

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7111 PCB EEIC 08-12 Economic Development

SPONSOR(S): Economic Expansion & Infrastructure Council & Cannon

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Expansion & Infrastructure Council	13 Y, 1 N	Croom / Suarez/Madsen	Tinker
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill, related to Economic Development, makes substantial amendments to the state’s incentive programs and supports rural and small businesses at a minimal cost to the state. The bill is designed to improve program implementation and processes. The bill consists of the following parts:

Small Business Regulatory Relief

The bill establishes the Small Business Regulatory Relief Act by creating a Small Business Regulatory Review Advisory Council and a Small Business Advocate. The bill also amends the Administrative Procedures Act by: requiring state agencies to prepare a statement of estimated regulatory cost if the proposed rule will impact small business; and creating a review process utilizing the Office of Program Policy Analysis & Government Accountability when an agency does not utilize an alternative rule offered by the Council.

Economic Development Incentive Programs

The bill amends several of the state’s business incentive programs. The bill creates a standard application timeline and removes the sunset of Qualified Target Industry Program. The bill modifies the following programs: the Capital Investment Tax Credit, the Economic Development Transportation Fund, the Qualified Defense Contractor Tax Refund Program, the Qualified Target Industry Program, the Brownfield Redevelopment Bonus Refund Program, the High Impact Performance Incentive Program, the Quick Action Closing Fund, the Entertainment Industry Financial Incentive Program, the Black Business Loan Program, and tax refunds available to spring training facilities.

The bills also: (1) amends the Florida Opportunity Fund to require final approval for the venture capital investment manager by Enterprise Florida, Inc.; and (2) creates s. 501.701, F.S., to require state agencies and Florida businesses that evaluate other businesses (based on consumer complaints) the requirement to disclose and publish the methodology of the evaluation and to offer each business under review the opportunity to supply a written statement or rebuttal for publication.

Rural Economic Development

The bill makes several recommended changes to the Rural Infrastructure Fund and the Rural Economic Development Initiative (REDI), including: codifying the catalyst project; giving REDI the ability to provide

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technical assistance for comprehensive planning; expanding enterprise zones in rural areas of critical economic concern by three square miles, and clarifying that criteria for rural projects receiving funds under the Quick Action Closing Fund can be waived. In addition, the bill expands the definition of rural in several sections of statute to allow Highlands County to remain designated as a rural county.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes – The effect of the proposed council bill is to strengthen the overall business climate by providing opportunities for economic stimulus. The bill also allows the expansion of enterprise zones in rural areas of critical economic concern allowing businesses in these areas the opportunity to take advantage of multiple tax credits.

B. EFFECT OF PROPOSED CHANGES:

Florida is largely made up of small businesses and rural communities. Small businesses are the foundation of Florida's economy. Recent statistics show that there are 1,942,200 small businesses in Florida and more than half of these businesses are operated by sole-proprietors, working full-time without any paid employees. In addition to providing a livelihood for their own families, Florida's small-business owners provide more than half (53 percent) of all wage-and-salary jobs in the state's private sector. In Florida, as in the nation as a whole, small firms lead the way in job creation. Small businesses are the backbone to the state's economy and their growth is critical to the state's economic well-being.

In addition, research clearly indicates that economic development strategies can be especially beneficial if the project helps overcome involuntary unemployment or underemployment or helps local residents move up to higher paying jobs. Thirty-two of the state's 67 counties are presently categorized as rural and large sections of the state are low-income communities. Incentives in these areas can be less costly than attracting a major business, can have a large economic impact across the state, and can have a significant impact on Florida's citizens.

The bill makes substantial amendments to the state's incentive programs and supports rural and small businesses at a minimal cost to the state. The bill is designed to improve program implementation and processes.

SMALL BUSINESS REGULATORY RELIEF

Present Situation

Recent statistics show that there are 1,942,200 small businesses in Florida and more than half of these businesses are operated by sole-proprietors, working full-time without any paid employees. Among these "employer firms" (businesses providing full-time jobs to people other than the owners):

- Nineteen out of 20 (97 percent) have fewer than 100 employees.
- Four of every five (81 percent) have fewer than 10 employees.
- Nearly two-thirds (64 percent) have fewer than five employees.

In addition to providing a livelihood for their own families, Florida's small-business owners provide more than half (53 percent) of all wage-and-salary jobs in the state's private sector. In Florida, as in the nation as a whole, small firms lead the way in job creation.

From 1991 to 1995, firms with fewer than 100 employees accounted for all net new jobs in the state. Florida's smallest firms (those with fewer than 20 employees) expanded their job rolls by 10.4 percent. During that same period, the state's largest private employers (5,000+ employees) cut their job rolls by 1.9 percent.

The services sector—dominated by small firms—provided the greatest number of net new jobs for Florida during the '91-'95 period. Small (fewer than 100 employees) service operations grew by 5.5 percent. Employment remained essentially unchanged (+0.2 percent) among larger service firms during that period. Wholesale and retail trades were the second-most prolific job generators during the period. Small firms in these sectors lengthened their job rolls by 3.3 percent, nearly twice the growth rate of their larger competitors (1.7 percent).

