive the average wage requirement at the request of EFI for a project located in a rural area, a brownfield area, or an enterprise zone,

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[31] Section 288.1088(3)(b)3., F.S.
[32] Section 288.1088(3)(b)4., F.S.
[33] Section 288.1088(3)(b)5., F.S.
[34] Section 288.1088(3)(b)6., F.S.
[35] Section 288.1088(3)(c), F.S.
[36] Section 288.1088(3)(d), F.S.
[37] Performance conditions include net new employment in the state, average salary, and total capital investment. *See* s. 288.1088(3)(d), F.S.
[38] Section 288.1088(3)(d), F.S.
[39] Section 288.1089(1), F.S.
[40] Section 288.1089(3), F.S.
[41] Section 288.1089(4)(a), F.S.

when the merits of the individual project or the specific circumstances in the community in relationship to the project warrant such action.[42]

- Research and development projects receiving an IIP award must provide the state at least a break-even return-on-investment (ROI) within a 20-year period.[43]
- Local Support: A one-to-one match from the local community. The match requirement may be reduced or waived in rural areas of opportunity or reduced in rural areas, brownfield areas, and enterprise zones.[44]
- Performance-Based Approval Process
    - DEO must make a recommendation to the Governor to approve or deny an IIP award.
    - If the project is recommended, DEO must include in their recommendation proposed performance conditions that the applicant must meet in order to obtain incentive funds and any other conditions that are required to be met before the receipt of any incentive funds.
    - The Governor must:
        - Approve or deny the award based on the valuation and recommendation received from DEO; and
        - Consult with the President of the Senate and the Speaker of the House of Representatives prior to approving an award. The funds may not be released until the award has been reviewed and approved by the Legislative Budget Commission.
- Upon approval, DEO and the award recipient must enter into an agreement that specifies the amount of the award, the performance conditions and measures, and a schedule of payments and sanctions for failure to comply with performance conditions, including clawback provisions.[45] Agreements signed on or after July 1, 2009, must also include, among other things, provisions related to job creation, reinvestment of royalty revenues, reporting requirements, and a process for amending the agreement.[46]

High-Impact Sector Performance Incentive (HIPI)

- HIPI[47] is a grant program reserved for major facilities operating in designated portions of high-impact sectors including clean energy, life sciences, financial services, information technology, silicon technology, transportation equipment manufacturing, or a corporate headquarters facility.
- This performance-based cash award is paid in two equal installments, one upon commencement of operations and the other upon commencement of full operations.[48]
- An “eligible high-impact business” is a business in one of the high-impact sectors identified by EFI, and certified by DEO, which is making a cumulative investment in the state of at least $50 million and creating at least 50 new full-time equivalent jobs, or a research and development facility making a cumulative investment of at least $25 million and creating at least 25 new full-time equivalent jobs. Such investment and employment must be achieved in a period not to exceed 3 years after the date the business is certified as a qualified high-impact business.[49]

[42] *Id*.
[43] Section 288.1089(4)(b), F.S
[44] Section 288.1089(4)(b)4., F.S.
[45] Section 288.1089(8)(a), F.S.
[46] Section 288.1089(8)(b), F.S.
[47] Ch. 97-278, L.O.F.
[48] *See supra* note 1 at 10.
[49] Section 288.108(2)(c), F.S.

- DEO reviews an application[50] received from an eligible business for consideration as a qualified high-impact business before the business has made a decision to locate or expand a facility in this state. The business must provide the following information:
    - A complete description of the type of facility, business operations, and product or service associated with the project.
    - The number of full-time equivalent jobs that will be created by the project and the average annual wage of those jobs.
    - The cumulative amount of investment to be dedicated to this project within 3 years.
    - A statement concerning any special impacts the facility is expected to stimulate in the sector, the state, or regional economy and in state universities and community colleges.
    - A statement concerning the role the grant will play in the decision of the applicant business to locate or expand in this state.
    - Any additional information requested by the department.[51]
- In negotiating the amount of a HIPI award, DEO must consider the following guidelines in conjunction with other relevant applicant impact and cost information and analysis:[52]
    - A qualified high-impact business making a cumulative investment of $50 million and creating 50 jobs may be eligible for a total grant between $500,000 and $1 million.
    - A qualified high-impact business making a cumulative investment of $100 million and creating 100 jobs may be eligible for a total grant between $1 million and $2 million.
    - A qualified high-impact business making a cumulative investment of $800 million and creating 800 jobs may be eligible for a total grant between $10 million and $12 million.
    - A qualified high-impact business engaged in research and development making a cumulative investment of $25 million and creating 25 jobs may be eligible for a total grant between $700,000 and $1 million.
    - A qualified high-impact business engaged in research and development making a cumulative investment of $75 million and creating 75 jobs may be eligible for a total grant between $2 million and $3 million.
    - A qualified high-impact business engaged in research and development making a cumulative investment of $150 million and creating 150 jobs may be eligible for a total grant between $3.5 million and $4.5 million.
- The total amount of active HIPI grants scheduled for payment by DEO in any single fiscal year may not exceed the lesser of $30 million or the amount appropriated by the Legislature for that fiscal year for qualified HIPI grants.[53]
- Within 10 business days after DEO receives a submitted HIPI application, the executive director of DEO must approve or disapprove the application and issue a letter of certification which includes a justification of that decision, unless the business requests an extension of that time.[54]
- DEO has the authority to grant awards to qualifying HIPI projects without approval by the Governor or Legislative Budget Commission.[55]
- Performance-Based Award
    - Upon approval, DEO and the award recipient must enter into an agreement which specifies the conditions for payment of the qualified high-impact business performance grant.

[50] In accordance with Section 288.061, F.S.
[51] Section 288.108(5), F.S.
[52] Section 288.108(3)(b), F.S.
[53] Section 288.108(4)(a), F.S.
[54] *See* s. 288.108(5), F.S.; and s.288.061(3), F.S.
[55] *See* s. 288.108(3-5), F.S.

- The agreement includes the total amount of the qualified high-impact business facility performance grant award, the performance conditions that must be met to obtain the award, including the employment, average salary, investment, the methodology for determining if the conditions have been met, and the schedule of performance grant payments.[56]

Economic Benefits

Current law requires DEO to review and evaluate each economic development incentive application for the economic benefits of the proposed award of state incentives. The Office of Economic and Demographic Research (EDR) is required to establish the methodology and model used to calculate those economic benefits.[57]

Economic benefits mean the direct, indirect, and induced gains in state revenues as a percentage of the state's investment.[58] State investment means any state grants, tax exemptions, tax refunds, tax credits, or other state incentives provided to a business under a program administered by DEO, including the capital investment tax credit.[59] The cumulative capital investment means the total capital investment in land, buildings, and equipment made in connections with a qualifying project from the beginning of construction of the project to the commencement of operations.[60]

The current methodology and model developed by EDR, which only represents state investments directly under the control of EFI or DEO[61], is used across all economic development incentive programs required by law to be evaluated for economic benefits.[62]

Employ Florida Marketplace

The Employ Florida Marketplace[63] is an automated job-matching or job bank system, implemented by CareerSource Florida, Inc., (formerly Workforce Florida, Inc.), which is accessible to employers, job seekers, and others via the Internet.

Receiving more than 9 million hits per day, EmployFlorida.com also offers labor market statistics, access to training grant information and contact information for any of the state's Regional Workforce Boards and CareerSource Centers. Throughout the life cycle of the Employ Florida Marketplace, nearly 6.5 million individuals have registered in the system, posting more than 4 million resumes and receiving more than 181 million services to assist them with either re-entering the workforce or finding better employment opportunities. In addition, over 200,000 employers have registered in the Employ Florida Marketplace, posting over 2.1 million job openings and receiving nearly 9.7 million employer services.[64]

Term of Incentive Agreement

Following approval of an incentive package, DEO executes an incentive agreement or contract between the business[65] and the state. The contract or agreement with the applicant must specify the total amount of the award, the performance conditions that must be met to obtain the award, the schedule for payment, and sanctions that would apply for failure to meet performance conditions. DEO may enter into one agreement covering all of the state incentives that are being provided to the applicant.[66] The law does not dictate the length of term for incentive agreements between a business

[56] Section 288.108(5)(c), F.S.
[57] Section 288.061(2), F.S.
[58] Section 200.005(1), F.S.
[59] Section 288.076((1)(e), F.S.
[60] Section 220.191(1)(b), F.S.
[61] 2013 Review of the Department of Economic Opportunity's Legacy Economic Impact Model (on file with the House Transportation & Economic Development Appropriations Subcommittee).
[62] *See* s. 288.0001, F.S. The Innovation Incentive Program is not required to be evaluated for economic benefits. Innovation Incentive Program projects are required to have a cumulative break-even economic benefit within a 20-year period except for certain exceptions. *See* s. 288.1089(4)(b)(3), F.S.
[63] Employ Florida Marketplace; available at: www.employflorida.com (last visited Feb. 12, 2015).
[64] *Id*.
[65] In some instances local governments may enter into a contract with DEO for a project.
[66] Section 288.061(3)(a), F.S.

and the state, nor does it address the usage of escrow accounts for the holding of funds for future performance payments.

Incentive Agreement Amendments

Under current law, contact or agreements executed for QDSC, QTI, and IIP may be amended under certain circumstances.

Appropriation of Funds

Under current law, funds to make tax refunds and payments to qualifying businesses under the QDSC, QTI, HIPI, and Brownfield Redevelopment Bonus programs are appropriated in the General Appropriations Act 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 General Appropriations Act for use on prospective QAC and IIP projects. Any funds encumbered under contract for either of these programs may be paid to the business in the same fiscal year, or transferred to an escrow account managed by EFI outside of the state budget system, to be paid to the qualifying business in a later year after meeting its contractual performance requirements. Any funds not encumbered as of June 30 of each year revert.[67] There is currently an estimated $86.3 million in escrow.

Limitation on Application Certification

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.[68]

Professional Golf Hall of Fame

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 of its players. Originally, formed in 1974 in Pinehurst, North Carolina, the hall of fame relocated to Florida in 1998[69] 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)[70] 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.[71]

Section 288.1168, F.S., establishes the Professional Golf Hall of Fame Facility funding program which allows DEO to certify applicants as professional golf hall of fame facilities. To be eligible:

- the applicant facility must be the only professional golf hall of fame in the U.S. recognized by the PGA;[72]
- the applicant is a unit of local government or private sector group that has contracted to construct or operate the professional golf facility on land owned by a unit of local government;
- the municipality or county (if located in an unincorporated area) in which the facility is located,[73] has passed a resolution that states the application serves a public purpose;[74]

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[67] Section 216.301, F.S.
[68] Section 288.095(3)(a), F.S.
[69] World Golf Hall of Fame, *Our History*; available at: http://www.worldgolfhalloffame.org/about-the-museum/our-history/ (last accessed on Feb. 14, 2015)
[70] DEO assumed the responsibilities of OTTED in 2011 pursuant to ch. 2011-142.
[71] Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 2, Report No. 15*-01, pg. 51; Jan. 1, 2015
[72] Section 288.1168(1)(a), F.S.
[73] Section 288.1168(1)(b), F.S.

- there are projections that the facility will attract a paid attendance of more than 300,000 annually;[75]
- there is an independent analysis which demonstrates that the amount of sales tax generated by sales at the facility will at least equal $2 million annually;[76]
- 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;[77]
- 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;[78] and
- the application is signed by an official senior executive of the applicant and is notarized according to state law.[79]

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).[80]

Every ten years the 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 facility submitted its first 10-year recertification application and reported that annual attendance from 1998 through 2009 had varied between 230,000 and 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.[81]

International Game Fish Association World Center

The International Game Fish Association (IGFA) is a nonprofit organization founded in 1939 that focuses on the conservation of game fish and the promotion or 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 DEO to certify applicants as IGFA World Center facilities. To be eligible:

- 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;[82]
- IGFA is a nonprofit Florida corporation that has contracted to construct and operate the facility;[83]
- the municipality or county (if located in an unincorporated area) in which the facility is located has passed a resolution that states the facility serves a public purpose;[84]

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[74] Section 288.1168(1)(c), F.S.
[75] Section 288.1168(1)(d), F.S.
[76] Section 288.1168(1)(e), F.S.
[77] Section 288.1168(1)(f), F.S.
[78] Section 288.1168(1)(g), F.S.
[79] Section 288.1168(1)(h), F.S.
[80] Section 212.20(6)(d)6.c., F.S.
[81] *Id*.
[82] Section 288.1169(2)(a), F.S.
[83] Section 288.1169(2)(b), F.S.

- there are existing projections that the facility and co-located privately-owned facilities will attract an attendance of more than 1.8 million annually;[85]
- there is an independent analysis which demonstrates that the amount of sales tax generated by sales at the facility will at least equal $1 million annually;[86]
- there are existing projections that the project will attract more than 300,000 out-of-state visitors annually;[87]
- 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;[88]
- 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;[89] and
- the application is signed by senior officials of the IFGA and is notarized according to state law.[90]

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).[91] The state made its last disbursement to the facility in February 2014.[92]

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.[93]

Effect of Proposed Changes

Waivers of Eligibility Criteria (QTI, QAC, IIP)

The bill amends QTI, QAC, and IIP, to prohibit DEO from granting waivers to projects that do not pay an average wage of at least 100 percent of average wage of the county or standard metropolitan area in which the project is located or will be located.

The bill amends QAC to provide that a QAC project may receive no more than two waivers of eligibility criteria. Additionally, the bill prohibits DEO from granting a waiver for a QAC project that does not produce an economic benefit ratio of at least two to one. The bill also prohibits DEO from granting a waiver for inducement or for a QAC project that does not qualify as a target industry project.[94]

Average Wage (QDSC, QTI, QAC, IIP)

The bill amends the economic development incentive application process for QDSC, QTI, QAC, and IIP to provide that "average private sector wage in the area" means the average of all private sector wages and salaries in the county or the standard metropolitan area in which the project is located or will be located.

