

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2290

SPONSOR: Commerce and Economic Opportunities Committee and Senator Klein

SUBJECT: Self-Employment Assistance

DATE: March 14, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gillespie/Birholz</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 2290 creates the Florida Self-Employment and Enterprise Development (SEED) Act, composed of both a self-employment-assistance program and a micro-loan program. The self-employment-assistance program is established within the Agency for Workforce Innovation and allows unemployed individuals who are eligible to participate in the program to receive allowances in lieu of regular unemployment benefits. The allowances are paid in the same amounts, at the same intervals, on the same terms, and subject to the same conditions as regular benefits. Instead of searching for a salary or wage job, the committee substitute requires participants to attend business training and counseling programs and engage full-time in activities related to establishing businesses and becoming self-employed. Workforce Florida, Inc., is directed to allocate funds for the training and counseling programs from funds provided to the state’s workforce system and to adopt minimum standards for the programs.

The committee substitute also requires the Agency for Workforce Innovation, in conjunction with Workforce Florida, Inc., to establish a micro-loan program to provide business start-up loans for participants in the self-employment-assistance program who complete the required training and counseling programs. An individual may receive no more than \$10,000 in loans, and the loans are provided to participants for costs related to the establishment or operation of their businesses. The committee substitute provides for the loans to be made by qualified entities selected by Workforce Florida, Inc., under contract with the Agency for Workforce Innovation. The committee substitute provides for the expiration of both programs and requires a report evaluating the programs to be submitted to the Governor and the Legislature by January 1, 2007.

This committee substitute substantially amends section 443.111, Florida Statutes. The committee substitute also creates s. 445.053, F.S.

II. Present Situation:

Federal Self-Employment Assistance Program

In 1993, as part of the federal law to ratify the North American Free Trade Agreement (NAFTA), the United States Congress amended the Federal Unemployment Tax Act (26 U.S.C. ss. 3301-3311), thereby allowing each state to establish a self-employment assistance program as part of the state's unemployment compensation system.¹ Originally authorized as a temporary program for five years after the ratification of NAFTA, the self-employment assistance program was designed to benefit workers who were dislocated because of NAFTA. The traditional unemployment compensation system is primarily designed to provide income support for workers who are temporarily laid off or who expect to be unemployed for a short time. Because NAFTA had the potential to cause some workers to lose their jobs permanently, the self-employment assistance program was designed to assist workers in starting new careers in self-employment. In 1998, Congress repealed the sunset of the self-employment assistance program, thereby establishing it as a permanent program.² Seven states currently operate a self-employment assistance program: Delaware, Maine, Maryland, New Jersey, New York, Oregon, and Pennsylvania.³

The self-employment assistance program is designed to encourage and enable unemployed workers to create their own jobs by starting a business. Under the program, the state pays a self-employment assistance allowance, in lieu of regular unemployment benefits, to help unemployed workers while they establish businesses and become self-employed. Instead of searching for a salary or wage job, participants must engage full-time in activities related to the establishment of their businesses and becoming self-employed. Participants must also attend state-approved programs, including entrepreneurial training, business counseling, and technical assistance.

To be eligible, an individual must first be eligible to receive regular unemployment benefits. Individuals who are permanently laid off from their previous jobs and who are identified as likely to exhaust regular unemployment benefits are eligible to participate in the program. To identify those individuals likely to exhaust regular benefits, most states use a profiling system comprised of an exhaustion prediction algorithm, which is a formula-driven statistical analysis. In Florida, the Agency for Workforce Innovation currently uses a similar profiling system for determining eligibility for reemployment services.⁴

Participants receive self-employment assistance allowances in the same amounts, at the same intervals, on the same terms, and subject to the same conditions as regular unemployment benefits, but earned income from self-employment does not disqualify an individual from continued participation in the program. Federal law limits the number of participants in the self-

¹ North American Free Trade Agreement Implementation Act, s. 507, Pub. L. No. 103-182 (codified at 26 U.S.C. s. 3306(t)).

² Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, s. 3, Pub. L. No. 105-306.