Small manufacturers logged the highest growth rate of any sector, expanding their workforce by 7.6 percent during this period. Meanwhile, larger manufacturers cut their job rolls by 5.0 percent.

Nationally, small businesses make up over 99 percent of all employing businesses and provide about 50 percent of all jobs. Federal reports show that households owning small businesses are more likely to be high income earners and high wealth holders than those that are not business owners. In 2001, these households owning businesses comprised about 12 percent of all households, but earned over 25 percent of total household income and held over 40 percent of household wealth.¹

Existing Regulatory Flexibility Legislation & Administrative Procedures Act (APA)

The APA refers to the Commercial Development and Capital Improvements Act to define small business. That Act defines small business as an entity employing 200 or less full-time employees and that, together with its affiliates, has a net worth of less than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.² This definition includes approximately 97% of firms in the state based on 2002 census. (Under the APA an agency may define “small business” to include businesses employing more than 100 persons if it finds that such definition is necessary to adapt a rule to the needs and problems of small businesses.)³

Economic Impact Analysis

Before the adoption, amendment, or repeal of a rule, agencies are “encouraged” but not required to consider the impact of the rule on small businesses and when practicable agencies should reduce the disproportionate impacts on small businesses.⁴ This provision does not include specific economic elements for the agency to consider, only that agencies may prepare a “statement of estimated regulatory costs” which must include an analysis of the impact on small business.⁵

Regulatory Flexibility

When practicable, agencies must tier its rules to reduce disproportionate impacts on small business.⁶ Agencies must consider alternative methods for reducing the impact of the proposed rule on small business, i.e. establishing less stringent compliance or reporting requirements; establishing less stringent schedules or deadlines; consolidating or simplifying the rule’s compliance or reporting requirements; establishing performance vs. design standards; or exempting small businesses from the rule.⁷

Periodic Review: Required review by agencies every two years

Agencies must identify and correct deficiencies; clarify and simplify its rules; delete obsolete or unnecessary rules; delete rules that are redundant of statutes; and seek to improve efficiency, reduce paperwork or decrease costs.⁸

Judicial Review

A party who is adversely affected by final agency action is entitled to judicial review.⁹ Agency action is defined as “the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule

¹ SBA Office of Advocacy-Small Business Profile: Florida, www.sba.gov/advo.

² s. 288.703(1), F.S.

³ s. 120.54(3)(b)(2)(a), F.S.

⁴ s. 120.54(3)(b)1. & 2.a., F.S.

⁵ s. 120.541(2)(d), F.S.

⁶ s. 120.54(3)(b)2.a., F.S.

⁷ s. 120.54(3)(b)2.a., F.S.

⁸ s. 120.74, F.S.

or issue an order.”¹⁰ A preliminary, procedural, or intermediate order of the agency or of an administrative law judge is immediately reviewable if review of the final agency decision would not provide adequate remedy.¹¹

The court must remand the case to the agency for further proceedings consistent with the court’s decision when it finds that the “correctness” of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.¹²

Rules Review

If the agency determines the proposed action will affect small businesses, it must send written notice to the small business ombudsman of the Office of Tourism, Trade, and Economic Development (OTTED).¹³ Agencies must adopt regulatory alternatives offered by the small business ombudsman which are feasible and consistent with the stated objective of the proposed rule and which would reduce the impact on small business.¹⁴ If the agency does not adopt the alternatives offered by the small business ombudsman, it must file a detailed written statement with the Joint Administrative Procedures Committee (JAPC) explaining the reason for failure to adopt such alternatives.¹⁵

The APA provides for each proposed rule to be reviewed by the Joint Administrative Procedures Committee.¹⁶

Agency Sunset Review

The Florida Government Accountability Act establishes the agency sunset review process, which determines whether an agency should be abolished, continued, or reorganized. The act establishes a schedule of agency review beginning in 2008. An agency is up for sunset review every 10 years after its initial review.¹⁷ An agency subject to review by the Legislature shall be abolished on June 30 following the date of review, unless the Legislature continues the agency or advisory committee. However, an agency may not be abolished unless the Legislature finds, pursuant to law, that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made for the transfer to a successor agency of all duties and obligations relating to bonds, loans, promissory notes, lease-purchase agreements, installment sales contracts, certificates of participation, master equipment financing agreements, or any other form of indebtedness such that security therefore and the rights of bondholders or holders of other indebtedness are not impaired.

If the Legislature does not take action before the date of review to continue the agency or advisory committee, the agency must submit its legislative budget request consistent with the provisions of ch. 216, F.S. Such agency shall continue to be subject to annual sunset review by the Legislature until the Legislature enacts legislation relating to the agency's continuation, modification, or termination.¹⁸

No later than July 1, two years preceding the year in which a state agency and its advisory committees are scheduled to be reviewed, the agency must provide the Legislature with essentially a performance report.¹⁹

Upon receipt of an agency report, the Joint Legislative Sunset Committee may and the appropriate committee shall conduct a review of the agency and may direct the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the agency and its advisory committees, including an examination of the cost of each agency program, an evaluation of best practices and alternatives that

⁹ s. 120.68(1), F.S.