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[84] Section 288.1169(2)(c), F.S.
[85] Section 288.1169(2)(d), F.S.
[86] Section 288.1169(2)(e), F.S.
[87] Section 288.1169(2)(f), F.S.
[88] Section 288.1169(2)(g), F.S.
[89] Section 288.1169(2)(h), F.S.
[90] Section 288.1169(2)(i), F.S.
[91] Section 212.20(6)(d)6.d., F.S.
[92] Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 2, Report No. 15*-01, pg. 52; Jan. 1, 2015
[93] *Id*.
[94] Target industries are defined within s. 288.106, F.S.

Local Financial Support (QDSC, QTI, HIPI, QAC, IIP)

The bill amends QDSC and QTI to create uniform local financial support requirements and waivers across these incentive programs and activities, and provides for a more clear definition of support from local communities for HIPI, QAC, and IIP.

QDSC and QTI (Tax Refund Programs)

The bill authorizes DEO to:

- Reduce the required local financial support amount from 20% to 10%.
- Eliminate the required local financial support amount for a project located within a rural area of opportunity (RAO).

The bill requires a local government that requests a waiver to provide DEO with a resolution adopted by the governing body of the local government notifying DEO of its request, as well as a statement by a state-certified public accountant that describes the financial constraints preventing the local government from providing the required local financial support amount. The bill exempts fiscally constrained counties, as designated by s. 218.67, F.S., from this provision.

The bill provides that a qualified applicant may not receive more than 80% of the total tax refunds approved by DEO from state funds.

HIPI and QAC (Performance-Based Grant Incentives)

The bill defines "support by the local community" (QAC) and "local financial support" (HIPI) as financial, in-kind, or other quantifiable contributions from local sources that, combined, equal 20% or more of the total investment in the project by state and local sources. The bill exempts fiscally constrained counties, as designated by s. 218.67, F.S., from this provision.

Innovation Incentive Program (Performance-Based Grant Incentive)

A local government that requests a waiver reducing or eliminating the one-to-one match requirement of the program must provide DEO with a written statement, prepared by a state-certified public accountant describing the financial constraints preventing the local government from providing the required local financial support amount. The bill exempts fiscally constrained counties, as designated by s. 218.67, F.S., from this provision.

Performance-Based Grant Approval Process (HIPI, QAC, IIP)

The bill creates a new uniform approval process for HIPI, QAC, and IIP as follows:

Within seven business days after evaluating an incentive application, DEO must recommend to the Governor approval or disapproval of a project. The recommendation must include a description of the anticipated performance conditions of the project including:

- the total proposed award amount; the award's performance conditions;[95]
- a baseline of current service and a measure of enhanced capability;
- the methodology used for validating performance;
- a schedule of payments; and
- sanctions for failure to meet performance conditions.

For projects less than $2 million:

[95] Such performance conditions must include, but are not limited to, net new employment in the state, average salary, and total capital investment incurred by the business.

- The Governor is authorized to approve the award. However, a written description and evaluation of the project and the anticipated performance conditions must be provided to the chairman and vice chairman of the Legislative Budget Commission, the President of the Senate (President), and the Speaker of the House of Representatives (Speaker) within one business day after approval.

For projects at least $2 million, but not more than $7.5 million:

- The Governor must provide a written description and evaluation of the project and the anticipated performance conditions to the chairman and vice chairman of the Legislative Budget Commission, the President, and the Speaker at least 14 days prior to granting approval. Any of those four individuals may advise the Executive Office of the Governor (EOG) in writing that the award exceeds the authority of the EOG or is contrary to legislative policy or intent. If the EOG be so advised, the EOG shall instruct the DEO to change its action on the project.

For projects over $7.5 million and projects over $5 million that require a waiver of program requirements:

- The Legislative Budget Commission must approve the award.

Rural Areas Definition (QDSC, QTI, and IIP)

The bill amends QDSC, QTI, and IIP to replace various definitions of rural areas with "rural area of opportunity" as defined within s. 288.0656, F.S.[96]

Incentive Application and Agreements

Incentive Application

The bill clarifies information that must be included in incentive application submitted to DEO. Such information includes an applicant's:

- federal employee identification number;
- reemployment assistance account number;
- state sales tax registration number;
- project location;
- anticipated project commencement date;
- business activity, including applicable North American Industry Classification System codes;
- signature; and
- attestation verifying that the information provided is true and correct.

Incentive Application Evaluation

The bill requires DEO evaluate incentive applications based on specific criteria. Such criteria include:

- a financial analysis of the company including information regarding liens and 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 the related auditor management letter;

[96] "Rural area of opportunity" means a rural community, or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact. Section 288.0656(2)(d), F.S.

- a review of any other audits that are 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 DEO.

Economic Benefit

EDR is directed to establish guidelines for the appropriate use of the economic benefits model used to determine economic benefits.

Employ Florida Marketplace

The bill amends incentive application process to require that all vacant jobs created as a result of an executed state incentive agreement be posted on the state's job bank system, Employ Florida Marketplace.

Term of Incentive Agreements

The bill amends the incentive application process to prohibit DEO from entering into incentive agreements with businesses for terms longer than 10 years. The bill allows for terms of longer than 10 years under certain conditions.

- DEO may enter into successive agreements or contracts to extend an initial 10-year agreement or contract term if the applicant has successfully completed the previous agreement or term.
- If all of the state incentives for one agreement or contract total $20 million or more, the 10-year restriction does not apply.
- The 10-year restriction does not apply to IIP awards or Capital Investment Tax Credits.[97]

Incentive Agreement Amendments

The bill amends the incentive application process to require DEO to evaluate the projected economic benefits of a project prior to awarding a contract and reevaluate the projected economic benefits of a project each time an amendment or modification is made to a contract. Should a reevaluation result in the reduction of a project's projected economic benefits, DEO is precluded from executing a contract amendment or modification unless the state incentives outlined in the original contract are reduced by an amount proportionate to the reduction in the projected economic benefits. DEO is required to notify the Legislature any time an incentive contract is amended or modified.

The bill also amends HIPI, QAC, and IIP to provide that if an amended incentive agreement under one of these programs results in a 0.5 or greater reduction in the economic benefit ratio of a project, then the contract or amendment must be reapproved by the new performance-based grant incentive approval process provided for by the bill. DEO may not amend or modify a contract if the economic benefit ratio would be reduced below 2 to 1.

In-State Capital Investment

The bill requires that any agreement or contract which requires a capital investment component also require that such investment remain in the state for the duration of the agreement or contract. The bill also clarifies that capital investments made in assets which are primarily used to transport goods or employees are exempt from this requirement.

Incentive Payments

[97] IIP requires projects provide a break-even return on investment over a 20 year period. The Capital Investment Tax Credit program allows credits to be claimed for up to 20 years for qualifying businesses.

The bill requires that DEO only provide payments and tax refunds once it has verified that the applicant has met the required project performance criteria, and only in the year in which the payment or tax refund is scheduled to be paid pursuant to the incentive contract. Funds may only be paid to the applicant and not to a third party.

Any appropriated funds unexpended by June 30 of each year shall revert to General Revenue. Any funds transferred before July 1, 2015 into an escrow account held by EFI for payments due under the terms of existing QAC or IIP agreements or contracts may be used to make payments until such funds are expended. Any funds deposited into the escrow account whose agreement or contract requirements are not met or has been terminated, shall be returned to the state within 10 days after notification by DEO.

The total amount of payments and tax refunds approved for payment by DEO may not exceed the amount appropriated for the fiscal year. Claims for payments and tax refunds must be paid in the order that the claims are approved by DEO. The Legislature is directed to appropriate annually in the General Appropriations Act an amount estimated to satisfy payments and tax refunds in a fiscal year.

By January 2 of each year, DEO is required to provide to the Legislature a list of potential payment and tax refund claims that may be filed for payment in the following fiscal year based on existing incentive agreements and contracts. By March 1 of each year DEO is required to provide to the Legislature a list of actual payment and tax refund claims filed.

The total payments and tax refunds scheduled to be paid may not exceed more than $60 million in a single fiscal year.

Additional QDSC Changes

The bill amends QDSC to allow DEO to certify eligible applicants under the tax refund program until June 30, 2017.

The bill also allows a business that failed to timely submit required documentation to DEO for purposes of filing for a QDSC tax refund to receive a refund if:

- the business submits the required documentation to DEO;
- the business provides a written statement detailing the extenuating circumstances which resulted in the failure to timely submit the required documentation;
- funds appropriated for the program remain available;
- the business was scheduled to submit information between January 1, 2014 and December 31, 2014; and
- the business has met all other requirements of its agreement with DEO.

The bill removes the $35 million cap on cumulative tax refunds that may be approved by DEO.

Additional QTI Changes

The bill amends QTI to remove provisions related to economic recovery extensions and local financial support reductions for certain counties. These provisions have expired.

The bill removes the $35 million cap on cumulative tax refunds that may be approved by DEO.

Additional QAC Changes

The bill requires the economic benefit ratio must be at least 4 to 1, rather than 5 to 1 in order for a project to qualify for a QAC award.

The bill also amends the existing QAC contract requirements to:

- preclude payment of funds until scheduled goals have been achieved by the applicant;
- include the minimum and maximum amount of funds that may be awarded;
- clarify that the total capital investment measured by DEO include that which is incurred by the business; and
- include the minimum and maximum number of jobs that will be created.

The bill clarifies that a local governing body and EFI may request a waiver of eligibility criteria for QAC projects. However, requests for waivers must be transmitted in writing to DEO and must include an explanation of the specific justification for the request. DEO is directed to issue a written response approving or denying the request with an explanation of its decision.

The bill prohibits DEO from scheduling more than $35 million in QAC payments in any single fiscal year.

Professional Golf Hall of Fame

The bill requires increased reporting requirements for applicants certified under s. 288.1168, F.S., the professional golf hall of fame facility funding program.

- By January 1, 2016 and every fifth year thereafter, the Department of Revenue (DOR) must audit certified applicants to verify that program distributions have been expended as required by the program.
- Beginning in 2016, DEO is required to annually recertify that the facility remains open, continues to be the only PGA-recognized professional golf hall of fame in the United States, and is meeting the minimum attendance and sales tax revenue projections required at the time of original certification.
- Each year a facility is not certified as meeting the minimum projections, the PGA shall increase its required advertising contribution from $2 million to $3 million. DEO will approve the generic Florida advertising paid for by the PGA in consultation with VISIT Florida. The facility must be prominently featured in between 10 and 25 percent of such advertising.
- By October 1, 2015, a certified applicant must submit a report to DEO detailing actions that may be taken by the applicant to increase out-of-state visitors to the facility. DEO shall include activities the applicant has taken in conjunction with its report, and also include in the department's annual report information related to the number of visitors the facility attracted in the previous fiscal year.

The bill also provides for the decertification of an applicant should the facility close or no longer be recognized as the only PGA-recognized professional golf hall of fame in the United States.

The bill amends s. 288.1166, F.S., to add certified professional golf hall of fame facilities to the list of facilities that must be designated as a shelter site for the homeless during periods of declared federal, state, or local emergency in accordance with the criteria of locally existing homeless shelter programs.

International Game Fish Association World Center

The bill repeals s. 288.1169, F.S., which authorizes the International Game Fish Association World Center facility program as well as s. 212.20(6)(d)6.d., F.S., which allocates monthly payments of $83,333 for the program for a total of 168 months.

ENTERPRISE FLORIDA, INC.

Present Situation

Enterprise Florida, Inc. (EFI) Board Composition

The board of directors of EFI is comprised of 19 members from the public and private sectors. Appointed members include the following:

- The Governor or the Governor's designee;
- The Commissioner of Education or the commissioner's designee;
- The Chief Financial Officer or his or her designee;
- The Attorney General or his or her designee;
- The Commissioner of Agriculture or his or her designee;
- The chairperson of the board of directors for CareerSource Florida, Inc.;
- The Secretary of State or his or her designee; and
- Twelve members from the private sector, six of whom are appointed by the Governor, three of whom are appointed by the President of the Senate, and three of whom are appointed by the Speaker of the House of Representatives. Members appointed by the Governor are subject to Senate confirmation.[98]

The twelve members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives are appointed to 4-year terms and must include at least one director for each of the following areas of expertise:[99]

- International business;
- Tourism marketing;
- The space or aerospace industry;
- Managing or financing a minority-owned business;
- Manufacturing;
- Finance and accounting; and
- Sports marketing.

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 other members of the board.[100]

In addition, the board also consists of a member of the Senate, appointed by the President of the Senate, and a member of the House of Representatives, appointed by the Speaker of the House of Representatives, both serving as ex officio members.[101]

The 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.[102]

The board of directors is directed to integrate its efforts in business recruitment and expansion, job creation, marketing the state for tourism and sports, and promoting economic opportunities for minority-owned businesses, and promoting economic opportunities for rural and distressed urban communities

[98] Section 288.901(5)(a), F.S.
[99] Section 288.901(5)(b), F.S.
[100] Section 288.901(6), F.S.
[101] Section 288.901(7), F.S.
[102] Section 288.901(8), F.S.

with those of DEO to create an aggressive, agile, and collaborative effort to reinvigorate the state's economy.[103] The board may also:[104]

- secure funding for its programs and activities from federal, state, local, and private sources and from fees charged for services and published materials;
- solicit, receive, hold, invest, and administer any grant, payment, or gift of funds or property and make expenditures;
- make and enter into contracts and other instruments necessary or convenient with its powers and functions;
- elect or appoint officers, employees, and agents as required for its activities and for its divisions;
- carry forward any unexpended state appropriations into succeeding fiscal years;
- create and dissolve advisory councils, working groups, task forces, or other similar organizations, as necessary to carry out its mission;
- establish an executive committee consisting of the chairperson or a designee, the vice chairperson, and as many additional members of the board of directors as the board deems appropriate (with a minimum of five members);
- sue and be sued, and appear and defend all actions and proceedings;
- adopt, use, and alter a common corporate seal for EFI and its divisions;
- adopt, amend, and repeal bylaws;
- acquire, enjoy, use, and dispose of patents, copyrights, and trademarks and any licenses, royalties, and other rights or interests;[105]
- use the state seal when appropriate for standard corporate identity applications; and
- procure insurance or require bond against any loss in connection with the property of EFI.

Effect of Proposed Changes

The bill 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.