³ William T. Kosanovich et al., DTI Associates, Inc., *Final Report: Comprehensive Assessment of Self-Employment Assistance Programs* (Office of Workforce Security, U.S. Department of Labor, June 2001), available at <http://wdr.doleta.gov/owsdrr/papers/sea.pdf>.

⁴ Section 443.091(1)(d), F.S.; rule 60BB-3.028, F.A.C.

employment assistance program to no more than 5 percent of those individuals receiving regular unemployment benefits, and the self-employment assistance program is prohibited from imposing costs on the state's Unemployment Compensation Trust Fund exceeding the costs the trust fund otherwise would have incurred if the state had not participated in the program.

Unemployment Compensation in Florida

Florida's unemployment compensation program is administered by the Agency for Workforce Innovation to provide temporary income payments to make up part of the wages lost by workers who lose their jobs through no fault of their own and who are able and available to work. The objective of the program is to provide a cushion to absorb some of the shock of unemployment for jobless workers and their families. This temporary income helps workers sustain their families while they are without jobs.

To receive unemployment benefits, individuals must meet certain monetary and non-monetary eligibility requirements. For example, an individual must have worked during his or her "base period" (first four of the previous five calendar quarters). An individual must have earned at least \$3,400 during the base period and be unemployed due to a layoff or otherwise through no fault of the individual. To be eligible for benefits, an individual must register for work at an employment office and must be able to work and available for work (s. 443.091(1)(b) and (c)1., F.S.). Under current law, the term "able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought (s. 443.036(1), F.S.), and the term "available for work" means actively seeking employment and being ready and willing to accept suitable employment (s. 443.036(6), F.S.). An individual may be disqualified from receiving unemployment benefits if he or she fails without good cause to apply for available suitable work when directed or to accept suitable work when offered to him or her, or to return to the individual's customary self-employment when directed (s. 443.101(2), F.S.).

An eligible individual may receive benefits equal to 25 percent of the wages paid to the individual during his or her base period, but an individual's total benefits are capped for any period of unemployment within a range from a minimum cap of \$850 to a maximum cap of \$7,150. Benefits are paid weekly, ranging from a minimum of \$32 to a maximum weekly benefit amount of \$275 for up to 26 weeks, depending on the claimant's length of prior employment and wages earned.

If an individual is laid off from a job or otherwise loses a job through no fault of his or her own, but remains employed less than full time, the individual may be considered "partially unemployed" and be eligible to receive unemployment benefits (ss. 443.036(39)(a) and 443.111(4)(b), F.S.). An individual is partially unemployed in any week of less than full-time work if the earned income payable to him or her for that week is less than the individual's weekly benefit amount. The individual would, accordingly, be eligible for unemployment benefits needed to increase the individual's income to the level of the weekly benefit amount. Conversely, a "totally unemployed" individual has no earned income payable to him or her in any week, and would be eligible for unemployment benefits equal to the individual's weekly benefit amount (ss. 443.036(39)(a) and 443.111(4)(a), F.S.). Under current law, "earned income" means gross remuneration derived from work, professional service, or self-employment (s. 443.036(16), F.S.). The term does not include income derived from invested capital or ownership

of property. Thus, under current law, if an individual becomes unemployed and subsequently begins to start a business and becomes self-employed, the income earned from the self-employment would disqualify the individual from payment of all or part of the unemployment benefits.

Financing Unemployment Compensation

All unemployment compensation tax payments are deposited into the Unemployment Compensation Trust Fund and are used for the sole purpose of paying benefits to eligible individuals. The employer pays for the unemployment benefits program as a cost of doing business. Workers do not pay any part of unemployment compensation taxes in Florida, and employers may not make payroll deductions for this purpose. Employers with stable employment records receive credit in reduced tax rates after a qualifying period.

The Florida Unemployment Compensation Law (ch. 443, F.S.) provides three methods of financing unemployment benefits. Benefits paid to private-sector employees are financed through the contributory method. Benefits paid to public-sector employees are financed through the reimbursement method or through the Public Employers Unemployment Compensation Benefit Account. Nonprofit employers may choose to finance unemployment benefits through either the contributory method or the reimbursement method.