¹⁰ s. 120.52(2), F.S.

¹¹ s. 120.68(1), F.S.

¹² s. 120.68(7)(c), F.S.

¹³ s. 120.54(3)(b)2.b.I., F.S.

¹⁴ s. 120.54(3)(b)2.b.II., F.S.

¹⁵ s. 120.54(3)(b)2.b.III., F.S.

¹⁶ s. 120.545(1), F.S.

¹⁷ s. 11.905, F.S.

¹⁸ s. 11.9055, F.S.

¹⁹ s. 11.906, F.S.

would result in the administration of the agency in a more efficient or effective manner, an examination of the viability of privatization or a different state agency performing the functions, and an evaluation of the cost and consequences of discontinuing the agency.²⁰

No later than March 1 of the year in which a state agency or its advisory committees are scheduled to be reviewed, the committee shall and the joint committee may:

- Review the information submitted by the agency and the reports of any independent reviews directed by the committee, including those conducted by the Office of Program Policy Analysis and Government Accountability.
- Consult with the Legislative Budget Commission, relevant substantive and appropriations committees of the Senate and the House of Representatives, the Governor's Office of Policy and Budgeting, the Auditor General, and the Chief Financial Officer, or their successors, relating to the review of the agency and its advisory committees.
- Hold public hearings to consider this information as well as other information and testimony that the committee or joint committee deems necessary.
- Present to the President of the Senate and the Speaker of the House of Representatives a report on the agencies and advisory committees scheduled to be reviewed that year by the Legislature. In the report, the committee shall include its specific findings and recommendations regarding the information considered pursuant to s. 11.910, F.S., make recommendations as described in s. 11.911, F.S., and propose legislation as it considers necessary. In the joint committee report, the joint committee shall include its specific findings and recommendations regarding the information considered pursuant to s. 11.910, F.S., and make recommendations.²¹

In its report on a state agency, the joint committee shall:

- Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees.
- Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.
- The joint committee may access or request information and request assistance of state agencies and officers.²²

When assistance is requested, a state agency or officer shall assist the joint committee.²³

Effect of Proposed Changes

Small Business Regulatory Relief Act & Advisory Council

Section 1 of the bill establishes a short title as the "Small Business Regulatory Relief Act" and provides the findings and purpose for the act. The bill defines the term "Agency" as an agency as defined in s. 120.52, F.S., which is the definition in the Administrative Procedures Act for an agency. The bill defines the term "rule" as provided in section 120.52, F.S..

²⁰ s. 11.907, F.S.

²¹ s. 11.908, F.S.

²² s. 11.911, F.S.

²³ s. 11.918, F.S.

The bill also creates the Small Business Regulatory Advisory Council (council) which is authorized to: provide recommendations to state agencies regarding proposed rules that may impact small business; consider requests from small businesses to review an agency's rules; review rules to determine whether a rule places an unnecessary burden on small businesses; consider requests from small business owners to review small business owners' private property rights related to rules or programs adopted or implemented by an agency; and to make recommendations to the agency to mitigate adverse impacts to small businesses. The council is established and administratively assigned to the Florida Small Business Development Center Network.

Three members are appointed each by the Governor, the President of the Senate, and the Speaker of the House for staggered terms. The bill restricts the council from interfering with administrative or judicial proceedings or to issue subpoenas. The bill requires the council to provide a report to the Governor and the Legislature that describes the activities and recommendations of the council.

The bill further provides discretion to the council to participate in the agency sunset review process according to the sunset review schedule contained in s. 11.905, F.S., by reviewing rules of agencies to determine whether the rules should be continued without change or should be amended or repealed to reduce the impact on small business subject to the requirement that the recommendations of the council must be feasible and consistent with the stated objectives of the proposed rules. If the council reviews an agency's rules, the council must provide a report to the Joint Legislative Sunset Committee, the Governor, and the Legislature with recommendations and evaluations of these rules and agencies regarding regulatory fairness for small businesses. A component of the report is a rating system entitled the "Small Business Friendliness and Development Scorecard."

Small Business Advocate

Section 2 of the bill creates the Office of the Small Business Advocate and provides for the selection of an advocate by the Florida Small Business Development Center Network. The director's duties include:

- Serving as staff for the Small Business Regulatory Advisory Council;
- Serving as principal advocate in the state on behalf of small business including participation in the consideration of legislation and administrative rules that affect small business;
- Working with public and private agencies and organizations to provide information to small business about state and local programs, including small business finance, and to consult with those in academia with particular expertise;
- Issuing a biennial report evaluating the efforts of state agencies, that significantly regulate small businesses, to assist minority and other small business enterprises, and make recommendations where appropriate to assist the development and strengthening of minority and other small business enterprises;
- Creating an annual process for small businesses to nominate agency regulations for amendment or repeal and to post those nominations online and update the status of agency action on those nominations twice yearly;
- Coordinating a statewide conference on small business;
- Coordinating annual public meetings to educate small businesses on disaster preparedness; and
- Providing an annual report to the Governor and the Legislature on the activities and recommendations of the advocate.