MICROFINANCE

Present Situation

The state has two separate microfinance programs, the Microfinance Loan Program[106] and the Microfinance Guarantee Program.[107] The loan program makes short-term, fixed-rate microloans in conjunction with business management training, business development training, and technical assistance to entrepreneurs and newly-established or growing small businesses for start-up costs, working capital, and the acquisition of materials, supplies, furniture, fixtures, and equipment.

Participation in the loan program is intended to enable entrepreneurs and small businesses to access private financing upon completing the loan program. The guarantee program is housed within DEO to stimulate access to credit for entrepreneurs and small businesses by providing targeted guarantees to loans. Funds appropriated must be reinvested and maintained as a long-term and stable source of funding for the program. DEO is required to enter into a contract with EFI to administer the program.

[103] Section 288.9015(1), F.S.
[104] Section 288.9015(2), F.S.
[105] Section 288.9015(2)(k), F.S.
[106] Section 288.9934, F.S.
[107] Section 288.9935, F.S.

The Office of Economic and Demographic Research (EDR) is tasked with analyzing, evaluating, and determining the economic benefits of the first three years of the Microfinance Loan Program and the Microfinance Guarantee Program. A report, prepared by EDR, is due to the President of the Senate and the Speaker of the House of Representatives by January 1, 2018.

Effect of Proposed Changes

The bill requires that the Office of Program Policy and Government Accountability (OPPAGA) participate in the creation of the report EDR is directed to prepare and provide to the President of the Senate and the Speaker of the House of Representatives in regards to the Microfinance Loan Program and Microfinance Guarantee Program.

NEW MARKETS DEVELOPMENT PROGRAM

Present Situation

In 2009, the Florida Legislature passed the New Markets Development Program Act (NMDP or program).[108] The program, which is modeled after the federal New Markets Tax Credit Program, allows taxpayers to earn credits against specified taxes by making qualified investments in qualified community development entities that, in turn, invest in businesses in low-income communities to create and retain jobs in such communities.[109]

Qualified community development entities apply to DEO for approval of a proposed investment as a qualified investment.[110] A qualified community development entity is a federally-certified Community Development Entity, which has entered into an allocation agreement with the U.S. Department of Treasury with respect to tax credits and is authorized under the allocation agreement to serve Florida businesses.[111] A qualified investment is an equity investment in, or a long-term debt security issued by, a qualified community development entity that is issued solely in exchange for cash and is approved by DEO.[112] Often, the equity investor will make its investment with the help of a loan.[113]

The applications, which DEO reviews and approves on a first-come first-serve basis,[114] must include the following:

- the name, address, and tax identification number of the qualified community development entity;
- proof of certification as a qualified community development entity under 26 U.S.C. s. 45D;
- a copy of an allocation agreement executed by the qualified community development entity, or its controlling entity, and the Community Development Financial Institutions Fund, which authorizes the entity to serve businesses in this state;
- a verified statement by the chief executive officer of the entity that the allocation agreement remains in effect;
- a description of the proposed amount, structure, and purchaser of an equity investment or long-term debt security;
- the name and tax identification number of any person authorized to claim a tax credit earned as a result of the purchase of the proposed qualified investment;
- a detailed explanation of the proposed use of the proceeds from a proposed qualified investment;

[108] Chapter 2009-50, L.O.F.
[109] Section 288.9912, F.S.
[110] Section 288.9914, F.S.
[111] Section 288.9913(6), F.S.
[112] Section 288.9913(7), F.S.
[113] The loan allows the taxpayer to make a larger investment, to in turn receive a greater amount of tax credits through the program. Current law does not dictate where the loan must come from. Accordingly, the loan may come from an affiliate of the qualified active low income community business.
[114] Section 288.9914(3), F.S.

- a nonrefundable application fee of $1,000, payable to the department; and
- a statement that the entity will invest only in the industries designated by the department.[115]

Once DEO has approved the qualified investment, the taxpayer is eligible to receive tax credits, and the qualified community development entities can invest the proceeds received from the qualified investment in a qualified active low-income community business (up to $10 million per qualified active low-income community business).[116] A qualified active low-income community business is a business that, among other requirements, derives at least 50 percent of its total gross income from within a low-income community.[117] A low-income community means a population census tract within the state with a particular poverty rate or average median family income (depending on where the tract is).[118]

Tax Credit

Taxpayers that make a qualified investment in qualified community development entities may receive tax credits against the corporate income tax found in s. 220.11, F. S. or the insurance premium tax found in s. 624.509, F.S.[119] The taxpayer may not claim the credit in the first two years after the investment.[120] In year three after the investment, the credit is worth seven percent of the qualified investment, and from the fourth year through the seventh year the credit is worth eight percent.[121] As in the federal program, over seven years the credit totals 39 percent of the total qualified investment in the qualified community development entity.[122] Therefore, a taxpayer with qualified investments approved for both the federal and state programs could receive 78 percent of the purchase price of the investment in tax credits over seven years.

Any unused portion of the tax credit may be carried forward for future tax years; however, all tax credits expire on December 31, 2022.[123] Moreover, the department may not approve a cumulative amount of qualified investments that may result in the claim of more than $216.34 million in tax credits during the existence of the program or more than $36.6 million in tax credits in a single state fiscal year.[124]

Time Limits

Qualified community development entities must be aware of the following time limits relating to qualified investment applications and issuance:

- The department must approve or deny an application for a proposed investment to become a qualified investment within 30 days after receipt. If the department intends to deny an application, the department must inform the applicant of the basis of the proposed denial. The applicant then has 15 days after it receives such notice to submit a revised application to the department. The department must issue a final order approving or denying the revised application within 30 days after receipt of the revised application.[125]
- A qualified community development entity must issue a qualified investment in exchange for cash within 60 days after it receives the order approving an investment as a qualified investment.[126]
- A qualified community development entity must provide the department with evidence of the receipt of the cash they received in exchange for the qualified investment within 30 business days after receipt.[127]

[115] Section 288.9914(2), F.S.
[116] Section 288.9915, F.S.
[117] Section 288.9913(5), F.S.
[118] Section 288.9913(3), F.S.
[119] Section 288.9916(1), F.S.
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] Section 288.9922, F.S.
[124] Section 288.9914(3)(c), F.S.
[125] Section 288.9914(3), F.S.
[126] Section 288.9914(5), F.S.

- Within 30 days after a credit allowance date, a qualified community development entity that has issued a qualified investment shall submit extensive information to the department relating to all investments they made in qualified active low-income community businesses since the last credit allowance date.[128]

Current law does not specify the type of day—calendar, business or otherwise—by which the New Markets Development Program intends the time limits to be measured.

Annual Report

Section 288.9918, F.S., requires qualified community development entities that have issued a qualified investment to submit an annual report to the department by January 31 after the end of each year that includes a "credit allowance date," or date on which a qualified investment is made and the six subsequent anniversaries of that date. A summary of the minimum requirements qualified community development entities must include in the report is as follows:

- the identity of the types of industries in which qualified low-income community investments were made;
- the names of the counties in which the qualified active low-income businesses are located which received qualified low-income community investments;
- the number of jobs created and retained by qualified active low-income community businesses receiving qualified low-income community investments, including verification that the average wages paid meet or exceed 115 percent of the federal poverty income guidelines for a family of four;
- a description of the relationships that the qualified community development entity has established with community-based organizations and local community development offices and organizations and a summary of the outcomes resulting from those relationships; and
- any other information and documentation required by the department to verify continued certification as a qualified community development entity under 26 U.S.C. s. 45D.[129]

In addition, by April 30 after the end of each year that includes a credit allowance date, each qualified community development entity shall submit to the department annual financial statements for the preceding tax year, audited by an independent certified public accountant.[130]

Effect of Proposed Changes

The bill amends certain time limits in the program relating to qualified investment applications and issuance and specifies that the time limits be measured in *calendar* days.

The bill also requires the department to submit to the Legislature, within the department's annual report, a detailed analysis of the data that the department currently receives annually from qualified community development entities pursuant to s. 288.9918., F.S. The first annual report the department submits that includes such analysis must analyze the data the department has received from the qualified community development entities since the program's inception.

STARTUP FLORIDA INITIATIVE

Present Situation

In June 2014, the U.S. Chamber of Commerce Foundation issued its fifth annual *Enterprising States* report[131] which uses a performance set of metrics to identify the top 10 state performers in each of five

[127] Section 288.9914(6), F.S.
[128] Section 288.9917, F.S.
[129] Section 288.9918(1), F.S.
[130] Section 288.9918(2), F.S.

economic development policy areas (talent pipeline, exports and international trade, business climate, infrastructure, and technology and entrepreneurship). The 2013 edition of the Enterprising States report[132] noted:

> Recognizing the importance of new business, small business, and stage-2 gazelle firms, economic development policy execution is rapidly shifting toward programs and investments targeting these firms and away from high-cost incentive packages designed to convince large firms to relocate. States are investing in business accelerator programs, co-location and assistance programs for the self-employed, and economic gardening initiatives that provide high-end research and advisement services for growing companies.[133]

Florida ranked 10th in the entrepreneurship policy area in 2013 as it received high scores in business birthrate and increase in self-employed workers.[134] However, the state did not score as well in areas of high-tech and STEM industry entrepreneurship[135], which led to a drop in the rankings in 2014. States that were ranked in the top 10 in 2013 and 2014 include Maryland, Colorado, Virginia, Washington, Utah, Texas, and Massachusetts.[136]

In December 2014, the Small Business & Entrepreneurship Council released the 19th annual Small Business Policy Index report,[137] which ranks the states on policy measures and costs impacting small business and entrepreneurship. The report listed Florida as the 5th most friendly state to small business and entrepreneurship based on metrics that included a variety tax rates, energy regulation, health savings accounts, workers' compensation costs, total crime rate, state and local government debt, spending trends, per capital spending, and education reform.[138]

The Kauffman Index of Entrepreneurial Activity[139], published in April 2014, identified Florida as having one of the highest rates of entrepreneurship in the nation in 2013 with 340 per 100,000 adults creating businesses each month. That placed the state 10th among the 50 states and the District of Columbia.[140] The report also found the Miami-Fort Lauderdale-Miami Beach metropolitan area had the third highest entrepreneurial activity among the fifteen largest metropolitan areas in the nation during 2013.[141]

Florida Economic Gardening Institute (GrowFL)

In 2009, the Executive Office of the Governor's Office of Tourism, Trade, and Economic Development[142] contracted with the University of Central Florida (UCF) to implement the Economic Gardening Technical Assistance Pilot Program.[143] UCF then established the Florida Economic

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[131] U.S. Chamber of Commerce Foundation, *Enterprising States 2014*, available at: http://www.uschamberfoundation.org/sites/default/files/legacy/foundation/Enterprising%20States%202014_0.pdf (last accessed on Feb. 15, 2015)
[132] U.S. Chamber of Commerce Foundation, *Enterprising States 2013*, available at: http://www.uschamberfoundation.org/sites/default/files/legacy/foundation/ES2013.pdf (last accessed on Feb. 15, 2015)
[133] *Id*., pg. 20
[134] *Id*., pg. 41
[135] U.S. Chamber of Commerce Foundation, *Enterprising States 2014*, available at: http://www.uschamberfoundation.org/sites/default/files/legacy/foundation/Enterprising%20States%202014_0.pdf, pg. 27, (last accessed on Feb. 15, 2015)
[136] *Id*.
[137] Small Business & Entrepreneurship Council, *Small Business Policy Index 2014*, available at: http://www.sbecouncil.org/wp-content/uploads/2014/12/SBPI2014Final.pdf, (last accessed on Feb. 15, 2015)
[138] *Id*.
[139] Ewing Marion Kauffman Foundation, *Kauffman Index of Entrepreneurial Activity*, April 2014, available at: http://www.kauffman.org/~/media/kauffman_org/research%20reports%20and%20covers/2014/04/kiea_2014_report.pdf (last accessed on Feb. 15, 2015)
[140] *Id*., pg. 21
[141] *Id*., pg. 24
[142] In 2011, the Legislature merged the Office of Tourism, Trade, and Economic Development into the newly created Department of Economic Opportunity. *See* s.4, ch. 2011-142, L.O.F.
[143] Section 288.1082, F.S.

Gardening Institute (GrowFL) in 2009 to focus on assisting second-stage growth companies throughout the state.

The GrowFL Program provides strategies, resources, and support to second-stage companies for next level growth through strategic research, peer learning, and leadership development. These activities are targeted to support the second-stage CEOs with operational and revenue-increasing strategies to improve business performance. As of June 30, 2013, GrowFL assisted companies representing 13,493 jobs across the state with an estimated sales output of $1.14 billion contributing $2.33 billion to the state economy.[144]

The Florida Institute for the Commercialization of Public Research

The Florida Institute for the Commercialization of Public Research (Institute) was created by the Legislature in 2007[145] as a non-profit organization tasked with working collaboratively with the technology licensing and commercialization offices of Florida's publicly supported universities and research institutions. It focuses on assisting in the creation of investable companies that in turn create jobs in innovation industries within the state. The Institute's mission is economic development through the commercialization of new discoveries generated from publicly funded research. The Institute supports new company formation and growth activities that result in increased job creation, capital investment, and revenue generation.

Florida universities and research institutions are conducting ground-breaking research and discovery that spurs the creation of new products and companies. Competing with 38 states that have similar initiatives, Institute programs seek to enhance Florida's entrepreneurship and innovation ecosystem at the early stages, encouraging company growth and assisting in the creation of high-wage, high-skill jobs. The Institute evaluates roughly 100 potential new company creation opportunities annually in science and technology-based industry fields.[146]

Effect of Proposed Changes

The bill amends s. 288.901, F.S., to direct EFI to "foster and encourage high-tech startup and second stage business development within the state."

The bill establishes the "Startup Florida Initiative" and declares successful high-tech startup and second stage businesses as critical to the state's economic growth. The initiative requires DEO to develop a statewide strategic plan for fostering and encouraging high-tech startup and second stage businesses in coordination with various economic development entities throughout the state including EFI, the Institute, and GrowFL. The strategic plan must:

- include actionable steps to provide technical support to local and regional economic development organizations to enhance high-tech startup and second stage business growth at the local and regional levels;
- evaluate the accessibility of the state's economic development incentive and loan programs to high-tech startups and second stage businesses; and.
- analyze industrywide best practices, competitor state programs related to startup, entrepreneurship, and second stage business programs, and survey high-tech startups and second stage businesses and support organizations both within and outside the state. The strategic plan must be delivered to the Governor, President of the Senate, and the Speaker of the House of Representatives by January 1, 2016.