The reimbursement method is a self-insurance system that requires payments to the Unemployment Compensation Trust Fund only when benefits are paid based on an individual's service to the employer. If benefits are not paid based on that service, the employer is not required to make payments to the trust fund.

Under the contributory method, employers pay quarterly taxes on the first \$7,000 of each employee's annual wages. The method of determining varying tax rates assigned to taxpaying employers is referred to as "experience rating." The purpose of experience rating under the Florida Unemployment Compensation Law is to keep the Unemployment Compensation Trust Fund stabilized between 4 and 5 percent of the taxable payrolls reported by all employers, and to ensure that employers with higher unemployment benefits costs pay a higher tax rate.

An employer's experience rate is based on the employer's own employment record in relation to the employment records of all other employers. The rate at which taxes are paid is based on the employer's experience with unemployment during the three-year period before the effective date of the tax rate. An employer's initial tax rate is 2.7 percent. After an employer is subject to benefit charges for 10 or 11 calendar quarters (depending on when the employer became subject to charges), the tax rate is adjusted between a low of 0.1 percent and a high of 5.4 percent. The adjustment in the tax rate is determined by calculating several factors.

The benefit ratio is the most significant factor in determining the tax rate, and it is the factor over which the employer has control. The benefit ratio is the cost of benefit charges as a percentage of the employer's taxable wages and is calculated by dividing the total benefits charged to the employer's record over the preceding three years by the amount of the employer's payroll during the same three-year period.

When an individual receives unemployment benefits based on the wages an employer paid the worker, benefit charges are assigned to that employer's account. The account of each employer who paid an individual \$100 or more during the period of a claim is subject to being charged a proportionate share of the benefits paid to the individual. However, an employer can obtain relief from benefit charges (noncharging) by responding to a notification of the claim with information concerning the reason for the individual's separation from work or refusal to work. In general, an employer can earn a lower tax rate by limiting the amount of benefit charges to the employer's account.

Benefits that cannot be charged against any employer's account are recovered through adjustment factors that socialize the cost of these benefits among all contributory employers who, during the previous three years, had benefit experience. These adjustment factors include the noncharge adjustment factor, the excess payments adjustment factor, and the positive fund size adjustment factor. Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the Unemployment Compensation Trust Fund. The effect is an increase in the adjustment factors, which consequently increases tax rates for all contributory employers. Conversely, when unemployment is low, the adjustment factors decrease and tax rates for contributory employers are reduced accordingly. An October 2001 interim project report by the Florida Senate Committee on Commerce and Economic Opportunities predicts the trust fund's balance, without the impact of this committee substitute, is likely to fall below the statutory "trigger" (4 percent of the state's taxable payrolls) by June 30, 2002, thereby causing a positive fund size adjustment factor to increase employer tax rates beginning January 1, 2003, to replenish the trust fund.⁵ A positive fund size adjustment factor has not increased employer tax rates since 1984.

Workforce Training and Counseling Programs

In addition to administering the unemployment compensation program, the Agency for Workforce Innovation oversees the state's workforce system and administers the plans and policies of Workforce Florida, Inc. A complement to the unemployment compensation program, the state's workforce system provides various workforce services, including services designed to assist dislocated workers. These workforce services are provided by the regional workforce boards through the one-stop delivery system, and include:

- Job search, referral, and placement assistance;
- Career counseling and educational planning;
- Employability skills training;
- Adult education and basic skills training; and
- Technical training leading to a certification and degree (s. 445.009(1), F.S.).

Funding provided for these workforce services is derived from both federal and state sources, including the federal Workforce Investment Act and Temporary Assistance for Needy Families block grants. The principal focus of these training and counseling programs is to increase the education, skills, and employability of workers, thereby assisting them in attaining salary or

⁵ Committee on Commerce and Economic Opportunities, Florida Senate, *Solvency of the Unemployment Compensation Trust Fund and the Tax "Trigger,"* Interim Project Report No. 2002-122 (Oct. 2001).

wage jobs. The programs are not, however, centered on assisting individuals in starting their own businesses and becoming self-employed.