Joint Legislative Sunset Committee

Section 3 of the bill amends s. 11.908, F.S., to require the Joint Legislative Sunset Committee to consult with the Small Business Regulatory Advisory Council relating to the review of agencies.

Section 4 of the bill amends s. 11.911, F.S., to require the council's report on agency rules to be included in recommendations by the Joint Legislative Sunset Committee where the Committee recommends continuation or reorganization of an agency.

Section 5 of the bill amends s. 11.919, F.S., to require state agencies to assist the council upon request.

Administrative Procedures Act

Section 6 of the bill amends s. 120.54, F.S., to require agencies to prepare a statement of estimated regulatory cost of a proposed rule as provided in s. 120.541, F.S., if the rule will have an impact on small business. The bill also amends s. 120.54(3), F.S., to require an agency to provide written notification to the council of any proposed rule that will affect small businesses. Further the bill requires an agency to adopt the regulatory alternatives offered by the council which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. Current law requires adoption of alternatives offered by OTTED. However, if the agency opts not to adopt all the alternatives offered by the council, it is required to file a detailed written statement with the JAPC and the council prior to rule adoption explaining its reasons. The bill also revises section 120.54(3) to allow the President of the Senate or Speaker of the House of Representatives to request OPPAGA review of an agency's decision to reject the regulatory alternatives. In conducting its review, OPPAGA is required to consider whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. OPPAGA has 30 days in which to respond to the Legislature's request and provide its findings to the Legislature, Governor, and JAPC. The committee must report OPPAGA's findings to the agency and the agency must respond in writing to JAPC if OPPAGA found that the alternative reduced the impact on small business while meeting the stated objectives of the proposed rule. If the agency still will not adopt the alternative, it must also provide a detailed written statement to JAPC as to why it will not adopt the alternative.

Section 7 of the bill amends section 120.74(1), F.S., which requires agencies to review its rules periodically but at least provide a formal review every two years, by requiring an agency to determine whether its rules should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule.

ECONOMIC DEVELOPMENT INCENTIVE PROGRAMS

Present Situation

Incentive Process Timeline

When a business is seeking an incentive award, it must submit an application to Enterprise Florida, Inc. (EFI). The application and approval process includes consultation with staff from EFI and the Office of Tourism, Trade, and Economic Development (OTTED). EFI works with the business to evaluate the application for eligibility, ensures application completeness, and prepares an economic analysis for each project. Based on this evaluation, EFI makes an official recommendation to OTTED for project approval. OTTED has the final authority to approve or deny an application, executes performance contracts with business applicants, and oversee claim payments. Currently an application may take from 23 days to 101 days to be approved or denied by OTTED. The Legislature has established timelines for some of the economic development incentive programs. For instance, for the Qualified Targeted Industry Program, OTTED has 45 days to make a recommendation to the director of OTTED, and the director has an additional 30 days to approve or deny the project (after OTTED receives a recommendation from EFI).

Qualified Defense Contractor Tax Refund Program

In 1993, Florida made a commitment to expand its high technology employment base by creating the Qualified Defense Contractor Program (QDC). This program gives Florida contractors specializing in national defense and homeland security an advantage in acquiring new contracts and converting contracts to commercial production.²⁴ Qualified defense contractors may be eligible for up to \$5,000 per job created or saved in Florida through "the conversion of defense jobs to civilian production, the acquisition of a new defense contract, or the consolidation of a defense contract which results in at least a 25 percent increase in Florida employment or a minimum of 80 jobs."²⁵

24 s. 288.1045, F.S.

25 Id.

Qualified Target Industry Tax Refund Program

Florida has made targeting specific industries a priority in its efforts to further economic development in the state. The Qualified Target Industry Tax Refund Program (QTI) was created by the Florida Legislature in 1994 to attract businesses that offer high-wage jobs, particularly headquarters, to relocate in Florida. Businesses that locate or expand in Florida are eligible for tax refunds of \$3,000 per new job created. The tax refund increases to \$6,000 per job for businesses that locate in an enterprise zone or rural county. In addition, a business is eligible for a \$1,000 per job bonus if it pays over 150 percent of the average wage in the area, and a \$2,000 per job bonus if it exceeds 200 percent of the average wage.²⁶ To qualify, the business must secure the local government's support. A local government is required to provide at least 20 percent of the amount of the state's award.²⁷

Economic Stimulus Exemption

After the 2004 and 2005 hurricane seasons, the Florida Legislature allowed for projects contracted for awards under the QTI program the ability to be forgiven for one year if the business was unable to meet the performance requirements in the contract. This was necessary to ensure businesses were not penalized for the impacts of wide spread conditions beyond their control, and ensure that the business has an incentive to continue to grow in Florida after the downturn has passed.