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[144] Florida Economic Gardening Institute at the University of Central Florida, *About GrowFL*, Available at: http://www.growfl.com/about (last accessed on Feb. 24, 2015)
[145] Section 288.9625, F.S.
[146] The Florida Institute for the Commercialization of Public Research, *2013-2014 Annual Report*; available at: http://www.florida-institute.com/sites/default/files/FICPR_AR_2014.pdf (last accessed on Feb. 24, 2015)

The bill defines the term “advanced technology products” as specified high-tech products produced by a business employing a high proportion of scientists, engineers, and technicians. The term "high-tech startup" means a business unit having existed for less than five years and employing less than 10 employees that produces a high proportion of advanced technology products. A "second stage business" means a business unit that employs between 10 and 50 employees, generates between $1 million and $25 million in annual revenue, and produces a high proportion of advanced technology products.

The initiative requires EFI to market the state's economic development activities related to high-tech startups and second stage businesses. EFI is required to provide information regarding its activities related to the development of high-tech startups and second stage businesses in its annual report.

SMALL BUSINESS DEVELOPMENT CONCURRENCY AND PROPORTIONATE SHARE

Present Situation

Transportation Concurrency and Proportionate Share

Concurrency requires public facilities and services to be available “concurrent” with the impacts of new development. Under Florida law, concurrency for sanitary sewer, solid waste, drainage, and potable water is required,[147] and concurrency for transportation, schools, and parks and recreation is optional.[148] However, if a local government decides to implement concurrency for one of the optional facilities, it must do so according to state law.[149]

A local government that implements transportation concurrency must define what constitutes an adequate level of service (LOS) for its transportation system, adopt a plan and improvement program to achieve and maintain adequate LOS standards, and measure whether the service needs of a new development exceed existing capacity of the transportation system.[150] Unless and until LOS standards are met, a local government may not issue a development permit without an applicable exception.[151]

If adequate transportation facilities are not currently available to support the impacts of a proposed development (i.e., if LOS standards are not currently met), the local government may require the developer to contribute his or her “proportionate share.” Proportionate share is a tool local governments use to require developers to contribute to or build facilities necessary to offset a new development’s impacts to ensure LOS standards are met.[152]

The state provides requirements that local governments must follow when implementing proportionate share, including specific formulas local governments must use when calculating proportionate share and criteria for when developers have satisfied proportionate share.[153] One such requirement prevents local governments from ordering a developer to contribute to or construct transportation facilities where the developer’s costs exceed the developer’s proportionate share of the improvements necessary to mitigate the development’s impact.[154]

Impact Fees

Local governments and certain special districts may use their constitutional or statutory home rule powers to enact “impact fees.”[155] Impact fees are total or partial payments charged to cover the cost of

[147] Section 163.3180(1), F.S.
[148] Section 163.3180, F.S.
[149] Section 163.3180(1), F.S.
[150] Section 163.3180(5), F.S.
[151] *E.g.* s. 163.3180(5)(h)1.b., F.S., which exempts public transit facilities from concurrency.
[152] Section 163.3180(5)(h), F.S.
[153] *Id.*
[154] *Id.*
[155] *See* s. 163.31801, F.S.

additional infrastructure necessary as a result of new development. As local governments tailor impact fees to meet the infrastructure needs of new growth, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and a local government's determination to charge the full cost of a fee's earmarked purposes.

The Legislature has found that impact fees are an important source of revenue for local governments to use in funding the infrastructure necessitated by growth.[156] However, due to the growth of impact fee collections and local governments' reliance on impact fees, the Legislature imposes minimum standards local governments must comply with when adopting impact fees.[157]

At minimum, a county, municipality, or special district that adopts an impact fee must abide by the following statutory requirements:

- require that the calculation of the impact fee be based on the most recent and localized data;
- provide for accounting and reporting of impact fee collections and expenditures;
- limit administrative charges for the collection of impact fees to actual costs; and
- require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.[158]

In addition to the Legislature's requirements, Florida courts have held that impact fees must meet the "dual rational nexus test."[159] That is, there must be (1) a reasonable connection between the need for infrastructure improvements and the population growth generated by new development and (2) a reasonable connection between the expenditure of fees collected and the benefit to the development from those expenditures.[160] Fifty-eight Florida jurisdictions had impact fees in place as of the 2012 National Impact Fee Survey.[161]

Effect of Proposed Changes

The bill creates a three year window exempting certain new development from satisfying transportation concurrency requirements and contributing to its corresponding proportionate share. The bill also exempts certain transportation impact fees from being imposed on new development.

The exemption window will apply to any new business development beginning on or after July 1, 2015, and before July 1, 2018. The exemption does not apply to business developments that consist of more than 6,000 square feet or new business developments that will include a business that employs more than 12 full-time employees. In addition, to maintain the exemption, a new business development must receive a certificate of occupancy on or before July 1, 2019.

The exemption window will not apply to a new development in a local government's jurisdiction where such local government, by super-majority vote of its governing body, revokes the exemption. The exemption window will also not apply if the exemption alters a local government's financing contracts or bonds, or the developer elects to not have the exemption applied.

FLORIDA DEVELOPMENT FINANCE CORPORATION

[156] Section 163.31801, F.S.
[157] *Id.*
[158] Section 163.31801(3), F.S.
[159] *See Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611-12 (Fla. 4th DCA 1983); *St. Johns County v. N.E. Fla. Builders Assoc.*, 583 So. 2d 635 (Fla. 1991).
[160] *Id.*
[161] The 2012 National Impact Fee Survey is available at www.impactfees.com/publications%20pdf/2012_survey.pdf (last visited Feb. 15, 2015).

Present Situation

Florida Development Finance Corporation Background

In 1993, the Florida Legislature created the Florida Development Finance Corporation ("FDFC") as a state-authorized issuer of industrial revenue bonds, which are typically tax-exempt, private activity bonds.[162] In so doing, the Legislature's aim was to have the FDFC help foster the growth of manufacturing and other job-creating businesses in Florida by brokering private-activity bond financing through inter-local agreements with counties, municipalities, and other local political subdivisions. Over time, the Legislature expanded the FDFC's authority.[163]

Currently, the FDFC's statutorily expressed purpose is to enhance economic activity and development throughout the state by assisting in the financing of certain projects and facilitating the commercial interaction and cooperation between public and private organizations.[164] To undertake such responsibility, s. 288.9605, F.S., grants FDFC many powers, some of which include the following:

- to enter into interlocal agreements with public agencies for the exercise of any power, privilege, or authority consistent with the purposes of FDFC's enacting law;
- to issue revenue bonds for the purpose of financing and refinancing any capital projects for approved applicants;
- to issue bond anticipation notes in connection with the issuance and sale of such revenue bonds;
- to invest funds held in reserve or sinking funds or any such funds not required for immediate disbursement in property or securities in such manner as the board determines, subject to the authorizing resolution on any bonds issued, and to terms established in an investment agreement; and
- to borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the Federal government or the state, county, or other public body or from any sources, public or private, pursuant to the purposes of FDFC's enacting law.

One of FDFC's primary activities involves issuing revenue bonds throughout Florida to in turn offer low interest financing to qualified, financially sound, manufacturing and 501(c)(3) non-profit organizations.[165] FDFC may not issue a bond without the authorization of a public agency, which authorization is granted through an interlocal agreement.[166] Additional information about the revenue bonds includes as follows:

- tax exempt bond issuance amounts can be up to $10,000,000 per project for qualifying manufacturers;
- total capital investment in a community cannot exceed $20,000,000 in a six-year period;
- smaller size bond issuance fees may be around 4% to 5% of the bond amount, and larger size bond issuance fees may be around 2% to 3% of the bond amount;
- bond rates can be fixed or variable; and
- taxable bonds do not have a dollar issuance limit.[167]

To receive such financing from FDFC, businesses must submit applications (along with an application fee) to FDFC.[168] In addition to manufacturers, 501(c)(3) organizations that have been financed with

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[162] Sections 25-34, Ch. 93-187, L.O.F. *See also* The Florida Senate *Issue Brief 2011-209*: "An Overview of the Economic Development Affiliates Administered by Enterprise Florida, Inc." October 2010. At 6.
[163] *Id.*
[164] *See* s. 288.9602, F.S.
[165] Information obtained from Enterprise Florida, Inc. website at: http://www.enterpriseflorida.com/small-business/florida-development-finance-corporation/ (last visited on Feb. 22, 2015).
[166] Section 288.9606(1), F.S.
[167] Information obtained from "General FDFC Brochure" on file with staff and available on Enterprise Florida, Inc.'s website at : http://www.enterpriseflorida.com/small-business/florida-development-finance-corporation/ (last visited on Feb. 22, 2015).

FDFC issued revenue bonds include charter and private schools, homes for the aged, daycare facilities, and recreation centers.[169]

The FDFC has issued 65 bonds for 91 borrowers totaling over $940,000,000 since 1997.[170]

Property Assessed Clean Energy Program

The Property Assessed Clean Energy ("PACE") program encourages property owners to increase the energy efficiency of their property by allowing property owners to voluntarily make certain energy-efficiency related "qualified improvements" to their property with financial assistance from the local government in which the property lies.[171]

Local governments choose whether or not to support a PACE program.[172] Accordingly, property owners may only participate in the PACE program if their property is located within a local government that has a PACE program.[173] If the local government supports a PACE program, the local government often contracts with a PACE "provider" (or providers) to administer the program. The provider may be a third party entity or an entity that consists of multiple local governments created by interlocal agreement.[174]

Once a provider(s) is in place, the local government's role in the program is often to serve as a conduit issuer of bonds. That is, the local government issues bonds that are sold to the PACE provider (or an investor in the PACE provider), and the bond proceeds are used to finance a PACE improvement. The bonds are in turn repaid ("backed") by a voluntary special assessment that the local government levies on the property receiving the PACE improvement.[175] The assessment attaches to the property and takes priority to any mortgage on the property.[176]

A "qualifying improvement," which must be affixed to a building or facility that is part of the property,[177] includes the following:

- any energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property;
- a renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses certain fuels or energy sources; and
- certain wind resistance improvements.[178]

In 2010, the Florida Legislature granted the FDFC with the authority to issue bond financing for the PACE program.[179] However, the FDFC does not currently have the ability to levy a special assessment to back such bonds.

FDFC Board of Directors

The Governor appoints FDFC's five member board of directors, subject to Senate confirmation.[180] At least three of the board members must be bankers selected by the Governor from a list submitted by

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[168] Information obtained from Enterprise Florida, Inc. website at: http://www.enterpriseflorida.com/small-business/florida-development-finance-corporation/ (last visited on Feb. 22, 2015).
[169] *Id.*
[170] E-mail from Bill Spivey, FDFC Vice President of Capital Programs. E-mail received on April 16, 2015. E-mail on file with House staff.
[171] Section 163.08, F.S.
[172] Section 163.08, F.S.(3)-(4)
[173] *Id.*
[174] Section 163.08(5)-(6), F.S.
[175] Section 163.08(4), (8), (14), F.S.
[176] *See* s. 163.08(8), F.S.
[177] Section 163.08(10), F.S.
[178] Section 163.08(2)(b), F.S.
[179] Section 288.9606(7)(c), F.S.

Enterprise Florida, Inc. (EFI), and one of the directors must be an economic development specialist.[181] The chairperson of the Florida Black Business Investment Board serves as an ex officio member.[182] Terms are for four years, and any vacancy occurring during a term is filled by the Governor for the remainder of that term. Board members receive no compensation but are entitled to per diem and travel expenses.[183]

FDFC Reporting Requirements

Florida law requires the FDFC to submit to the Governor, the Legislature, the Auditor General, and the governing body of each public entity with which it has entered into an interlocal agreement a complete and detailed annual report setting forth the following:

- the results of any audit of the FDFC conducted pursuant to s. 11.45, F.S.;
- the activities, operations, and accomplishments of the FDFC, including the number of businesses assisted by the corporation; and
- the FDFC's assets, liabilities, income, and operating expenses at the end of its most recent fiscal year, including a description of all of its outstanding revenue bonds.

Effect of Proposed Changes

The bill removes the requirement that FDFC enter into interlocal agreements with public entities throughout the state to fulfil its abovementioned purposes and removes the requirement that the FDFC receive authorization by a public entity to issue bonds. The bill also removes the requirement that the FDFC submit an annual report to all the public entities with which the FDFC has entered into an interlocal agreement. The FDFC still must submit an annual report to the Governor, the Legislature, and the Auditor General. Moreover, the projects for which the FDFC assists are still subject to local government approval requirements (e.g., building permits, inspections, and zoning requirements).

The bill specifies that any and all actions taken by the FDFC's directors in furtherance of the FDFC's purposes during the pendency of one or more vacancies on the board occurring on or after January 1, 2008 are deemed to be valid and binding actions of the corporation as of the date of such actions, without regard to such vacancies.

The bill specifies that all bonds the FDFC issues do not constitute a debt, liability, or obligation of the state or of any political subdivision thereof, or a pledge of the faith and credit of the FDFC or of the state or of any political subdivision of the state.

The bill authorizes the FDFC to levy special assessments on property owners throughout the state who voluntarily choose to participate in the PACE program and specifies that the FDFC may not levy special assessments for any other purpose.

The bill specifies that no more than 30 days after entering into a financing agreement pursuant to the PACE program, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. A verified copy or other proof of such notice must be provided to the local government. A provision in any agreement between a mortgagee or other lienholder and the property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into such a financing agreement is not enforceable. However, the bill does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

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[180] Section 288.9604, F.S.
[181] *Id.*
[182] *Id.*
[183] *Id.*

TWO-YEAR EXTENSIONS FOR BUILDING AND DEVELOPMENT PERMITS

Present Situation

In 2009, the Legislature provided a retroactive two-year extension and renewal from the date of expiration for the following permits or development orders:

- any permit issued by the Department of Environmental Protection (DEP) or a water management district (WMD) under Part IV of ch. 373, F.S.;
- any development order issued by the Department of Community Affairs[184] pursuant to s. 380.06, F.S.; and
- any development order, building permit, or other land use approval issued by a local government that expired on or after September 1, 2008, but before January 1, 2012.[185]

The extension applied to phase, commencement, and buildout dates, including a buildout date extension previously granted under s. 380.016(19)(c), F.S., for development orders and land use approvals, including but not limited to certificates of concurrency and development agreements.