Small Business Development Centers

There are existing programs in this state which provide training and counseling to assist individuals in starting their own small businesses. For example, the Florida Small Business Development Center Network coordinates 28 Small Business Development Centers (SBDCs) located throughout the state. These SBDCs are part of a federal program administered by the United States Small Business Administration. The SBDCs provide management assistance to current and prospective small business owners. Both directly and indirectly (through approved partners such as the Service Corps of Retired Executives), the SBDCs deliver up-to-date counseling, training, and technical assistance in all aspects of small business management.

The SBDCs generally offer a core set of training classes for individuals starting a business, including how to write a business plan, marketing, basic business law, how to find financing, accounting, and information technology. In addition to the core courses, some SBDCs offer specialized training that is relevant to the region in which they are located (e.g., the SBDC at Florida Atlantic University's College of Business offers some international trade courses). The SBDCs typically offer business counseling both before and after a client starts a new business. In 2001, SBDCs served approximately 27,000 clients in Florida. Their combined budgets were about \$7 million [\$4.5 million from the federal government and \$2.5 million from local matches (often from state universities and community colleges)].

III. Effect of Proposed Changes:

The committee substitute creates the Florida Self-Employment and Enterprise Development (SEED) Act, which is composed of two programs: a self-employment-assistance program and a complementary Self-Employment-Assistance Loan Program.

Short Title (Section 1)

The committee substitute specifies that it may be cited as the "Florida Self-Employment and Enterprise Development Act."

Self-Employment-Assistance Program (Section 2)

The committee substitute amends s. 443.111, F.S., which governs the payment of unemployment benefits. The committee substitute creates a self-employment-assistance program within the Agency for Workforce Innovation, implementing authority in the Federal Unemployment Tax Act. Under the program, the committee substitute provides for the payment to eligible individuals of self-employment-assistance allowances in lieu of regular unemployment benefits. The committee substitute requires participants, instead of searching for a salary or wage job, to engage full-time in activities related to establishing businesses and becoming self-employed. The following summarizes the major program components:

- **Eligibility:** To be eligible, an individual must first be eligible to receive regular unemployment benefits. Individuals who are permanently laid off from their previous jobs and who are identified by an eligibility-assessment system as likely to exhaust regular unemployment benefits are eligible to participate in the program. An eligible individual must apply for the program within 60 days after filing for unemployment, must have at least 18 weeks of unemployment benefits remaining, and must not have previously participated in the program.
- **Eligibility-Assessment System:** For determining eligibility, the Agency for Workforce Innovation is required to establish a system to identify unemployed individuals who are likely to exhaust regular unemployment benefits. The system may be the same as the existing profiling system used to determine eligibility for reemployment services.
- **Training and Counseling Programs:** Each participant in the self-employment-assistance program must attend entrepreneurial training, business counseling, and technical assistance programs. These programs must be approved by the Agency for Workforce Innovation. Workforce Florida, Inc., is directed to adopt the minimum standards for these training and counseling programs and to contract with existing providers (e.g., Small Business Development Centers) using funds provided to the workforce system (i.e., funds from the federal Workforce Investment Act and Temporary Assistance for Needy Families block grants).
- **Disqualification:** Each participant in the program is required to document attendance of the training and counseling programs and participation in the full-time activities related to establishing a businesses and becoming self-employed. If an individual fails to engage in the required activities and programs in any week, the individual is disqualified from receiving an allowance for that week. If the individual is disqualified in two consecutive weeks or for any three weeks, the individual is removed from the program.
- **Allowances:** Participants in the program receive self-employment-assistance allowances in the same amounts, at the same intervals, on the same terms, and subject to the same conditions as regular unemployment benefits, but earned income from self-employment does not disqualify an individual from continued participation in the program, and each participant is considered to be “totally unemployed” while participating in the program. In addition, requirements for registering for work, ability to work, availability for work, and failing to apply for or accept suitable work do not apply to participants. Allowances are paid from the Unemployment Compensation Trust Fund, but are not charged to the accounts of contributory employers. Reimbursable employers are, however, required to make reimbursements for the allowances.
- **Participation Limit:** The number of participants in the program is limited to 1 percent of those receiving regular unemployment benefits. The committee substitute authorizes the Agency for Workforce Innovation to limit admissions into the program to meet this requirement and allows the agency to further restrict participation based upon the availability of training and counseling programs or funding.