Brownfield Redevelopment Bonus Refunds

In 1997, Florida enacted the Brownfield Redevelopment Act, patterned after federal legislation from 1995 that was initiated by the U.S. Environmental Protection Agency as an "experimental idea for restoring many environmentally challenged sites throughout the United States, without the threat of legal and financial repercussion commonly associated with ownership of contaminated properties."²⁸ Brownfield sites are defined in Florida law as a site that is "generally abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination."²⁹ A brownfield site may not have any contamination at all, and is often times designated as a brownfield site prior to a formal environmental investigation.

The Brownfield Redevelopment Bonus Refund provides a tax refund to eligible businesses of up to \$2,500 (based on taxes paid by the business) for each new job created in a brownfield area. To qualify, a business must demonstrate it will diversify and improve the area economy, create at least 10 full-time jobs, and provide at least \$2 million in capital investment.

High Impact Performance Incentive

The High Impact Performance Incentive (HIPI) was created in 1997 and is designed to attract "high impact" sectors of the economy to Florida such as life sciences, financial services, and manufacturing industries such as transportation equipment, aviation and aerospace, automotive, and semiconductors.³⁰ Businesses that receive a HIPI award must create at least 100 new full-time jobs and make a cumulative investment in Florida of at least \$100 million over a three-year period. If the business is a research and development facility, the threshold falls to 75 new full-time jobs and a cumulative investment of at least \$75 million in Florida over a three-year period.

Entertainment Industry Financial Incentive Program

In 2003, the Florida Legislature created the Entertainment Industry Financial Incentive Program in s. 288.1254, F.S. The program offers a 15 percent financial reimbursement on qualified expenditures for certified productions, and an additional reimbursement of five percent if 75 percent or more of its principal photography days is filmed from June 1 through November 30.

26 s. 208.106, F.S.

27 Id.

28 Florida Brownfield Association, "Brownfields 101". website: <http://www.floridabrownfields.org/Resources/Brownfields101.htm>. (June 2007).

29 s. 288.107(1)(b), F.S.

30 Enterprise Florida, Inc. website: <http://www.eflora.com/ContentSubpage.aspx?id=472>. (June 2007).

The program first received funding in 2004 when the Legislature appropriated \$2.4 million. The program has continued to receive incremental increases in appropriations since its inception. In fiscal years 2004-05 and 2005-06 the program received \$10 million, in fiscal year 2006-07 the program received a \$20 million appropriation, and in fiscal year 2007-08 the program received a \$25 million appropriation in HB 1325 with an additional provision that the funds would not revert for two years.

Spring Training Franchises

To maintain spring training franchises in the state, chapter 2000-186, LOF, created a one-time funding opportunity for at least five applicants certified as facilities for retained spring training facilities. The Department of Revenue was instructed to distribute sales tax proceeds to any applicant certified by OTTED—up to \$41,667 monthly for up to 30 years. The 2006 Florida Legislature provided for the certification of an additional five facilities for retained spring training franchises. Funds are awarded to local governments that must be responsible for the construction, management, or operation of the property on which the facility is located. In addition, the local government has to provide a local match of one to one.

Black Business Loan Program

The Black Business Loan Program, under the administration of the Office of Tourism, Trade, and Economic Development, provides loans, loan guarantees, and investments through eligible recipients such as Black Business Investment Corporations or others, to black business enterprises that cannot otherwise obtain capital through conventional lending institutions. The program was amended substantially by the 2007 Florida Legislature. OTTED is required to establish an open, competitive, and uniform application and annual certification process; and to develop an equitable allocation policy for the distribution of funds. Each recipient must be certified by OTTED each year as meeting the requirements of law and applicable contracts. No recipient may receive funds absent such annual certification. In addition, OTTED must enter into an agreement with the recipient of an award under the loan program. The agreement must include the total amount of funds awarded; the performance conditions that must be met; and sanctions for failure to meet performance conditions, including provisions to recover the award. In February 2008, OTTED established rules for a competitive and annual certification process.

Florida Opportunity Fund

The Florida Opportunity Fund was created by the 2007 Florida Legislature to invest in seed capital and early stage venture capital funds. The fund is organized as a private, not-for-profit corporation under chapter 617. Enterprise Florida was responsible for selecting a five-member appointment committee, this committee selected a board of directors for the Fund. The board of directors is then responsible for conducting a national search for a venture capital investment manager. As of April 2008, the board has been formed; however, a manager of the Fund has not been hired.

Effect of Proposed Changes

Standard Application Timelines

Section 9 creates s. 288.061, F.S., which sets a standard timeline for economic development programs. It requires Enterprise Florida, Inc. to determine if an application is complete in 10 working days, and once the application is complete, it gives EFI another 10 days to evaluate and make a recommendation to OTTED. Once OTTED receives the application, the office has 10 calendar days to notify EFI if the application is incomplete, and the director has a total 35 calendar days from the time the recommendation was received to approve or deny the application. The bill requires applications for the following programs to be reviewed pursuant to the standard application timelines created in s. 288.061, F.S.:

- Capital Investment Tax Credit (Section 8);
- Economic Development Transportation Fund (Section 10);
- Rural Infrastructure Fund (Section 12);
- Qualified Defense Contractor Tax Refund Program (Section 15);
- Qualified Target Industry Tax Refund Program (Section 16);

- Brownfield Redevelopment Bonus Refunds (Section 17); and
- High Impact Performance Incentive (Section 18).