Those requesting an extension were required to notify the authorizing agency in writing. The notification was required to specify which permit was intended to be extended, and the timeframe for acting on the authorization. Requests were due no later than December 31, 2009.[186]

The extension did not apply to a permit or authorization:

- under a programmatic or regional general permit issued by the United States Army Corps of Engineers;
- for owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension; or
- that would delay or prevent compliance with a court order if extended.

The rules in place at the time the initial permit or authorization was issued applied to the extension. Modifications to the permits and authorizations were also governed by rules in place at the time the permit or authorization was issued. However, a modification could not extend the time limit beyond two years.[187]

In 2010,[188] the Legislature reauthorized the two-year time extension granted in 2009 because the underlying law was being challenged in court.[189] Entities requesting an extension and renewal of the permit were required to notify the authorizing agency in writing.[190]

Chapter 2010-147, L.O.F., also extended and renewed the expiration date for permits that expired between September 1, 2008, and January 1, 2012. This extension was in addition to the extension granted in 2009 and applied to the same types of permits. The permit holder was required to request the extension in writing from DEP no later than December 31, 2010. The request was to include the

[184] Most of the programs administered by the Department of Community Affairs are now administered by the Department of Economic Opportunity. *See* Ch. 2011-142, L.O.F.
[185] Section 14, Ch. 2009-96, L.O.F. (CS/CS/SB 360 by Policy and Steering Committee on Ways and Means; Community Affairs; Bennett and others)
[186] *Id*.
[187] *Id*.
[188] Sections 46 and 47, Ch. 2010-147, L.O.F. (CS/SB 1752 by Policy and Steering Committee on Ways and Means; Gaetz and others).
[189] CS/CS/SB 360 codified as Ch. 2009-96, L.O.F., was challenged by a group of local governments. The lawsuit, filed in Leon County Circuit Court was based on two counts: violation of the single subject provision in Article III, section 6 of the Florida Constitution and a violation of Article VII, section 18(a) charging the law constituted an unfunded mandate. *See* City of Weston v. Crist, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).
[190] Section 46, Ch. 2010-147, L.O.F.

authorization the permit holder intended to use the extension for and the timeframe for acting on the authorization.[191]

In 2011, the Legislature extended and renewed the permits that were previously extended in 2009 and 2010 for an additional two years from their previously scheduled expiration date. The permit holder was required to request the extension in writing from DEP no later than December 31, 2011. The request was to include the authorization the permit holder intended to use the extension for and the timeframe for acting on the authorization.[192]

The legislation included a provision to extend and renew a building permit or environmental resource permit that had an expiration date of January 1, 2012, through January 1, 2014. The extension included any development order or building permit issued by a local government, including certificates or levels of services. The extension was in addition to any existing permit extension. DRI order extensions under s. 380.06(19)(c)2., F.S., were not eligible for this extension and any permit that received a cumulative extension of four years due to previous extension was not eligible for this extension.[193]

In 2012, the Legislature again provided that any building permit, and any permit issued by the DEP or a WMD, which has an expiration date from January 1, 2012, through January 1, 2014, is extended and renewed for two years after its previously scheduled date of expiration. [194] The extension included any local government-issued development order or building permit including certificates of levels of service. This permit extension did not prohibit conversion from the construction phase to the operation phase upon completion of construction. Further, any permit extensions granted pursuant to the 2012 law, section 14 of chapter 2009-96, L.O.F. (as reauthorized by section 47 of chapter 2010-147, L.O.F.), section 46 of chapter 2012-147, L.O.F., or section 74 or section 79 of chapter 2011-139, L.O.F., could not exceed four years in total.

In 2014, the Legislature provided for an additional two year permit extension—for permits with expiration dates between January 1, 2014 and January 1, 2016.[195] Other than the date change, the 2014 extension mirrored the 2012 extension described above.[196]

Effect of Proposed Changes

The bill creates an unnumbered section of Florida law to extend and renew the permit extensions from previous years. The bill extends the expiration date by two years for any environmental resource permit issued by DEP or a WMD with an expiration date from January 1, 2015, through January 1, 2017. The extension includes local government-issued development orders or building permits, including certificates of level of service. The bill does not prohibit the conversion from the construction phase to the operation phase upon completion of construction. The extension is in addition to any existing permit extensions; however, the total permit extension time for this bill or the 2009,[197] 2010,[198] 2011,[199] 2012,[200] and 2014[201] extensions cannot exceed four years in total.

The bill requires that the dates for commencement and completion of any required mitigation associated with a phased construction project are also extended so that mitigation occurs in the same timeframe relative to the phase as originally permitted. The eligible permit holder must notify the authorizing agency in writing by December 31, 2015.

[191] Section 46, Ch. 2010-147, L.O.F.
[192] Section 79, Ch. 2011-139, L.O.F.
[193] *Id*.
[194] Section 24, Ch. 2012-205, L.O.F.
[195] Section 46, Ch. 2014-218, L.O.F.
[196] *Id.*
[197] Section 14, Ch. 2009-96, L.O.F.
[198] Sections 46 or 47, Ch. 2010-47, L.O.F.
[199] Sections 73 or 79, Ch. 2011-139, L.O.F.
[200] Section 24, Ch. 2012-205, L.O.F.
[201] Section 46, Ch. 2014-218, L.O.F.

The extension provided by the bill does not apply to the following permits:

- a permit or authorization under a programmatic or regional permit issued by the United States Army Corps of Engineers;
- a permit or authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization; or
- a permit authorization that would be out of compliance with a court order if extended.

The bill provides that permits extended under this section are subject to the rules in effect at the time the permit was issued, unless the rules would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit, which lessens the environmental impact. A modification cannot extend the time limit beyond two additional years.

The bill does not prevent a county or municipality from requiring a property owner that has requested an extension to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws.

FLORIDA ENTERPRISE ZONE PROGRAM

Present Situation

The 1982 Florida Legislature created the Florida Enterprise Zone Program (Program) to encourage private investment in economically distressed areas by providing access to certain incentives and benefits to businesses within such areas. DEO oversees the Program at the state level and approves zone designation applications, and local governments administer enterprise zones locally. The Program is codified in sections 290.001-290.016, F.S. as the "Florida Enterprise Zone Act" (Act).

The following chart displays the history of the Program.[202] Notably, the Legislature has required all zones to reapply for designation as enterprise zones upon the Program's sunset on two separate occasions—in 1994 and 2005.

Year	Activity
1982	The Florida Legislature created the Florida Enterprise Zone Program to be administered by the Department of Community Affairs.
1994	The Florida Legislature repealed existing enterprise zones, created requirements for designation of new zones, and established a sunset date of June 20, 2005.
1995	Local governments submitted competitive applications for new enterprise zone designations. 19 new enterprise zones were designated.
1996	Administrative responsibilities of the Program transferred from the Department of Community Affairs to the Governor's Office of Tourism, Trade and Economic Development (OTTED).
	The Florida Legislature extended the Program for 10 years and provided existing

[202] Florida Department of Economic Opportunity, *Florida Enterprise Zone Briefing Document*, October 22, 2014, p.2.

2005	enterprise zones an opportunity to have their zones re-designated.
2006	OTTED approved 53 re-designations and 9 new designations.
2010	The Legislature amended the definition of "Real property" in the enterprise zone statute to exclude condominiums from the building materials sales tax refund, which significantly cut the amount of the state's investment in the Program.
2011	As a result of reorganization, DEO is responsible for administering the Program.
2012	DEO approved three additional enterprise zones, which brought the total number of enterprise zones to 65.
	DEO approved 4 enterprise zone Boundary Amendment Requests.
2013	DEO approved 10 enterprise zone Boundary Amendment Requests.

In FY 2013-14, the state awarded $15,767,111 in state incentives to 1,497 businesses and individuals in enterprise zones throughout the state.[203] Local governments report that they awarded $11,373,610 over the same period.[204] In addition, during fiscal years 2009-10 through 2011-12, seven zones received 84% of the incentives received state wide. The Program currently has a negative return on investment (ROI) to the state of -0.05.[205]

Florida has 65 enterprise zones in 52 of the state's 67 counties. The Act is set to repeal on December 31, 2015.[206]

Designation Process

Sections 290.0055-290.0067, F.S. lay out the requirements and procedure for an area to receive designation as an enterprise zone.

Ultimately, a governing body of a county or municipality or the governing bodies of a county and one or more municipalities jointly is responsible for applying to the department for designation of an area as an enterprise zone.[207] However, the governing body must first ensure that it has the Florida Legislature's authorization to apply.[208]

If the governing body has or is granted such authorization, the governing body seeking designation of an area as an enterprise zone must follow certain procedures and ensure the area meets certain requirements.[209]

Prior to applying for designation, the governing body must pass a resolution which:

- finds that the area "chronically exhibits extreme and unacceptable levels of poverty, unemployment, physical deterioration, and economic disinvestment;"[210]
- "determines that the rehabilitation, conservation, or redevelopment" of such area is necessary for the public health, safety, and welfare of the governing body's residents;[211] and

[203] OPPAGA Research Memorandum, "Florida's Enterprise Zone Program," January 5, 2015.
[204] *Id.*
[205] 2013-2014 EDR Return on Investment Analysis
[206] Section 290.016, F.S.
[207] Section 290.0065, F.S.
[208] *Id.*
[209] Section 290.0055(1), F.S.
[210] *Id.*
[211] *Id.*

- "determines that the revitalization of such area can occur only if the private sector can be induced to invest its own resources in productive enterprises that build or rebuild the economic viability of the area."[212]

In addition, the area must suffer from "pervasive poverty, unemployment, and general distress" as defined in s. 290.0058, F.S., must not exceed 20 square miles, and must have a continuous boundary, or consist of not more than three contiguous parcels.[213] Moreover, the selected area must not exceed the following mileage limitations relative to its population:[214]

Community Population	Mileage Limitation
150,000 or more	20 sq. mi.
50,000 – 149,999	10 sq. mi.
20,000 – 49,999	5 sq. mi.
7,500 – 19,999	3 sq. mi.
7,499 or less	3 sq. mi.

The governing body or bodies must also create an "enterprise zone development agency" and adopt a strategic plan, pursuant to sections 290.0056 and 290.0057, respectively.[215]

Section 290.0056, F.S. requires an enterprise zone development agency to have a board of commissioners of at least eight, and no more than 13. Broadly, the agency has the following powers and responsibilities:

- to assist in the development, implementation, and annual review and update of the strategic plan or measureable goals;
- to oversee the progress in implementing the strategic plan or measurable goals;
- to identify and recommend to the governing body ways to remove regulatory barriers;
- to identify the financial needs of, and local resources or assistance available to, eligible businesses within the zone;
- to promote the enterprise zone incentives to residents and businesses within the zone;
- to recommend boundary changes of the zone to the governing body;
- to work with nonprofit organizations that provide development consulting; and
- to ensure the enterprise zone coordinator (who the agency appoints) receives annual training and works with Enterprise Florida, Inc.

Section 290.0057, F.S. requires that an enterprise zone development plan (or strategic plan) accompany an application. At a minimum, the plan must:

- describe the community's goals for revitalizing the area;
- describe how the community will address concerns related to its social and human resources, including transportation, housing, community development, public safety, education, and the environment;
- identify key community goals and barriers to such goals;

[212] *Id.*
[213] Section 290.0055(4)(a), F.S.
[214] *Id.*
[215] Section 290.0055(1)(b),(c), F.S.

- outline how the community is a full partner in the process of developing and implementing the plan;
- commit the local governing body to enact and maintain local fiscal and regulatory incentives;
- identify the amount of available local and private resources and potential private/public partnerships;
- indicate how the enterprise zone tax incentives and other local, state, and federal resources will be utilized;
- identify funding requested under any state or federal program to support the proposed plan; and
- identify baselines, methods, and benchmarks for measuring the plan's success.

The department determines which nominated areas are most appropriate for designation as enterprise zones by competitively ranking applications as follows:

- pervasive poverty, unemployment, and general distress are weighted 35 percent;
- the strategic plan and local fiscal and regulatory incentives are weighted 40 percent; and
- prospects for new investment are weighted 25 percent.[216]

The department may revoke the designation of an enterprise zone if the department determines that a governing body or bodies failed to follow its strategic plan.[217] In addition, an enterprise zone will lose its designation automatically if the governing body or bodies fails to enact and maintain its committed-to local fiscal and regulatory incentives pursuant to s. 290.0057(1)(e) for two consecutive years.[218]

Enterprise Zone State Incentives

Businesses located within enterprise zones[219] have access to various incentives. As demonstrated below, certain incentives differ for businesses within "rural enterprise zones." A rural enterprise zone is "an enterprise zone that is nominated by a county having a population of 75,000 or fewer, or a county having a population of 100,000 or fewer which is contiguous to a county having a population of 75,000 or fewer, or by a municipality in such a county, or by such a county and one or more municipalities."[220]

DOR is responsible for processing all incentive applications. Available state incentives for businesses located within enterprise zones include the following:

- *Sales Tax Refund for Building Materials*[221]

  A refund is available for sales taxes paid on the purchase of certain building materials used to rehabilitate real property located in a zone. The amount refunded is the lesser of 97 percent of the sales tax paid on the building materials or $5,000 (or $10,000 if at least 20 percent of the employees of the business are residents of an enterprise zone).

- *Sales Tax Refund for Business Machinery and Equipment*[222]

  A refund is available for sales taxes paid on the purchase of certain business property, (e.g., tangible personal property such as office equipment, warehouse equipment, and some industrial machinery and equipment), which is used exclusively in a zone for at least three years. The amount refunded is the lesser of 97 percent of the sales tax paid on the business property or $5,000 (or $10,000 if at least 20 percent of the employees of the business are residents of an enterprise zone).

[216] Section 290.0065(2), F.S.
[217] Section 290.0066(1), F.S.
[218] *Id.*
[219] One incentive—the Community Contribution Tax Credit Program—is also available to Florida businesses located outside of zones.
[220] Section 290.004(5), F.S.
[221] Section 212.08(5)(g), F.S.
[222] Section 212.08(5)(h), F.S.

- *Enterprise Zone Jobs Tax Credit (Sales & Use Tax)*[223]

  Businesses located within a zone that collect and pay Florida sales and use taxes, are allowed a monthly credit against their sales tax due on wages paid to certain new employees. The credit is calculated as 20 or 30 percent of wages paid to new employees, unless the business is located in a rural enterprise zone, in which case the credit is calculated as 30 or 45 percent of wages paid to new employees.

- *Sales Tax Exemption for Electrical Energy*[224]

  A 50 percent sales tax exemption is available to qualified businesses located in a zone on the purchase of electrical energy. The exemption is only available if the municipality in which the business is located has passed an ordinance to exempt qualified enterprise zone businesses from 50 percent of the municipal utility tax.

- *Enterprise Zone Jobs Tax Credit (Corporate Income Tax)*[225]

  Businesses located in a zone that pay Florida Corporate Income Tax are allowed a corporate income tax credit for wages paid to certain new employees. The credit is calculated as 20 or 30 percent of wages paid to new employees, unless the business is located in a rural enterprise zone, in which case the credit is calculated as 30 or 45 percent of wages paid to new employees.

- *Enterprise Zone Property Tax Credit (Corporate Income Tax)*[226]

  Certain new or expanded businesses located in an enterprise zone are allowed a credit on the Florida Corporate Income Tax calculated from the amount of ad valorem tax paid on the new or improved property for each eligible location. The maximum amount of credit allowed in any one year is $25,000 or $50,000 if more than 20 percent of the business' employees reside in an enterprise zone.

- *Exemption for a Licensed Child Care Facility operating in an Enterprise Zone*[227]

  An exemption from ad valorem property taxes is available for certain childcare facilities operating in an enterprise zone.

- *Community Contribution Tax Credit Program*[228]

  Businesses located anywhere in Florida are eligible for certain tax credits for eligible donations made to approved community development projects.

In addition to state incentives, counties and municipalities may offer businesses enterprise zone benefits, including:

- reduction in occupational license fees;
- reduction in building permit or land development fees;
- utility tax abatement;
- façade/commercial rehabilitation grants;
- local option economic development property tax exemptions;
- ad valorem tax exemptions; and
- local funds for capital projects.

[223] Section 212.096, F.S.
[224] Section 212.08(15), F.S.
[225] Section 220.181, F.S.
[226] Section 220.182, F.S.
[227] Section 196.095, F.S.
[228] Section 212.08(5)(p), s. 220.183, F.S., and s. 624.5105, F.S.

Florida's Enterprise Zone Program also provides indirect benefits to businesses located within enterprise zones by enhancing the incentives for other economic development programs available to such businesses. Examples include as follows:

- Qualified Target Industry Tax Refund Program
    - Increases per job tax refund from $3,000 per job to up to $6,000
    - Waives certain job creation requirements
- Economic Development Transportation Projects (Road Fund)
    - Increases per job award from up to $7,000 to up to $10,000
    - Waives Capital Investment Cap (which prevents awards from exceeding an investment)

The following chart displays how much the state spends on each incentive and which incentives businesses in enterprise zones took most advantage of between July 1, 2013 and June 30, 2014.

State Incentive	Tax Incentive Type	Approved Amount	Number of Approvals
Sales Tax Exemption for Electrical Energy	Sales Tax	$751,485	79
Property Tax Credit	Corporate Income Tax	$1,191,181	17
Building Materials Sales Tax Refund	Sales Tax	$1,194,130	317
Business Equipment Sales Tax Refund	Sales Tax	$1,561,339	834
Jobs Tax Credit	Corporate Income Tax	$4,237,163	47
Jobs Tax Credit	Sales Tax	$6,831,758	203
	TOTALS	$15,767,116	1,497

2015 OPPAGA Research Memorandum

The Office of Program Policy Analysis and Government Accountability (OPPAGA) released a research memorandum on January 5, 2015, which analyzed the performance of Florida's Enterprise Zone Program. Specifically, the report analyzed changes in seven selected enterprise zones over a three year period and compared such zones to similar non-zone areas. The report also included findings from an OPPAGA survey sent to all enterprise zone stakeholders, requesting feedback on the Program.

The report's summary findings were as follows: For economic indicators (median home value, median household income, unemployment rate, and poverty rate), the seven enterprise zones generally underperformed when compared to similar non-zone areas. For social indicators (infant mortality, educational attainment, crime rate, and population density), the seven enterprise zones showed mixed results, with few zones outperforming comparison non-zone areas for some indicators.

Most businesses that responded to the OPPAGA survey did not know that they are located in an enterprise zone, and very few had taken advantage of Program incentives. According to stakeholders, incentive eligibility thresholds constitute a significant barrier to program participation, especially for small businesses.

In its closing, the report offers the following three options for legislative consideration:

1) Require local governments to reapply for enterprise zone designation and periodically monitor performance goals. Such performance goals should be objectively measurable;
2) To make program incentives more accessible to small businesses, the Legislature could create a tiered program with eligibility requirements and incentive amounts based on business size; and
3) Target program incentives to encourage job creation. To focus the program on job creation, the Legislature could eliminate all Program incentives except jobs tax credits. Under this option, the Legislature could also amend current law to allow businesses to claim part-time employees and non-zone residents for jobs tax credits (which would also assist small businesses).

2014 and 2015 Office of Economic and Demographic Research (EDR) Reports[229]

EDR released a report on Florida's Enterprise Zone Program in January, 2014, which evaluated the program's return on investment (ROI) to the state and performed a property tax analysis of the zones. The highlights of the report's finding were as follows:

- The program produces a negative ROI to the state (-.05) for a number of reasons. Most importantly, the Program converts previously taxable activity to non-taxable activity.
- Unless bundled with other incentives, enterprise zone incentives are an insufficient inducement to relocate to Florida.
- The analysis supported the conclusion that enterprise zones have a direct and positive impact on property values over an extended period of time and that there is a potential benefit to local governments through increased ad valorem revenue.

EDR released a subsequent report on the program on January 1, 2015, which: expanded on its previous property value analysis of enterprise zones; discussed ways to improve the program's ROI; discussed approaches to improve the program's induced and indirect benefits; discussed alternatives to the program's structure; and analyzed the option of shifting the funding responsibility for the program to local governments. A brief summary of the report's findings and analyses for each topic is as follows:

Extended Analysis of Property Tax Values

- The greatest long term benefit to property values is largely concentrated in commercial and industrial parcels in urban enterprise zones.
- Rural enterprise zones generally do not benefit from long term increases in property values as is seen in the urban zones.
- Residential properties do not detectably benefit from being in a zone, whether the zone is rural or urban.
- To the extent there is benefit to property values in a zone, such value would accrue to local governments, not the state.

Improving the Program's ROI[230]

- Require specific capital investment (such as construction)
- Create a specific new/retained job requirement
- Create a high wage requirement
- Create a job training requirement
- Target industries with high multipliers (i.e., industries that create more economic activity)

[229] The Report is an expansion of a 2014 EDR report.
[230] Note: increasing the ROI will not necessarily cure blight or improve a severely distressed area.

- Create a market or resource independence requirement. That is, do not provide incentives to businesses that would have created or retained jobs regardless of the incentive. Such businesses include those that are dependent on Florida's population growth or resources.
- Target businesses with strong export capability or that bring in federal dollars
- Target businesses that would not have existed "but for" the incentive
- Limit the state investment to no more than needed to accomplish the Program's goals. One avenue to accomplish this would be to consider local participation in the Program's funding.

Approaches to Improve the Program's Induced and Indirect Benefits

- Improve direct effects of the Program primarily through facilitating new business establishments in targeted industries, promoting higher salaries, and promoting additional capital expenditures
- Requiring incentive-recipients to demonstrate backward linkages. An industry has significant backward linkages when its production of output requires substantial intermediate inputs form many local industries.
- Incentivize the creation of strong pools of local suppliers in key locations. Suppliers will in turn attract businesses that would benefit from the suppliers' output (thereby creating a stronger web of backward linkages).

Alternatives to the Program's Structure

- Consider encouraging the inclusion of arts and culture in some (not too many) enterprise zones. These "creative districts" are defined as "well-recognized, labeled, mixed-use areas of a city in which a high concentration of cultural facilities serves as the anchor of attraction and robust economic activity."
- Consider creating "industry specific zones" that foster clusters of specific industries such as healthcare, high technology, manufacturing or research and development. (This is in stark contrast to current zone formations, which are predominantly residential in use.)
- Consider tying enterprise zones to "foreign trade zones" (or free trade zones) where goods may be landed, handled, manufactured or reconfigured, and re-exported without incurring customs duties. Over 200 communities in the US have free trade zones, 20 of which are in Florida. The free trade zones could provide a good foundation for enterprise zone incentives to build upon.
- Consider making zone geographically compact. This could help focus attention on the Legislature's most important policy goals.

Shifting Funding Responsibility to Local Governments

- Consider shifting funding responsibility of the Program to Local Governments. To assist local governments with such responsibility, the Legislature could expand the authorized uses of the Local Government Infrastructure Surtax[231] and Small County Surtax[232] to include enterprise zone funding, or replace the Emergency Fire Rescue Services and Facilities Surtax[233] with a surtax to fund local economic development efforts.

Effect of Proposed Changes

[231] All of Florida's 67 counties may levy the Local Government Infrastructure Surtax, for up to one percent, subject to referendum approval. 17 counties currently levy the surtax.

[232] 31 of Florida's counties are eligible to levy the Small County Surtax, for up to one percent, by extraordinary vote of the county commission if the proceeds are used for operating purposes. If the proceeds are used to service bonded indebtedness, it requires referendum approval. Currently, 29 of the eligible 31 counties levy the surtax.

[233] 65 Florida counties are authorized to levy the Emergency Fire Rescue Services and Facilities Surtax for up to one percent, subject to referendum approval. Only those counties that have already imposed two separate discretionary surtaxes without expiration are restricted from levying the surtax. However, no county in the past five and one-half years has levied the surtax.

The bill creates ss. 290.50 and 290.60, F.S., which establishes the Local Enterprise Zone program and the Enterprise Zone Certification program respectively.

Local Enterprise Zone Program

A local government may adopt a resolution establishing a local enterprise zone program through which it grants exemptions from specified local taxes, fees, permits, and licenses for newly established[234] or expanding businesses[235] located within designated enterprise zone areas. A local government that establishes a local enterprise zone program must submit a copy of the resolution creating the program to DEO within 20 days.

A local enterprise zone program must exempt all newly established or expanding businesses from the following taxes and fees imposed by the local government for a minimum of 24 consecutive months:

- business taxes;
- impact fees;
- business, professional, and occupational regulatory fees;
- green utility fees;
- building permit fees;
- special assessments, including, but not limited to, services associated with beach renourishment and restoration, downtown redevelopment, solid waste disposal, fire and rescue services, fire protection, parking facilities, sewer improvements, stormwater management services, street improvements, and water and sewer line extensions;
- sign ordinance requirements, permits, and fees; and
- tree and landscape ordinance requirements, permits, and fees.

For 24 consecutive months following the creation of a designated enterprise zone area, a local government may not issue a citation for a civil code or ordinance infraction on any business located within the designated enterprise zone. Additionally, newly established businesses may not be cited for civil code or ordinance infractions during the first 24 months of operation. For 24 months following an expansion that results in a 10% or greater increase in the number of full time employees, an expanding business may also be exempt from such citations. However, violations of civil code or ordinance which pose a direct threat to the health and safety of the public are not exempted.

Enterprise Zone Certification Program

The governing body of a county or municipality or the governing bodies of a county and one or more municipalities together may submit an application to DEO for certification of an area as an enterprise zone. Applications must be submitted to the department no later than January 1 of each year, and must include:

- an aerial map and legal description of the proposed enterprise zone area;
- demographic information regarding the proposed zone area;[236]
- verification that the applicant makes available on its website a list of all local tax, license, and fee data related to the creation of a new business, the expansion of an existing business, and the operation of an existing business located within the applicant's jurisdiction;

[234] Defined within the bill as "any business entity authorized to do business within the state that has established new operations in a designated enterprise zone area within the previous 12 months."
[235] Defined within the bill as "a business entity authorized to do business in the state that increases its total number of full-time employees by at least 10 percent and is located within a designated enterprise zone area."
[236] Such information must include unemployment, poverty, crime, income, and property value metrics. DEO is required to consult with EDR to develop or identify standard sources and metrics, and plus such information on its website.

- a list and description of the local financial incentives that have been or will be enacted by the applicant for the purpose of assisting in the redevelopment of the enterprise zone; and
- a copy of the resolution adopted by the local governing body creating the local enterprise zone program and designating the enterprise zone area.

All timely submitted and completed applications will be certified by DEO and assigned a unique identification number by June 30 of each year. Previously certified enterprise zones are not required to reapply.

DEO is required to develop a marketing and advertising plan in coordination with local governments for the purpose of highlighting the benefits of the program and encouraging increased business activity within certified enterprise zones.

Before October 1 of each year each local government containing a certified enterprise zone within its jurisdiction is required to submit the following information for inclusion in the department's annual report:

- the number and types of businesses established within the certified enterprise zone during the previous fiscal year;
- the number of jobs created within the certified enterprise zone during the previous fiscal year;
- a detailed description of the local and state financial incentives granted to businesses located within the certified enterprise zone during the previous fiscal year;
- a detailed description of the local regulatory incentives granted to businesses within the certified enterprise zone during the previous fiscal year; and
- any other information requested by DEO.

A certified enterprise zone will be decertified if the resolution creating the local enterprise zone program is repealed by the local government or the local government submits written notification to the department, along with a resolution adopted by the governing body of the local government after a public hearing, requesting that the certified enterprise zone be decertified.

PUBLIC-PRIVATE PARTNERSHIPS

Present Situation

Public-private partnerships (P3s) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public building and infrastructure projects.[237] Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for use by the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.[238]

Section 287.05712, F.S., governs the procurement process for P3s for public purpose projects. It authorizes a responsible public entity to enter into a P3 for a specified qualifying project if the responsible public entity determines the project is in the public's best interest.[239]

Section 287.05712(1)(j), F.S., defines "responsible public entity" as a county, municipality, school board, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

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[237] *See* The Federal Highway Administration, United State Department of Transportation, Innovative Program Delivery website, available at: http://www.fhwa.dot.gov/ipd/p3/defined/index.htm (last visited on February 16, 2015).
[238] *Id*.
[239] Section 287.05712(4)(d), F.S.

Section 287.05712(1)(i), F.S., defines "qualifying project" as:

- a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;
- an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
- a water, wastewater, or surface water management facility or other related infrastructure; or
- for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.

Procurement Procedures

Responsible public entities may receive unsolicited proposals or may solicit proposals for qualifying projects and may, thereafter, enter into a comprehensive agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities.[240] Responsible public entities may establish a reasonable fee to accompany unsolicited proposals. The fee must be sufficient to pay the costs of evaluating the proposals.[241]

Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:[242]

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of the person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information the responsible public entity reasonably requests.

If the responsible public entity receives an unsolicited proposal and intends to enter into a P3 agreement for the qualifying project, the responsible public entity must publish a notice in the Florida Administrative Register (FAR) and a newspaper of general circulation at least once a week for two weeks stating the entity has received a proposal and will accept other proposals.[243] The responsible public entity must establish a timeframe in which to accept other proposals; however, the timeframe for

[240] Section 287.05712(4), F.S.
[241] Section 287.05712(4)(a), F.S.
[242] Section 287.05712(5), F.S.
[243] Section 287.05712(4)(b), F.S.

allowing other proposals must be at least 21 days, but not more than 120 days after the initial date of publication.[244]

After the notification period has expired, the responsible public entity must rank the proposals received in order of preference.[245] If negotiations with the first ranked firm are unsuccessful, the responsible public entity may begin negotiations with the second ranked firm.[246] The responsible public entity may reject all proposals at any point in the process.[247]

The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the requests, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors and consultants.[248]

The responsible public entity may approve a qualifying project if: [249]

- there is a public need for or benefit derived from the project that the private entity proposes as the qualifying project;
- the estimated cost of the qualifying project is reasonable in relation to similar facilities; and
- the private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

Notice to Affected Local Jurisdictions

A responsible public entity must notify each affected local jurisdiction when considering a qualifying project by furnishing a copy of the proposal to each affected local jurisdiction.[250] The affected local jurisdictions may, within 60 days, submit written comments to the responsible public entity. The responsible public entity is required to consider the comments submitted by the affected local jurisdiction. In addition, a responsible public entity must mail a copy of the notice that is published in the FAR to each local government in the affected area.[251]

Agreements

Interim Agreement

Before entering into a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity, which does not obligate the responsible public entity to enter into a comprehensive agreement.[252] Interim agreements must be limited to provisions that:

- Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project.
- Establish the process and timing of the negotiation of the comprehensive agreement.
- Contain any other provision related to any aspect of the development or operation of a qualifying project.

Comprehensive Agreement

The responsible public entity and private entity must enter into a comprehensive agreement prior to developing or operating a qualifying project.[253] The comprehensive agreement must provide for:[254]

[244] *Id.*
[245] Section 287.05712(6)(c), F.S.
[246] *Id.*
[247] *Id.*
[248] Section 287.05712(6)(f), F.S.
[249] Section 287.05712(6)(e), F.S.
[250] Section 287.05712(7), F.S.
[251] Section 287.05712(4)(b), F.S.
[252] Section 287.05712(8), F.S.
[253] Section 287.05712(9), F.S.

- delivery of performance and payment bonds, letters of credit, and other security in connection with the development or operation of the qualifying project;
- review of plans and specifications for the project by the public entity;[255]
- inspection of the qualifying project by the responsible public entity;
- maintenance of a policy or policies of public liability insurance.
- monitoring the practices of the private entity to ensure the qualifying project is properly maintained;
- filing of financial statements on a periodic basis;
- policies and procedures governing the rights and responsibilities of the public and private entity in the event of a termination of the comprehensive agreement or a material default;
- user fees, lease payments, or service payments as may be established; and
- duties of the private entity, including terms and conditions that the responsible public entity determines serve the public purpose of the qualifying project.

The comprehensive agreement may include the following:[256]

- an agreement by the responsible public entity to make grants or loans to the private entity from amounts received from federal, state, or local government or any agency or instrumentality thereof;
- a provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity; and
- a provision that terminates the authority and duties of the private entity and dedicates the qualifying project to the responsible public entity.

Fees
The comprehensive agreement may authorize the private entity to impose fees to the public for use of the facility.[257]

Financing

Section 287.05712(11), F.S., authorizes the use of multiple financing options for P3s. The options include the private entity obtaining private-source financing, the responsible public entity lending funds to the private entity, or the use of other innovative finance techniques associated with P3s.

Powers and Duties of the Private Entity
The private entity must develop, operate, and maintain the qualifying project in accordance with the comprehensive agreement.[258] The private entity must cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and other facilities and infrastructure. The private entity must comply with the terms of the comprehensive agreement and any other lease or contract.

Expiration or Termination of Agreements

Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay the current operation and maintenance costs of the qualifying project.[259] If the private entity materially defaults, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying

[254] Section 287.05712(9)(a), F.S.
[255] This does not require the private entity to complete the design of the project prior to executing the comprehensive agreement.
[256] Section 287.05712(9)(b), F.S.
[257] Section 287.05712(10), F.S.
[258] Section 287.05712(12), F.S.
[259] Section 287.05712(13), F.S.

project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the project are paid in the normal course. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity.

Partnership for Public Facilities and Infrastructure Act Guidelines Task Force

Section 287.05712(3), F.S., creates the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force (task force). The task force was created to recommend guidelines for the Legislature to consider for purposes of creating a uniform P3 process across the state.[260] The seven-member task force was comprised of the Secretary of the Department of Management Services (department) and six members appointed by the Governor who represented the county government, municipal government, district school board, and business community. The department provided administrative and technical support to the task force.

In July 2014, the task force completed its duties and submitted a final report of its recommendations.[261] The task force was terminated on December 31, 2014.[262]

Effect of Proposed Changes

This bill incorporates many of the recommendations contained in the task force report, which include best practice recommendations as well as recommendations relating to needed clarification of s. 287.05712, F.S., which may facilitate the implementation of P3s.

Responsible Public Entity Definition

The bill expands the definition of "responsible public entity" to include state universities,[263] and clarifies that it includes special districts, school districts rather than school boards, and Florida College System institutions.[264]

Task Force

The bill deletes the task force provisions, as the task force was terminated on December 31, 2014.

[260] Section 287.05712(3)(a), F.S.
[261] The task force report can be found online at: http://www.dms.myflorida.com/agency_administration/communications/partnership_for_public_facilities_infrastructure_act (last visited February 16, 2015).
[262] Section 287.05712(3)(f), F.S.
[263] Partnership for Public Facilities and Infrastructure Act Guidelines Task Force, *Final Report and Recommendations* (July 2014), at 16. The task force recommended adding state universities to the list of entities that are included in the definition of "responsible public entity."
[264] *Id.* at 18. The task force recommended amending the definition of "responsible public entity" to reference school district, rather than board, as the district is the unit that provides public primary education. It also recommended clarifying that the definition includes both special districts and the Florida College System.

Application Fees

The bill provides that when a private entity submits an unsolicited proposal, the private entity must concurrently submit the initial application fee.[265] The application fee must be paid by cash, cashier's check, or other noncancelable instrument. The bill provides that if the initial fee, as determined by the responsible public entity, is not sufficient to cover the costs associated with evaluating the unsolicited proposal, the responsible public entity must request in writing the additional amount required. If the private entity fails to pay the additional amount requested within 30 days of the notice, the responsible public entity may stop reviewing the proposal. The bill requires the responsible public entity to return the application fee if the responsible public entity does not evaluate the unsolicited proposal.

Solicitation Timeframes

The bill provides flexibility to the responsible public entity for accepting proposals if an alternative timeframe is approved by majority vote of the entity's governing body.[266] It also removes the provision that required a school board to obtain the approval of the local governing body.[267]

Ownership by the Responsible Public Entity

The bill clarifies that the project will be owned by the responsible public entity upon expiration of the comprehensive agreement, rather than solely upon completion or termination of the agreement.[268]

Unsolicited Proposal

The bill clarifies that any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.[269]

Notice to Affected Local Jurisdictions

The bill deletes the requirement that a responsible public entity notify each affected local jurisdiction of an unsolicited proposal by furnishing a copy of the proposal to each affected local jurisdiction when considering it.[270] The responsible public entity must still provide each affected local jurisdiction a copy of the notice published in FAR concerning solicitations for a qualifying project.

Financing

The bill clarifies that a financing agreement may not require the responsible public entity to secure financing by a mortgage on, or security interest in, the real or tangible personal property of the responsible public entity in a manner that could result in the loss of the fee ownership of the property by the responsible public entity.[271]

The bill also deletes a provision that provides for the responsible public entity to appropriate on a priority basis a contractual payment obligation from the government fund from which the qualifying

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[265] *Id.* at 9. The task force recommended amending the fee provisions to ensure that the fees were related to actual, reasonable costs associated with reviewing an unsolicited proposal and not revenue generation.
[266] *Id.* at 7. The task force discussed that increased flexibility may be necessary when dealing with complex proposals to ensure sufficient time is allowed for the receipt of competing proposals.
[267] *Id.* at 18. The task force recommended striking this provision because school boards are not subject to governance by a local governing body.
[268] *Id.* at 13.
[269] *Id*. at 7.
[270] *Id.* at 12. The report provided a discussion on the notice that is already provided to affected local jurisdictions through the permitting process and stated a mandatory P3 notice process could delay project timelines.
[271] *Id.* at 20.

project will be funded.[272] Current law raised concerns regarding infringement upon a responsible public entity's appropriation powers. Additionally, had the provision remained in current law, it is unclear how this provision would apply to state universities or Florida College System institutions.

Department of Management Services

The bill provides that the department may accept and maintain copies of comprehensive agreements received from responsible public entities for the purpose of sharing the comprehensive agreements with other responsible public entities.[273] Responsible public entities are not required to provide copies to the department; however, if a responsible public entity provides a copy, the responsible public entity must first redact any confidential or exempt information from the comprehensive agreement.

Construction

The bill clarifies that the P3 process must be construed as cumulative and supplemental to any other authority or power vested in the governing body of a county, municipality, district, or municipal hospital or health care system. The bill provides that the P3 process is an alternative method that may be used, but that it does not limit a county, municipality, district, or other political subdivision of the state in the acquisition, design, or construction of a public project pursuant to other statutory or constitutional authority.[274]

Miscellaneous

The bill transfers and renumbers s. 287.05712, F.S., as s. 255.065, F.S., because chapter 255, F.S., relates to procurement of construction services and P3s are primarily construction related projects.

The bill also makes other changes to provide for the consistent use of terminology and to provide clarity.

MAJOR LEAGUE BASEBALL SPRING TRAINING RETENTION PROGRAM EVALUATION

Present Situation

Economic Development Programs Evaluation

In 2013,[275] the Legislature directed EDR to evaluate and determine the economic benefits[276] of each economic development incentive program over the previous three years. The analysis must also evaluate:[277]

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

OPPAGA is directed to evaluate each program over the previous 3 years for effectiveness and value to the state's taxpayers and include recommendations on each program for consideration by the

[272] *Id.* at 14-15. The report recommended the current provision addressing appropriating funds be revised, not deleted. Even though the report recommended that the Legislature consider specifically authorizing the State University System to utilize P3s as a project delivery method, it does not specifically address the applicability of an appropriations requirement to universities. *Id.* at 16.
[273] *Id.* at 11. The report recommended authorizing a state agency to provide assistance to responsible public entities concerning P3s.
[274] *Id*. at 19. The report discussed the need for flexibility in the creation of P3s and noted that clarification is needed to ensure that the process is considered supplemental and alternative to any other applicable statutory authority.
[275] Chapter 2013-39, L.O.F.
[276] "Economic benefits" means the direct, indirect, and induced gains in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives. Section 288.005, F.S.
[277] Section 288.0001, F.S.

Legislature. The analysis may include relevant economic development reports or analyses prepared by DEO, EFI, or local or regional economic development organizations; interviews with parties involved; or any other relevant data.[278]

The following economic development programs must be evaluated:

- Capital Investment Tax Credit.[279]
- Qualified Target Industry Tax Refund.[280]
- Brownfield Redevelopment Bonus Tax Refund.[281]
- High-Impact Sector Performance Grants.[282]
- Quick Action Closing Fund.[283]
- Innovation Incentive Programs.[284]
- Enterprise Zone Program.[285]
- Entertainment Industry Financial Incentive Program.[286]
- Entertainment Industry Sales Tax Exemption Program.[287]
- VISIT Florida.[288]
- Florida Sports Foundation.[289]
- Qualified Defense Contractor and Space Flight Business Tax Refund Program.[290]
- Tax Exemption for Semiconductor, Defense, or Space Technology Sales.[291]
- Military Base Protection Program.[292]
- Manufacturing and Spaceport Investment Incentive Program.[293]
- Quick Response Training Program.[294]
- Incumbent Worker Training Program.[295]
- International Trade and Business Development Programs.[296]

Major League Baseball Spring Training Retention Program

Section 288.11631, F.S., authorizes the Retention of Major League Baseball Spring Training Baseball Franchises program by which DEO may certify local governments to receive a distribution from state sales tax of $55,555 per month ($666,660 per year) for 20 years for a single franchise facility or

[278] *Id.*
[279] Section 220.191, F.S.
[280] Section 288.106, F.S.
[281] Section 288.107, F.S.
[282] Section 288.108, F.S.
[283] Section 288.1088, F.S.
[284] Section 288.1089, F.S.
[285] Sections 212.0805, 212.0815, 212.096, 220.181, and 220.182, F.S.
[286] Section 288.1254, F.S.
[287] Section 288.1258, F.S.
[288] Sections 288.122, 288.1266, 288.12265, and 288.124, F.S.
[289] Sections 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171, F.S.
[290] Section 288.1045, F.S.
[291] Section 212.08(5)(j), F.S.
[292] Section 288.980, F.S.
[293] Section 288.1083, F.S.
[294] Section 288.047, F.S.
[295] Section 445.003, F.S.
[296] Section 288.826, F.S.

$111,110 per month ($1,333,320 per year) for 25 years for a multiple franchise facility. The funds may be used to construct or renovate a spring training baseball facility. There is no limit to the number of applicants that may be certified by the department.

Effect of Proposed Changes

The bill adds the Retention of Major League Baseball Spring Training Baseball Franchises program authorized by s. 288.11631, F.S., to the list of programs scheduled to be reviewed by OPPAGA and EDR beginning January 1, 2018 and every 3 years thereafter.

PROPERTY ASSESSED CLEAN ENERGY PROGRAM

Present Situation

The Property Assessed Clean Energy Model

The Property Assessed Clean Energy ("PACE") program encourages property owners to increase the energy efficiency of their property by allowing property owners to voluntarily make certain energy-efficiency related "qualified improvements" to their property with financial assistance from the local government in which the property lies.[297]

Local governments choose whether or not to support a PACE program.[298] Accordingly, property owners may only participate in the PACE program if their property is located within a local government that has a PACE program.[299] If the local government supports a PACE program, the local government often contracts with a PACE "provider" (or providers) to administer the program. The provider may be a third party entity or an entity that consists of multiple local governments created by interlocal agreement.[300]

Once a provider(s) is in place, the local government's role in the program is often to serve as a conduit issuer of bonds. That is, the local government issues bonds that are sold to the PACE provider (or an investor in the PACE provider), and the bond proceeds are used to finance a PACE improvement. The bonds are in turn repaid ("backed") by a voluntary special assessment that the local government levies on the property receiving the PACE improvement.[301] The assessment attaches to the property and takes priority to any mortgage on the property.[302]

A "qualifying improvement," which must be affixed to a building or facility that is part of the property,[303] includes the following:

- any energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property;
- a renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses certain fuels or energy sources; and
- certain wind resistance improvements.[304]

Subsidence and Sinkholes

Florida law defines a sinkhole as "a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater."[305] Sinkholes are a common feature in Florida's

[297] Section 163.08, F.S.
[298] Section 163.08, F.S.(3)-(4)
[299] *Id.*
[300] Section 163.08(5)-(6), F.S.
[301] Section 163.08(4), (8), (14), F.S.
[302] *See* s. 163.08(8), F.S.
[303] Section 163.08(10), F.S.
[304] Section 163.08(2)(b), F.S.
[305] Section 627.706(2)(h), F.S.

landscape, due to erosional processes associated with the chemical weathering and dissolution of carbonate rocks below Florida's surface such as limestone, dolomite, and gypsum.[306] Over geologic periods of time, persistent erosion created extensive underground voids and drainage systems throughout Florida.[307] 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."[308]

The two primary repair methods for sinkhole remediation are grouting and underpinning.[309] 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.[310] Underpinning consists of steel piers drilled or pushed into the ground to stabilize the building's foundation. One end of the steel pipe connects to the foundation of the structure with the other end resting on solid limestone.[311] Underpinning repairs, when performed, are usually combined with grouting. Professional engineers do not typically recommend underpinning unless there is damage involving significant differential settlement or significant structural damage.[312]

Effect of Proposed Changes

The bill amends s. 163.08, F.S., to allow supplemental authority for financing stabilization or other repairs to real property damaged by ground subsidence, including sinkhole activity. The bill establishes a finding of a compelling state interest in providing local government assistance to enable property owners to voluntarily finance qualifying improvements to real property damaged by subsidence.

The bill expands the definition of "qualifying improvement" within the PACE program to include stabilization and other repairs to property damaged by subsidence. The bill also provides that a subsidence-related qualifying improvement is deemed affixed to a building or facility and requires that a disclosure statement must be provided to a prospective purchaser of a property which details such qualifying improvements.

B. SECTION DIRECTORY:

Section 1: Amends. s. 17.61, F.S., relating to the powers and duties of the Chief Financial Officer in the investment of certain funds.

Section 2: Amends s. 20.60, F.S., revising required elements of a report prepared by the Department of Economic Opportunity.

Section 3: Amends s. 163.08, F.S., relating to supplemental authority for improvements to real property.

Section 4: Amends s. 163.3180, F.S., prohibiting a local government from applying transportation concurrency within its jurisdiction unless certain conditions are met.

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[306] Florida Department of Environmental Protection, *Sinkholes*, can be found at: http://www.dep.state.fl.us/geology/geologictopics/sinkhole.htm (last accessed Mar. 18, 2015)
[307] *Id.*
[308] *Id.*
[309] Citizens Property Insurance Corporation, *Sinkhole Repairs: Underpinning and Grouting*, can be found at: https://www.citizensfla.com/shared/sinkhole/documents/GroutVersusUnderpinning.pdf (last accessed Mar. 18, 2015)
[310] *Id.*
[311] *Id.*
[312] *Id.*

Section 5: Amends s. 163.31801, F.S., prohibiting a county, municipality, or special district from applying certain impact fees or other fees within its jurisdiction unless certain conditions are met.

Section 6: Amends s. 212.20, F.S., conforming provisions to changes made by the act.

Section 7: Amends s. 220.03, F.S., conforming provisions to changes made by the act.

Section 8: Transfers, renumbers, and amends s. 287.05712, F.S., relating to public-private partnerships.

Section 9: Amends s. 288.061, F.S., revising the economic development incentive application process.

Section 10: Amends s. 288.076, F.S., conforming a cross-reference.

Section 11: Amends s. 288.095, F.S., removing a limit on the total amount of allowable payments from the Economic Development Trust Fund for certain purposes.

Section 12: Providing an appropriation in the sum of $20 million of nonrecurring funds in the State Economic Enhancement and Development Trust Fund and the sum of $3.8 million of nonrecurring funds in the Economic Development Trust Fund.

Section 13: Amends s. 288.1045, F.S., relating to the Qualified Defense Contractor and Space Flight Business tax refund program.

Section 14: Amends s. 288.106, F.S., relating to the Qualified Target Industry tax refund program.

Section 15: Amends s. 208.107, F.S., relating to the Brownfield Redevelopment Bonus Refund.

Section 16: Amends s. 288.108, F.S., relating to the High-Impact Performance Incentive.

Section 17: Amends s. 288.1088, F.S., relating to the Quick Action Closing Fund.

Section 18: Amends s. 288.1089, F.S., relating to the Innovation Incentive Program.

Section 19: Amends s. 288.1166, F.S., relating to the designation of professional sports facilities as shelter sites for the homeless.

Section 20: Amends s. 288.1168, F.S., relating to the Professional Golf Hall of Fame Facility program.

Section 21: Repeals s. 288.1169, F.S., relating to the International Game Fish Association World Center.

Section 22: Amends s. 288.1201, F.S., relating to the State Economic Enhancement and Development Trust Fund.

Section 23: Amends s. 288.901, F.S., relating to Enterprise Florida, Inc.

Section 24: Amends s. 288.9602, F.S., relating to the Florida Development Finance Corporation.

Section 25: Amends s. 288.9604, F.S., relating to the Florida Development Finance Corporation.

Section 26: Amends s. 288.9605, F.S., relating to the Florida Development Finance Corporation.

Section 27: Amends s. 288.9606, F.S., relating to the Florida Development Finance Corporation.

Section 28: Amends s. 288.9610, F.S., relating to the Florida Development Finance Corporation.

Section 29: Amends s. 288.991, F.S., relating to the New Markets Development Program

Section 30: Amends s. 288.9914, F.S., relating to the New Markets Development Program

Section 31: Amends s. 288.9917, F.S., relating to the New Markets Development Program.

Section 32: Amends s. 288.9937, F.S., relating to the Microfinance Loan Program and the Microfinance Guarantee Program.

Section 33: Creates s. 288.913, F.S., establishing the Startup Florida Initiative.

Section 34: Amends s. 189.033, F.S., conforming a cross-reference.

Section 35: Amends s. 288.11625, F.S., conforming a cross-reference.

Section 36: Amends s. 288.11631, F.S., conforming a cross-reference.

Section 37: Creates an unnumbered section of Florida law relating to the extension of certain permits subject to certain expiration dates.

Section 38: Creates s. 290.50, F.S., providing for the creation and operation of local enterprise zone designation programs.

Section 39: Creates s. 290.60, F.S., providing for the Department of Economic Opportunity to certify and decertify designated local enterprise zone areas.

Sections 40 – 55:
Amends s. 163.521, F.S., and others, conforming cross-references related to certified enterprise zones.

Section 56: Amends s. 288.0001, F.S., relating to Economic Development Programs Evaluation, and certified enterprise zones.

Section 57 - 65:
Amends s. 288.018, F.S., and others, conforming cross-references related to certified enterprise zones.

Section 66: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The fiscal impact on local governments depends upon the use of the various economic development incentives and programs addressed in the bill.

For instance, there would be a negative impact to local revenues due to certain new developments being exempt from complying with impact fee, concurrency, or proportionate share requirements for transportation impacts for three years, unless the local government revokes the exemptions by a super majority vote.

In addition, there would be a negative impact to local revenues if a local government adopts a resolution establishing a local enterprise zone program through which it grants exemptions from specified local taxes, fees, permits, and licenses for newly established or expanding businesses.

On March 27, 2015, the Revenue Estimating Conference estimated the certified enterprise zone and tax provisions of the bill to have an indeterminate negative revenue impact to local governments.

2. Expenditures:

The fiscal impact on local governments depends upon the use of the various economic development incentives and programs addressed in the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of this bill may positively impact various business sectors throughout the state.

D. FISCAL COMMENTS:

The bill appropriates $20 million of nonrecurring funds in the State Economic Enhancement and Development Trust Fund and the sum of $3.8 million of nonrecurring funds in the Economic Development Trust Fund for fiscal year 2015-16.

The bill provides for a two year extension for building and development permits that is in addition to any existing permit extensions; however, the total permit extension time for this bill or the 2009,[313] 2010,[314] 2011,[315] 2012,[316] and 2014[317] extensions cannot exceed four years in total. This may have an indeterminate negative impact on the state through lost revenues from permit fees not collected for renewals and extensions.

On March 27, 2015, the Revenue Estimating Conference estimated the certified enterprise zone and tax provisions of the bill to have an indeterminate negative revenue impact to the state.
The bill contains an extension to the Qualified Defense Contractor and Space Flight tax refund program to allow DEO to certify applications through June 30, 2017. This may have an estimated $2.6 million impact per year to the state.

The bill requires an annual analysis and report on the New Markets Development Program Act which may have an indeterminate but likely insignificant negative fiscal impact on DEO.

The bill will have an insignificant negative fiscal impact on the Department of Management Services for the purpose of receiving comprehensive agreements and acting as a depository for such comprehensive agreements. According to the department, the costs should be absorbed within current resources.

[313] Section 14, Ch. 2009-96, L.O.F.
[314] Sections 46 or 47, Ch. 2010-47, L.O.F.
[315] Sections 73 or 79, Ch. 2011-139, L.O.F.
[316] Section 24, Ch. 2012-205, L.O.F.
[317] Section 46, Ch. 2014-218, L.O.F.

The bill has an indeterminate fiscal impact on universities and local governments that enter into P3s. State and local government expenditures would be based on currently unidentified P3s.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DEO may require rulemaking authority to establish the new enterprise zone certification program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the House Economic Development & Tourism Subcommittee adopted two amendments and reported the bill favorably.

Amendment No. 1:

- corrected a scrivener's error;
- clarified that the exemption to municipal code and ordinance violations outlined within the new enterprise zone certification program does not apply to violations that pose a direct threat to the health and safety of the public; and
- made numerous updates to enterprise zone references throughout statute to reflect the new enterprise zone certification program.

Amendment No. 2 pertained to the New Markets Development program and clarified that a Qualified Community Development Entity that fails to meet the new capital requirement created by the bill will be subject to the recapture of funds provision of the program.

On April 14, 2015, the House Economic Affairs Committee adopted a strike-all amendment and reported the bill favorably. The strike-all amendment:

- defines the average wage for incentive programs as the average wage of the county or metropolitan area where the project is located;
- allows DEO to extend incentive contracts beyond 10 years under certain conditions;
- requires any incentive contract with a capital investment requirement to prohibit an applicant from removing the capital investment from the state for the duration of the contract;

- specifies information that must be collected and evaluated by DEO for purposes of accepting and evaluating economic development incentive applications;
- removes provisions related to “cumulative capital investment” contained within the bill;
- adds the Major League Baseball Spring Training Baseball Franchises program to the list of programs scheduled to be reviewed by EDR and OPPAGA;
- adds OPPAGA to the Microfinance program evaluation process;
- removes the job creation requirement for QAC projects contained within the bill;
- incorporates the recommendations of the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force;
- modifies the incentive grant approval process (HIPI, IIP, QAC), which based upon the amount of funds awarded for a project, requires either consultation with the LBC, Speaker, or President; or approval by the LBC;
- appropriates $20 million of non-recurring funds into the SEED Trust Fund and $3.8 million of non-recurring funds into the Economic Development Trust Fund to provide payments and tax refunds for incentive programs for FY 2015-2016;
- caps QAC expenditures at $35 million annually;
- removes the caps on QDSC, QTI, and HIPI;
- allows certain QDSC certified applicants to file tax refund claims after a missed deadline;
- caps total payments and tax refunds for incentive programs at $60 million annually;
- removes the repeal of the Professional Golf Hall of Fame Facility program and institutes new reporting requirements for certified applicants;
- exempts fiscally constrained counties from the provision in the bill requiring local governments requesting waivers of local financial support for incentive programs to provide a CPA-certified statement to DEO;
- clarifies that local governments participating in the new enterprise zone program created by the bill may offer financial incentives to all business types;
- defines “employee” for purposes of the new enterprise zone program created by the bill;
- removes the “new capital requirement” for the New Markets Development Program in order to maintain healthy competition in the Program. As a result of meeting with stakeholders and program participants; and
- makes technical changes and conforms cross-references.

This analysis is drafted to the bill as passed by the House Economic Affairs Committee.