- **Rules:** The Agency for Workforce Innovation is directed to adopt rules for the administration of the program.
- **Evaluations and Recommendations:** The Agency for Workforce Innovation, Workforce Florida, Inc., and the regional workforce boards are required to report to the Governor and the Legislature on the effectiveness of the program by January 1, 2007.
- **Conflicts:** The committee substitute provides that, if it conflicts with federal requirements, the federal requirements control.
- **Expiration:** The self-employment-assistance program expires July 1, 2007.

Self-Employment-Assistance Loan Program (Section 3)

The committee substitute creates s. 445.053, F.S., which requires the Agency for Workforce Innovation, in conjunction with Workforce Florida, Inc., to establish a Self-Employment-Assistance Loan Program. The program makes micro-loans available for participants of the self-employment-assistance program in order to assist participants in establishing businesses through supplying start-up capital. To be eligible for a loan, participants must apply within one year after completing the required training and counseling programs approved by the Agency for Workforce Innovation. Participants may receive follow-up loans within three years after completing the required programs, but the total of all loans received may not exceed \$10,000.

Funding for the loans is subject to specific legislative appropriation. The committee substitute requires the Agency for Workforce Innovation to contract with qualified entities to make and service the loans. These qualified entities may include financial institutions, nonprofit organizations that have demonstrated fiduciary integrity, or government agencies acting in cooperation with nonprofit organizations.

Workforce Florida, Inc., is directed to select the qualified entities and negotiate the terms and conditions of the contracts. The contracts must require that loan repayments be used only for the loan program (e.g., making loans to other program participants). The contracts must also specify that, when the loan program expires or is repealed, a qualified entity may use the loan repayments only for similar loans to assist small enterprises in this state. The committee substitute directs that business counseling and technical assistance programs should be extended during the first year after an individual receives a loan. The loan program expires three years after the self-employment-assistance program expires or is repealed.

Appropriation (Section 4)

The committee substitute appropriates \$1 million to fund the Self-Employment-Assistance Loan Program during fiscal year 2002-2003, which is provided from the General Revenue Fund. (*See* Section 3 of the committee substitute.)

Effective Date (Section 5)

The committee substitute provides an effective date of October 1, 2002.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The Agency for Workforce Innovation estimates that \$6.2 million in additional unemployment benefits would be paid each year from the Unemployment Compensation Trust Fund. The committee substitute's payments of self-employment-assistance allowances are not charged to the accounts of contributory employers but are charged to reimbursable employers. For contributory employers, the noncharging of these benefits may cause a marginal increase in the noncharge adjustment factor, thereby socializing the cost of the program among all contributory employers in the state in order to replenish the trust fund. Reimbursable employers will reimburse the trust fund for the self-employment-assistance allowances charged to their accounts in the same manner that they would have reimbursed amounts paid for regular unemployment compensation benefits.

B. Private Sector Impact:

Unemployed individuals participating in the self-employment-assistance program are eligible to receive self-employment-assistance allowances, in lieu of regular unemployment compensation; entrepreneurial training; business counseling; and technical assistance. Completers of the training and counseling programs may also be eligible for micro-loans to supply business start-up capital. The increased costs to the Unemployment Compensation Trust from the noncharging of self-employment-assistance allowances would likely cause a marginal increase in the noncharge adjustment factor, thereby resulting in marginal increases in the unemployment compensation taxes paid by contributory employers.

C. Government Sector Impact:

According to the Agency for Workforce Innovation, implementation of the self-employment-assistance program would yield recurring costs in benefits from the Unemployment Compensation Trust Fund of approximately \$6,263,400. This estimate is based upon calculations that predict the annual enrollment in the program would be approximately 1,100 unemployed individuals. Because the committee substitute limits

program eligibility to those individuals who are eligible to receive at least 18 weeks of unemployment benefits, these calculations estimate that program participants will be eligible for 26 weeks of benefits at an average weekly benefit amount of \$218.67 per claim. In addition, the agency estimates it will incur approximately \$46,200 in nonrecurring expenditures for information technology costs associated with reprogramming of the agency's mainframe computer to modify the unemployment compensation benefit payment system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