In addition, under the Quick Action Closing Fund (Section 19), Enterprise Florida, Inc. is directed to follow the standard timelines created in s. 288.061 and the Office of Tourism, Trade, and Economic Development is required to submit its recommendation for approval to the Governor within 35 calendar days.

Qualified Defense Contractor Tax Refund Program

Section 15 amends s. 288.1045 and changes the amount of tax refund available to qualified applicants to match the tiered system used to award tax refunds for the Qualified Target Industry Tax Refund Program. The language that allowed for qualified QDC applicants to receive up to \$5,000 per job specified in the tax refund agreement is deleted and replaced with the following:

- Qualified applicants will receive \$3,000 per job specified in the QDC contract;
- Projects in rural counties or enterprise zones will qualify for \$6,000 per job specified in the QDC contract;
 - An additional \$1,000 per job bonus is available when jobs pay 150 percent of the average private sector wage in the area; and
 - An additional \$2,000 per job bonus is available when jobs pay 200 percent of the average private sector wage in the area.

The bill removes two requirements relating to the application process: (1) removes the provision requiring a notarized signature on the application form; and (2) removes the provision requiring an applicant to estimate the amount of tax refunds claimed for each year. The QDC program is the only program to require a notarized signature on forms. Estimating tax credits claimed for each year can be confusing and difficult to calculate. Removing these requirements will simplify the application process.

The bill amends the QDC statute to allow local governments to use donated or discounted land and buildings to count against the 20 percent local match requirement.

The bill allows the local governing body, rather than the county commissioners, in a county or municipality to pass a resolution supporting the project.

The bill removes the requirement from s. 288.1045, F.S., that OTTED submit an annual report relating to the QDC program. OTTED is required to submit an annual report on incentives pursuant to s. 288.095, F.S., therefore the reporting language in s. 288.1045, F.S., was duplicative in nature.

The bill amends the sunset provision of the QDC program from June 30, 2010 to June 30, 2014.

Qualified Target Industry Tax Refund Program (QTI)

Section 16 amends s. 288.106, F.S., to allow for projects related to alternative energy production to receive incentive awards. The bill also requires that wages for expansion projects are based solely on new jobs being created, rather than an average of all jobs (current and new).

The bill further creates a new economic stimulus exemption for businesses that are not able to meet the performance requirements necessary to receive incentive awards. OTTED and EFI are seeing indications that the recent downturn in the economy has caused many QTI, QDC, and Brownfield incentive recipients to temporarily halt or cut back on their expansion plans. As a result they have been unable to meet the employment levels to which they had previously agreed, and there may be a need to give OTTED temporary authority to allow businesses that have experienced such negative impacts an extension of the time to meet their job creation requirements and with a commensurate delay in related tax refunds.

The bill allows OTTED the ability to approve applications for the Economic-Stimulus Exemption for tax refund claims scheduled to be submitted after January 1, 2008, but before February 1, 2009 to ensure that

businesses are not penalized for the impacts of wide spread conditions beyond their control, and ensure that they have an incentive to continue to grow in Florida after the downturn has passed.

The bill makes several other technical adjustments including requiring applications to include North Americans Industry Classifications Systems (NAICS) codes rather than outdated Standard Industry Classification (SIC) codes (the U.S. Census Bureau adopted NAICS codes in 2002 as part of a joint standardization process convened with Canada and Mexico to provide new comparability in statistics about business activity across North America).

The bill also deletes the sunset provision of the QTI program currently set for June 30, 2010.

Brownfield Redevelopment Bonus Refunds

Section 17 amends s. 288.107, F.S., to require brownfield projects to have local support as evidenced through the passage of a local resolution adopted by the governing board of a county or municipality.

Entertainment Industry Financial Incentive Program

Section 20 amends s. 288.1254, F.S., to permanently allow funds appropriated by the Florida Legislature for the Economic Industry Financial Incentive Program to not revert until two years after appropriation. The bill also allows the Office of Film and Entertainment to use up to a specified portion of appropriated funds to support film or arts festivals that meet the objectives of the incentive program.

Spring Training Franchises

Section 21 amends s. 288.1162, F.S., to allow a spring training franchise the ability to relocate to another community with approval from the Office of Tourism, Trade, and Economic Development and transfers the current sales tax refund with the franchise. It deletes the requirement that the local governing body must approve the relocation.

Section 22 requires the Office of Tourism, Trade, and Economic Development to develop a comprehensive strategic plan for retaining spring training facilities in Florida by December 31, 2008.

Black Business Loan Program

Section 23 amends s. 288.7102, F.S., deleting the requirement for the Office of Tourism, Trade and Economic Development to establish a competitive award process for the Black Business Loan Program. Instead, OTTED will be required to distribute an equal amount to each of the certified recipients no later than September 30 each year.

Florida Opportunity Fund

Section 24 amends s. 288.9624, F.S., requiring Enterprise Florida, Inc., to make the final approval of the venture capital investment manager, rather than the board of the Florida Opportunity Fund.

Business Evaluations for Consumer Complaints

Section 26 creates s. 501.701, to require state agencies and Florida businesses that evaluate other businesses (based on consumer complaints) the requirement to disclose and publish the methodology of the evaluation and to offer each business under review the opportunity to supply a written statement or rebuttal for publication.

RURAL ECONOMIC DEVELOPMENT

Present Situation

A "rural community" is defined by s. 288.0656, F.S., as: (1) a county with a population of 75,000 or less; (2) a county with a population of 100,000 or less that is contiguous to a county with a population of 75,000 or less; (3) a municipality within a county with a population of 75,000 or less or a county with a population of 100,000 or less that is contiguous to a county with a population of 75,000 or less; or (4) a federal enterprise

community or an incorporated rural city with a population of 25,000 or less and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified by statute and verified by the Office of Tourism, Trade, and Economic Development.

Thirty-two Florida counties are presently categorized as “rural” pursuant to the statutory definition outlined above. Twenty-eight of these rural counties have been categorized into one of three Rural Areas of Critical Economic Concern (North Central, Northwest, and South Central). The Rural Areas of Critical Economic Concern (RACECs) are defined by OTTED based on measures of economic interdependence among the rural counties in each of the three geographic regions.

The status of a county as rural and its inclusion in a RACEC is not static. Sumter County, which had previously fit the statutory definition of a rural county, exceeded the population threshold of 75,000 residents in 2006 causing the county to lose its status as a rural county. Based on population growth projections, it is likely that Highlands and Flagler counties will soon exceed the population requirements set forth by statute and lose their designation as a rural county and subsequently their ability to form part of a RACEC.

The Rural Economic Development Initiative (REDI) was created to encourage and align critical state agency participation and investment around important rural issues and opportunities. The Rural Economic Development Catalyst Project (catalyst project) is designed to further goals set forth in REDI by gathering economic intelligence and perspectives for Florida’s three Rural Areas of Critical Economic Concern (RACEC). The catalyst project is intended to identify, improve and market regional physical sites to facilitate the location of significant job creation opportunities within the RACECs.

In May 2007 each RACEC, in conjunction with EFI and OTTED, engaged in the identification and selection of possible sites for their respective catalyst project. Additionally, each RACEC had identified industries of catalytic opportunity and has begun to gear site selection and marketing activities central to the identified industries. The RACECs are presently engaged in a process of preparing each of the priority sites for market launch. As of January 2008, EFI and OTTED were in the process of negotiating revenue sharing agreements with the participating local governments. The revenue distribution formula will create a method for sharing potential benefits generated by the catalyst site in the hosting county and other counties that are invested in the site development and implementation.

The Committee on Economic Development surveyed economic development representatives in each of the state’s 67 counties for its 2008 interim project and received 42 responses from across the state. Eighteen of these responses were from rural counties. Rural counties expressed infrastructure needs as their number one impediment to locating and attracting new business. Currently, rural counties have access to multiple state programs that assist with developing infrastructure.

The Rural Infrastructure Fund was created within the Office of Tourism, Trade, and Economic Development in 1996 to facilitate the planning, preparing and financing of infrastructure projects in rural communities. Three project grants are available under the program: (1) Total Project Participation Grants; (2) Feasibility Grants; and (3) Preclearance Review Grants. The maximum amount available per grant for each project is limited to 25 percent of total appropriated funds. The Florida Legislature provided \$2.7 million for fiscal year 2007-08.

Total Participation Grants may fund up to 30 percent of the total infrastructure project costs related to specific job creating opportunities where applicants have applied for the maximum available under other state or federal infrastructure funding programs. Total participation grants are intended to leverage local, state and federal funds.

Effect of Proposed Changes

The bill makes several recommended changes to the Rural Economic Development Initiative (REDI) and the Rural Infrastructure Fund. The bill:

- Codifies the catalyst project initiative that is currently underway by the state's rural areas of critical economic concern. (Section 13)
- Creates definitions for "catalyst project," "catalyst site," and "rural area of critical economic concern."
- Expands the definition of "rural community." Currently, a county with a population of 100,000 or less that is contiguous to a county with a population for 75,000 or less qualifies as a rural community. The bill expands this classification to a county with a population of 120,000. This will allow Highlands County to remain a rural county. (Sections 11, 13, 14, and 16)
- Gives REDI the ability to provide technical assistance for comprehensive planning to local governments in rural areas of critical economic concern. In addition, REDI will annually develop a technical assistance manual. (Section 13)
- Increases the amount of funding available (from 30% to 40%) for catalyst sites that receive funding from the Rural Infrastructure Fund, and waives the local match requirement for catalyst projects. This change will help develop the state's rural economic development sites and allow rural areas a greater ability to attract catalyst projects that will greatly impact the economy within the region. (Section 11)
- Allows designated enterprise zones in rural areas of critical economic concern the ability to expand by three square miles. (Section 25)
- Clarifies that the Office of Tourism, Trade, and Economic Development may waive criteria of the Quick Action Closing Fund for projects in rural areas of critical economic concern. (Section 19)

Section 27 of the bill provides one full time equivalent position and \$60,000 from General Revenue for the Office of Tourism, Trade, and Economic Development.

Section 28 of the bill creates an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1: Creates s. 288.7001, providing for the Small Business Regulatory Relief Act, findings and purpose; creates the Small Business Regulatory Advisory Council; provides for council review of agency rules under sunset review process; provides reporting requirements.

Section 2: Creates s. 288.7002, providing for the findings and purpose of the Small Business Advocate; creates the office of small business advocate; provides reporting requirements.

Section 3: Amends s. 11.908, F.S., relating to the consulting duties of the Joint Legislative Sunset Committee.

Section 4: Amends s. 11.911, F.S., relating to the recommendations of the Joint Legislative Sunset Committee.

Section 5: Amends s. 11.919, F.S., relating to agency assistance to the Small Business Regulatory Council.

Section 6: Amends s. 120.54, F.S., requiring agencies to prepare an statement of estimated regulatory cost; requiring agencies to notify the Small Business Regulatory Advisory Council of impacts of rules on

small business; requiring agencies to consider alternatives proposed by the Small Business Regulatory Advisory Council; establishing a review procedure for alternatives not utilized by agencies.

Section 7: Amends s. 120.74, F.S., relating to periodic agency review of rules and impacts on small business.

Section 8: Amends s. 220.191, F.S., establishing standard timeline application processes for the Capital Investment Tax Credit.

Section 9: Creates s. 288.061, F.S., establishing a standard timeline application process for economic development programs.

Section 10: Amends s. 288.063, F.S., establishing standard timeline application processes for the Economic Development Transportation Fund.

Section 11: Amends s. 288.065, F.S., relating to the Rural Community Development Revolving Loan Fund.

Section 12: Amends s. 288.0655, F.S., relating to the Rural Infrastructure Fund.

Section 13: Amends s. 288.0656, F.S., codifying the catalyst project and making other adjustments to the Rural Economic Development Initiative.

Section 14: Amends s. 288.0657, F.S., relating to rural economic development strategy grants.

Section 15: Amends s. 288.1045, F.S., relating to business incentives approved under the Qualified Defense Contractor Tax Refund Program.

Section 16: Amends s. 288.106, F.S., relating to business incentives approved under the Qualified Target Industry Tax Refund Program.

Section 17: Amends s. 288.107, F.S., relating to business incentives approved under the Brownfield Redevelopment Bonus Refund Program.

Section 18: Amends s. 288.108, F.S., relating to business incentives approved under the High Impact Performance Incentive Program.

Section 19: Amends s. 288.1088, F.S., relating to business incentives approved under the Quick Action Closing Fund.

Section 20: Amends s. 288.1254, F.S., relating to appropriations for the Entertainment Industry Financial Incentive Program.

Section 21: Amends s. 288.1162, F.S., relating to the relocation of spring training franchises.

Section 22: Requires the Office of Tourism, Trade, and Economic Development to develop a comprehensive plan related to retaining spring training facilities in the state.

Section 23: Amends s. 288.7102, F.S., relating to the distribution of appropriations for the Black Business Loan Program.

Section 24: Amends s. 288.9624, F.S., relating to the Florida Opportunity Fund.

Section 25: Amends s. 290.0055, F.S., relating to the expansion of enterprise zones in rural areas of critical economic concern.

Section 26: Creates s. 501.701, F.S., relating to business evaluation for consumer complaints.

Section 27: Provides a \$60,000 appropriation from General Revenue and one full-time equivalent position for the Office of Tourism, Trade, and Economic Development.

Section 28: Creates an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference determined the expansion of enterprise zones in rural areas of critical economic concern will have a negative impact on state revenues of approximately \$400,000 annually.

The bill also appropriates \$60,000 from the General Revenue Fund to the Office of Tourism, Trade, and Economic Development for the salaries and benefits of one FTE.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments may benefit from a decrease in regulations and the creation of new jobs and businesses.

2. Expenditures:

The bill provides for a waiver of the local match for catalyst projects approved for incentives under the Rural Infrastructure Fund.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a significant impact on the private sector. Businesses seeking incentives under any of the state's economic development incentive programs can expect more prompt response for approval or denial.

Rural areas will receive several benefits that will encourage economic development.

Small businesses will benefit in several ways.

1. A single voice for small business will be created by the bill (Small Business Advocate) to advocate in numerous ways on behalf of small business in front of government and in coordination with the private sector.
2. A council dedicated to reviewing agency rules that may have an impact on small business is created by the bill and the council is authorized to offer alternatives that must be considered by state agencies.
3. Agencies are required to prepare a statement of estimated regulatory cost if the proposed rule will have an impact on small business which will allow small businesses to be informed on how rules may affect their operations.

D. FISCAL COMMENTS:

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DATE: 4/11/2008

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the full provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

Not applicable

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES