

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Transportation, Tourism, and Economic Development

**BILL:** CS/CS/SB 1024

**INTRODUCER:** Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Community Affairs Committee and Commerce and Tourism Committee

**SUBJECT:** Department of Economic Opportunity

**DATE:** March 29, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	<b>cm SPB as introduced</b>
2.	Anderson	Yeatman	CA	<b>Fav/CS</b>
3.	Pingree	Martin	ATD	<b>Fav/CS</b>
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/CS/SB 1024 modifies several activities under the jurisdiction of the Department of Economic Opportunity (DEO or department).

The bill has a fiscal impact on both state revenues and expenditures. In Fiscal Year 2013-2014, the bill is projected to have a fiscal impact of \$515,887 to the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA). Of the \$515,887 projected expenditures, \$336,724 would need to be appropriated in the General Appropriations Act for EDR and \$178,163 can be absorbed by the OPPAGA within existing resources. It is anticipated that the expenditures required of the DEO can be absorbed within the DEO's existing state and federal resources. See Section V.

Highlights of the bill include:

*Reporting and Evaluations of Economic Development Programs*

- Streamlines the process by which all incentive program applicants are evaluated by requiring that all applicants be evaluated for the “economic benefits” of the proposed project.
- Creates a rotating, 3-year review schedule for specified incentives and programs to be evaluated by the EDR and the OPPAGA.
- Consolidates required reports and reporting dates for various economic development program reports by the DEO, Enterprise Florida, Inc. (EFI), the Office of Film and Entertainment, and Space Florida.

*Florida Small Business Development Center Network*

- Aligns the network’s statewide policies with the statewide strategic economic development plan and statewide goals of the university system.
- Specifies the composition of the network’s statewide advisory board.
- Specifies the support services offered by the network.
- Requires the network to provide a match to any direct state appropriation.
- Requires the network to set up incentives for the regional centers to create jobs, institute best practices, and serve new areas of the state or underserved areas.
- Requires regular reporting by the network on programs, services, and outcomes, including information on the network’s economic benefits to the state.

*Economic Development Incentives*

- Requires the DEO to evaluate each application for economic incentives for the economic benefits of the proposed award to the state, and EDR is to review and report on the methodology used to calculate the economic benefit.
- Requires recipients of incentives under the Quick Action Closing Fund and the Innovation Incentive Programs to secure the award with a surety bond, letter of credit, or other security before any state funds can be disbursed.
- Provides that the DEO may waive the securitization requirements upon certifying specific information, in writing, to the Governor and the Legislature. The Legislative Budget Commission must approve any waiver granted by the DEO for a project exceeding \$5 million.

*Reemployment Assistance Program*

- Requires that an appeals referee employed by the DEO be an attorney in good standing with the Florida Bar within a specified timeframe depending upon whether the referee is a current employee (must be an attorney by September 30, 2014) or a new employee hired on or after January 1, 2014 (must be an attorney within 8 months of his or her employment date). Effective January 1, 2014, an appeals referee currently employed by the DEO that does not have a degree from a law school accredited by the American Bar Association would no longer meet the qualifications for the appeals referee position.

- Prohibits a claimant from counting the same prospective employer at the same location more than once during his or her claim as proof of work search efforts, unless the employer indicates that it is hiring after the initial contact by the claimant.
- Provides that any excess assessments previously collected to pay interest on federal advances taken to cover unemployment compensation benefit claims be applied to federal interest payments due before additional assessments are made. The bill prohibits the collection of assessments if the amount on deposit is at least 80 percent of the estimated amount of interest.
- Assesses a 15 percent penalty on individuals who fraudulently collect unemployment compensation benefits, in order to comply with the requirements of federal law.
- Reenacts a provision that provides a penalty for disclosing confidential information that was inadvertently repealed in 2012 and required by federal law.
- Extends the deployment date of the Reemployment Assistance Claims and Benefits Information System to June 30, 2014.

*Florida Small Cities Community Development Block Grant (CDBG) Program*

- Significantly revises the Florida Small Cities CDBG Act to remove requirements that are more restrictive than required by federal regulations.
- Grants rulemaking authority to the department and streamlines public hearing requirements.

*Florida Tourism Marketing Corporation (Visit Florida)*

- Provides that the Governor will serve as an ex officio, nonvoting member of the board of directors of the Florida Tourism Industry Marketing Corporation (Visit Florida), which enables the Governor to act as a spokesperson for Florida tourism.

This bill is effective upon becoming law, except as otherwise provided in the bill.

This bill substantially amends the following sections of the Florida Statutes: 20.60, 201.15, 213.053, 220.194, 288.001, 288.005, 288.012, 288.061, 288.0656, 288.106, 288.1081, 288.1082, 288.1088, 288.1089, 288.1226, 288.1253, 288.1254, 288.1258, 288.714, 288.7771, 288.903, 288.906, 288.907, 288.92, 288.95155, 290.0056, 290.014, 290.0411, 290.042, 290.044, 290.0455, 290.046, 290.047, 290.0475, 290.048, 331.3051, 331.310, 443.036, 443.091, 443.101, 443.1113, 443.131, 443.151, 443.1715, 443.191, and 446.50.

This bill repeals sections 288.095(3)(c) and 288.904(6), Florida Statutes.

This bill creates two undesignated sections of the Florida Statutes.

## **II. Present Situation:**

The Department of Economic Opportunity (DEO or department) is charged with supporting the economic and community development of Florida and facilitating the workforce development of

Floridians. The department accomplishes these functions under three main divisions: Community Development, Strategic Business Development, and Workforce Services.<sup>1</sup>

The Division of Community Development manages the state's land use planning and community development. Under its responsibilities, the division provides technical assistance to local governments on a variety of land use planning topics, provides economic development assistance to rural and urban small businesses, and administers state and federal grant programs for community development, including grants to local governments for infrastructure and revitalization.<sup>2</sup>

The Division of Strategic Business Development is charged with attracting out-of-state businesses, as well as promoting the creation and expansion of Florida businesses. This division is also responsible for facilitating economic development partnerships.<sup>3</sup> Among other things, the division provides oversight and evaluation of the state's economic development incentive programs and coordinates with public and private entities, including Enterprise Florida, Inc. (EFI), to strategically plan for Florida's short-term and long-term economic development needs. The department contracts with Enterprise Florida, Inc. (EFI) to attract businesses to locate, expand, or remain in Florida.

Under Florida's current economic development framework, Enterprise Florida, Inc. (EFI) serves as the state's economic development organization, operating under a contract with the DEO. EFI is a public-private partnership that serves as the state's primary contact for businesses interested in pursuing relocation, expansion, or retention possibilities.<sup>4</sup> EFI works with businesses to match business needs with state and local resources, including developing an economic development incentive proposal for the prospective business. EFI performs an evaluation of each potential project to determine its prospective economic impact. After EFI has offered an incentive proposal to a business, EFI submits the incentive application to the DEO and the department evaluates the application based on the statutorily defined requirements for the incentive(s). The DEO makes the final determination of incentive eligibility, executes incentive contracts, and is responsible for contract monitoring and compliance.<sup>5</sup>

The Division of Workforce Services administers the reemployment assistance program and partners with Workforce Florida, Inc. (WFI) and the state's 24 Regional Workforce Boards (RWBs) to administer a number of federally funded workforce development programs. The division also provides technical assistance to One-Stop Career Centers that directly provide employment and training services.<sup>6</sup>

According to the U.S. Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed

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<sup>1</sup> Section 20.60, F.S.

<sup>2</sup> See Department of Economic Opportunity brochure, available at [http://www.floridajobs.org/pdg/Factsheets/DEO\\_brochure.pdf](http://www.floridajobs.org/pdg/Factsheets/DEO_brochure.pdf) (last visited Mar. 26, 2013).

<sup>3</sup> *Id.*

<sup>4</sup> Section 288.901, F.S.

<sup>5</sup> Section 288.061, F.S.

<sup>6</sup> See Department of Economic Opportunity, About Workforce Services, available at <http://www.floridajobs.org/office-directory/division-of-workforce-services> (last visited Mar. 26, 2013).

through no fault of their own (as determined under state law) and who meet the requirements of state law.<sup>7</sup> Individual states collect payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).<sup>8</sup> FUTA collections go to the states for costs related to the administration of state unemployment insurance and job service programs. In addition, the FUTA pays one-half the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.<sup>9</sup>

States are permitted to set benefit eligibility requirements, the amount and duration of benefits and the state tax structure, as long as state law does not conflict with the FUTA or the Social Security Act requirements. Florida's unemployment insurance program was created by the Legislature in 1937.<sup>10</sup> The program was rebranded as the "reemployment assistance program" in 2012.<sup>11</sup> The Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance (RA) laws, primarily through its Division for Workforce Services. The DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collection services.<sup>12</sup>

In Florida, Reemployment Assistance (RA) benefits are financed solely through contributions by employers – employers pay taxes on the first \$8,000 of each employee's wages.<sup>13</sup> The calculation for determining each employer's tax rate is statutorily set, and takes into consideration an employer's "experience" (as former employees collect RA benefits, these benefits are charged to the employer), the balance of the Unemployment Compensation Trust Fund, and other factors.

The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.0 percent of employees' annual wages.<sup>14</sup> If, however, a state program meets the federal requirements and has no delinquent federal loans, employers are eligible for up to a 5.4 percent tax credit, making the net tax rate 0.6 percent. Employers file an annual return with the Internal Revenue Service each January for taxes on the first \$7,000 of employee's annual wages during the previous year.

The USDOL provides the DEO with administrative resource grants from the taxes collected from employers pursuant to the FUTA. These grants are used to fund the operations of the state's

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<sup>7</sup> USDOL, Employment and Training Administration, State Unemployment Insurance Benefits, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited February 6, 2013).

<sup>8</sup> FUTA is codified at 26 U.S.C.

<sup>9</sup> USDOL, Employment and Training Administration, Unemployment Insurance Tax Topic, available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited February 6, 2013).

<sup>10</sup> Chapter 18402, L.O.F.

<sup>11</sup> Chapter 2012-30, L.O.F.

<sup>12</sup> Section 443.1316, F.S.

<sup>13</sup> Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust fund. See s. 443.1312, F.S. State and local governments are reimbursing employers. Most employers are contributory employers. In January 2015, the "wage base" will be reduced to \$7,000. See s. 443.1217(2)(a), F.S.

<sup>14</sup> 26 U.S.C. s. 3301.

program, including the processing of claims for benefits by DEO, state unemployment tax collections performed by the DOR, appeals conducted by the DEO and the Reemployment Assistance Appeals Commission, and related administrative functions.

Unfortunately, due to the past few years of high unemployment in Florida, more funds have been paid out of the Unemployment Compensation Trust Fund than have been collected. The trust fund fell into deficit in August 2009, and since that time, the state has requested over \$2 billion in federal advances in order to continue to fund unemployment compensation claims. Through voluntary repayment and partial loss of the federal tax credit, Florida has substantially paid down its debt.<sup>15</sup> It is estimated that all federal advances should be repaid by mid-2013.<sup>16</sup>

Federal advances accrue interest on a federal fiscal year basis (October to September), and such interest is due no later than September 30 each year. The interest rate for 2013 is 2.5765 percent.<sup>17</sup> The Revenue Estimating Conference estimated on January 15, 2013, that the interest due for 2013 would be \$9.6 million.<sup>18</sup>

The interest due on advances cannot be paid from funds from the Unemployment Compensation Trust Fund. In order to repay the interest, a state may make an appropriation from general revenue, issue bonds, or impose an assessment on employers.<sup>19</sup> In 2010, the Legislature imposed an additional assessment on employers to pay interest on federal advances.<sup>20</sup>

Section 443.131(5)(b), F.S., sets forth the calculations for the assessment. To determine the additional rate for the assessment, the formula divides the estimated amount of interest owed by 95 percent of total wages paid by employers for the previous year ending June 30. To determine an employer's payment amount, the formula multiplies an employer's taxable wages by the additional rate. DOR is required to calculate and bill the assessment prior to February 1 of the year, based upon the interest estimated by the Revenue Estimating Conference. An employer has 5 months, until June 30<sup>th</sup>, to pay the assessment. The assessments are paid into the DOR's Audit and Warrant Clearing Trust Fund and may earn interest. Any interest earned is part of the balance available to pay the interest due to the federal government.

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<sup>15</sup> As of February 4, 2013, Florida had an outstanding advance balance of slightly less than \$685 million. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's [Title XII Advance Activities Schedule](http://treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiesched.htm) at [http://treasurydirect.gov/govt/reports/tfmp/tfmp\\_advactivitiesched.htm](http://treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiesched.htm) (last visited February 6, 2013).

<sup>16</sup> The most recent forecast by the Revenue Estimating Conference shows repayment of all federal advances by June 2013. On file with the Senate Commerce and Tourism Committee.

<sup>17</sup> The interest rate charged is equal to the fourth calendar quarter yield on the Unemployment Trust Fund for the previous year, capped at 10 percent. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's [Unemployment Trust Fund Quarterly Yields](http://treasurydirect.gov/govt/rates/rates_tfr.htm) at [http://treasurydirect.gov/govt/rates/rates\\_tfr.htm](http://treasurydirect.gov/govt/rates/rates_tfr.htm) (last visited on February 6, 2013).

<sup>18</sup> Revenue Estimating Conference forecast, available at <http://edr.state.fl.us/content/revenues/reports/unemployment-compensation-trust-fund/UnemploymentCompensationTax2013InterestDueonFederalAdvancesRevised.pdf> (last visited February 6, 2013).

<sup>19</sup> The option of issuing bonds to repay the interest may be unavailable to Florida, See Art. VII, s. 11, Fla. Const.

<sup>20</sup> Section 443.131(5), F.S. Section 4, ch. 2010-1, L.O.F.

**III. Effect of Proposed Changes:**

**Evaluation of Economic Development Programs**

The bill creates the Economic Development Programs Evaluation (evaluation). (**Section 1 – undesignated section of the Florida Statutes.**) EDR and OPPAGA are required to jointly present the evaluation to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees. The offices are required to evaluate specified economic development programs according to a 3-year review schedule. Programs are grouped together based on general program type. The evaluation schedule is as follows:

<b>YEAR 1 (January 1, 2014) and every 3<sup>rd</sup> year</b>	
<b>Programs</b>	<b>Florida Statute(s)</b>
Quick Action Closing Fund	s. 288.1088
Brownfield Redevelopment Bonus Tax Refund	s. 288.107
High Impact Sector Performance Grants	s. 288.108
Capital Investment Tax Credit	s. 220.191
Qualified Target Industry Tax Refund	s. 288.106
Innovation Incentive Program	s. 288.1089
Enterprise Zone Programs	ss. 220.181-182, 212.08(5), 212.096, 212.08(15)

<b>YEAR 2 (January 1, 2015) and every 3<sup>rd</sup> year</b>	
<b>Programs</b>	<b>Florida Statute(s)</b>
Entertainment Industry Financial Incentive Program	s. 288.1254
Entertainment Industry Sales Tax Exemption Program	s. 288.1258
The Florida Commission on Tourism/Visit Florida	ss. 288.122-124
Florida Sports Foundation	ss. 288.1162-1171

<b>YEAR 3 (January 1, 2016) and every 3<sup>rd</sup> year</b>	
<b>Programs</b>	<b>Florida Statute(s)</b>
Qualified Defense Contractor and Space Flight Business Tax Refund Program	s. 288.1045
Semiconductor, Defense, or Space Technology Sales Tax Exemption	s. 212.08(5)(j)
Military Base Protection	s. 288.980
Manufacturing & Spaceport Investment Incentive Program	s. 288.1083

Quick Response Training	s. 288.047
Incumbent Worker Training	s. 445.003
International Trade & Business Development	s. 288.826

EDR and OPPAGA are required to coordinate and submit a work plan for the evaluation to the President of the Senate and the Speaker of the House of Representatives by July 1, 2013.

The bill requires EDR to use specialized modeling techniques to evaluate the economic development programs listed above. EDR is required to evaluate each program for “economic benefits,” as well as jobs created, the increase or decrease in personal income, and the impact on state GDP of each program using data from the previous 3 years. The data used to evaluate any tax credits, tax refunds, sales tax exemptions, cash grants, and similar programs is specified as being data from projects that are either fully complete, partially complete with future fund disbursement possible pending performance measures, or partially completed with no future fund disbursement possible as a result of a business’s inability to meet performance measures. EDR is required to provide an explanation of the model used in its analysis, and the model’s key assumptions. EDR is permitted to use another model if it explains why another model is more appropriate.

The OPPAGA is required to evaluate each program for effectiveness and value to Florida taxpayers, and to provide recommendations to the Legislature based on its evaluation of each program. OPPAGA’s analysis is required to include information from interviews, reviews of relevant reports, or other data.

The bill gives EDR and the OPPAGA access to all data necessary to complete the Economic Development Programs Evaluation, including confidential data. The offices may coordinate data collection and analysis. **(Section 4, amends s. 213.053, F.S.)**

The bill updates requirements for the Annual Incentives Report currently produced by EFI **(Section 26, amends s. 288.907, F.S.)** and requires the report to be a joint report by the DEO and EFI. The agencies will no longer be required to report on the “economic benefit” of each project or program in the Annual Incentives Report. The evaluation of “economic benefits” will now be conducted as part of the Economic Development Programs Evaluation, conducted jointly by EDR and the OPPAGA. See above.

“Jobs” is defined to ensure that all jobs data is reported and evaluated in the same manner across programs. The term means only full-time equivalent positions, and excludes any temporary construction jobs involved with the construction of facilities for a project. **(Section 7, amends s. 288.005, F.S.)**

The bill repeals a required OPPAGA report on the Innovation Incentive Program. **(Section 16, amends s. 288.1089, F.S.)** This report is duplicative as a result of the evaluation of the Innovation Incentive Program required as part of the Economic Development Programs Evaluation created in Section 1 of the bill.



A duplicative analysis of EFI's return on the public's investment is repealed. (**Section 24, repeals s. 288.904(6), F.S.**) Current law requires the analysis to be included as part of the EFI annual report. Currently, section 20.601(3), F.S., requires the OPPAGA to conduct a similar analysis in 2016.

### **Agency Reporting Consolidation**

Presently, there are multiple reporting requirements for the state's various economic development programs and activities. Some entities are required to submit reports to the Governor, Legislature, and/or the department and the report due dates lack uniformity. The bill consolidates several independent program reports and reporting dates.

#### *Department of Economic Opportunity's Annual Report*

The bill makes several changes to the department's annual report. (**Section 2, amends s. 20.60, F.S.**) The report's due date is changed from January 1<sup>st</sup> to November 1<sup>st</sup>. The department is directed to include supplements to its annual report on several programs. As a result, the independent due dates for each of the reports are deleted. The programs to be included in the department's annual report are:

- Displaced Homemaker program. (Section 51, amends s. 446.50, F.S.)
- Enterprise Zone program. (Sections 29 and 30).
  - Changes the due date of each enterprise zone development agency's report to the department from December 1<sup>st</sup> to October 1<sup>st</sup>. (**Section 29, amends s. 290.0056, F.S.**)
  - Changes the due date of the Department of Revenue's report on the usage and revenue impacts, by county, of state incentives relating to enterprise zones from February 1<sup>st</sup> to October 1<sup>st</sup>. (**Section 30, amends s. 290.014, F.S.**)
- Economic Gardening Business Loan Pilot Program. (Section 13, amends s. 288.1081, F.S.)
- Economic Gardening Technical Assistance Pilot Program. (Section 14, amends s. 288.1082, F.S.)
- Black Business Loan Program. (Section 21, amends s. 288.714, F.S.)
- Rural Economic Development Initiative. (Section 10, amends s. 288.0656, F.S.)

#### *EFI's Annual Report*

The bill requires EFI to include, as a supplement in its annual report, information on: (**Section 25, amends s. 288.906, F.S.**)

- State of Florida International Offices. (**Section 8, amends s. 288.012, F.S.**)
- Florida Export Finance Corporation annual report. (**Section 22, amends s. 288.7771, F.S.**)

Additionally, under current law EFI division reports are due independently on October 1<sup>st</sup>, for inclusion in EFI's annual report. The bill repeals this independent due date. (**Section 27, amends s. 288.92, F.S.**)

*Annual Incentives Report*

The bill revises the duties of EFI to require the Annual Incentives Report to be a joint report by EFI and the DEO. (**Section 23, amends s. 288.903, F.S.**) The report is currently produced independently by EFI using data supplied by the department.

Information on the Economic Development Trust Fund is required to be included in the Annual Incentives Report. The information is currently required under s. 288.095(3)(c), F.S. The bill repeals this paragraph (**Section 11**) and incorporates the information into the Annual Incentives Report. (**Section 26, amends s. 288.907, F.S.**) The information includes:

- The types of projects supported;
- Tax refunds or other payments made out of the Economic Development Incentives Account for each project supported;
- A separate analysis of the impact of tax refunds on Enterprise Zones, rural communities, brownfield areas, and distressed urban communities; and
- The name and tax refund amounts for each business receiving a qualified target industry or qualified defense space contractor and space flight business tax refund.

Several other stand-alone program reports are incorporated as supplements to the Annual Incentives Report. As a result, the independent due dates for the reports are deleted. The reports required to be included as supplements to the Annual Incentives Report include:

- Florida Space Business Incentives Act annual report (**Section 5, amends s. 220.194, F.S.**), beginning in 2014.
- Information on the causes of a business's failure to complete its qualified target industry incentive agreement. (**Section 12, amends s. 288.106, F.S.**)
- Information relating to Innovation Incentive Program recipients, including the evaluation as to whether the recipients were catalysts for additional economic development. (**Section 16, amends s. 288.1089, F.S.**)
- Florida Small Business Technology Growth Program annual report. (**Section 28, amends s. 288.95155, F.S.**)

Validation of contractor performance for all incentive programs is currently required as part of the Annual Incentives Report. The bill adds a cross-reference to s. 288.061, F.S., clarifying that validation of contractor performance is to be included in the Annual Incentives Report. (**Section 26, amends s. 288.907, F.S.**)

The bill clarifies that the DEO, rather than EFI, is responsible for validating contractor performance for the Quick Action Closing Fund incentives and that such information is to be included in the Annual Incentives Report. Current law requires the contractor performance validation to be reported within 6 months of completion. This requirement is deleted by the bill. (**Section 15, amends s. 288.1088, F.S.**)

Validation of contractor performance for the Innovation Incentive Program recipients is required to be included in the Annual Incentives Report. The current law requirement that a report on

contractor performance be submitted within 90 days of an agreement's conclusion is repealed. (**Section 16, amends s. 288.1089, F.S.**)

#### *Office of Film and Entertainment's Annual Report*

The bill changes the due date of the Office of Film and Entertainment's (OFE) Annual Report on the entertainment industry financial incentive program from October 1<sup>st</sup> to November 1<sup>st</sup>. (**Section 19, amends s. 288.1254, F.S.**) The OFE's Annual Report is also required to include the OFE expenditures report (**Section 18, amends s. 288.1253, F.S.**) and the report detailing the relationship between tax exemptions and incentives to industry growth. (**Section 20, amends s. 288.1258, F.S.**)

#### *Space Florida's Annual Report*

The bill changes the due date for the Space Florida annual performance report from September 1<sup>st</sup> to November 30<sup>th</sup> (**Section 39, amends s. 331.3051, F.S.**), and requires Space Florida's annual operations report to be included in the performance report. (**Section 40, amends s. 331.310, F.S.**)

### **Community Planning – Use of Documentary Stamp Tax Distribution**

**Section 3** amends s. 201.15(1)(c), F.S., to delete obsolete language and clarify that the share of the documentary stamp distribution that DEO receives in the Grants and Donations Trust Fund must be used by the Community Planning Program to provide technical assistance to local governments.

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

**Section 6** significantly amends s. 288.001, F.S., relating to the Florida Small Business Development Center Network (network). The bill provides that the purpose of the network is to serve emerging and established private, for-profit businesses that maintain a place of business in Florida. Florida's network is a consortium of regional small business development centers throughout the state that offer consulting services, training opportunities, and access to other resources and information to current and prospective small businesses.

The national Small Business Development Center program is administered by the U.S. Small Business Administration (SBA) and federal laws and regulations require that various state-level programs be located at higher education institutions. Regional centers are based at several of Florida's colleges and universities, with a total of 39 locations in the state. The network's state headquarters are located at the University of West Florida (UWF).<sup>21</sup>

#### *Statewide Director*

The bill requires the statewide director to:

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<sup>21</sup> See History of the Florida SBDC Network, available at <http://floridasbdc.org/history.php> (last visited March 26, 2013).

- Operate the network in compliance with federal law and Board of Governors Regulation 10.015;
- Consult with the Board of Governors, the DEO, and the network's statewide advisory board to ensure that the network's policies and programs align with the statewide economic development plan and the statewide goals of the State University System;
- Develop support services, in consultation with the advisory board, to be delivered through regional small business development centers;
- Develop a pay-per-performance incentive for regional small business development centers, in coordination with the center's host institution;
- Develop annual programs that support small business assistance best practices, enhance network participation among state universities and colleges, and ensure that network services are offered statewide, especially in rural and underserved areas;
- Update the Board of Governors, the DEO, and the advisory board quarterly on the network's performance, including aggregate information on businesses assisted by the network; and
- Present an annual report on June 30th to the President of the Senate and the Speaker of the House of Representatives on the network's progress and outcomes for the previous fiscal year, including the network's economic benefit to the state.

#### *Statewide Advisory Board*

Federal requirements do not specify how members of the network's statewide advisory board are selected or the size of the board, but the board must have members who are small business owners and representative of the program's entire Service Area (in Florida, the Service Area is the entire state). The bill codifies the current membership of the statewide advisory board, with the exception of two additional members to be appointed by the network's statewide director. The bill requires the statewide advisory board to consist of 19 members from across the state, with at least twelve members being representatives of the private sector who are knowledgeable of the needs and challenges of small businesses, as follows:

- Three members from the private sector appointed by the Governor - two of whom initially serve 2-year terms.
- Three members from the private sector appointed by the President of the Senate - one of whom initially serves a 2-year term.
- Three members from the private sector appointed by the Speaker of the House of Representatives - one of whom initially serves a 2-year term.
- Three members appointed by the statewide director - one of whom initially serves a 2-year term.
- One member appointed by the host institution (the University of West Florida).
- The President of Enterprise Florida, Inc., or his or her designee.
- The Chief Financial Officer or his or her designee.
- The President of the Florida Chamber of Commerce or his or her designee.
- The Small Business Development Center Project Officer from the U.S. Small Business Administration's South Florida District Office or his or her designee.
- The Executive Director of the National Federation of Independent Businesses, Florida or his or her designee.
- The Executive Director of the Florida United Business Association or his or her designee.

The bill requires that minority and gender representation be considered when making appointments to the statewide advisory board.

The bill sets a member's term on the board at 4 years, except for five members who initially serve 2 year terms (as specified above). Statewide advisory board members may be reappointed to a subsequent term. Board members cannot receive compensation for serving on the board but may receive reimbursement for per diem and travel expenses as provided in s. 112.061, Florida Statutes.

#### *Small Business Support Services*

The bill specifies that the statewide director and the statewide advisory board must develop support services that are delivered by regional small business development centers. Support services must target the needs of businesses that employ fewer than 100 persons and demonstrate an assessed capacity to grow in employment or revenue. Businesses receiving support services must agree to participate in assessments of services received. Information requested of participating businesses includes demographic information, changes in employment and sales, debt and equity capital attained, government contracts obtained, and other information as required by the host institution (UWF).

The bill requires regional small business development centers to provide businesses with support services that include, but are not limited to providing information or research, consulting, educating, or otherwise assisting businesses in specific activities. These activities largely codify the support services already offered by the network and include:

- Planning related to starting-up, operating, or expanding a small business.
- Developing and implementing strategic or business plans.
- Developing the financial literacy of existing businesses.
- Developing and implementing plans for existing businesses to access or expand to new or existing markets.
- Supporting access to capital for business investment and expansion, including providing technical assistance related to obtaining surety bonds.
- Assisting existing business with natural or man-made disaster planning.

#### *Additional State Funds*

The bill requires the network to provide a match equal to the amount of any direct legislative appropriation. The match provided by the network must consist of 50 percent cash, with the remaining 50 percent coming from any allowable combination of additional cash, in-kind contributions or indirect costs. The 50 percent cash requirement may include funds from federal or other non-state funding sources designated for the network.

If the host institution (UWF) receives additional state funding specifically designated for the network, half of the funds must be used to establish a pay-per-performance incentive for regional small business development centers. The statewide director, in coordination with the host institution (UWF), will develop the pay-per-performance incentive. The incentive must be

distributed based data collected from businesses as provided in the bill. The distribution formula must include recognition of the gross number of jobs created annually by each regional center and the number of jobs created per support service hour. Pay-per-performance incentive funds received by regional centers must be used to supplement operations and services provided by regional centers. Regional centers may not reduce matching funds dedicated to the small business development center program if they receive any incentive funds under the pay-per-performance program.

The remaining half of any additional state funds received by the host institution (UWF) for the network must be distributed by the statewide director, in coordination with the advisory board, for the purposes of:

- Ensuring support services are available statewide, especially in underserved and rural areas of the state;
- Encouraging colleges and universities to participate in the program; and
- Encouraging the adoption of small business assistance best practices by regional centers.

The network must announce the annual amount of available funds for each program, as well as any performance expectations or other requirements. The statewide director must present applications and recommendations to the statewide advisory board. The advisory board must approve applications and publicly post approved applications. At a minimum, programs must include new regional small business development centers and awards for the top six regional centers that adopt best practices, as determined by the advisory board. Detailed information about best practices must be made available to regional centers for voluntary implementation. A regional center cannot receive an award from this allocation of additional state funds if the statewide director has found that the regional center has:

- Performed poorly,
- Engaged in improper activity affecting the operation and integrity of the network, or
- Failed to follow the rules and procedures set forth in the laws, regulations and policies governing the network.

### *Reporting Requirements*

The bill requires that the statewide director update the Board of Governors, the Department of Economic Opportunity, and the advisory board each quarter on the network's progress and outcomes, including aggregate information on businesses assisted by the network. In addition to quarterly updates, the statewide director and the advisory board must produce an annual report, due by June 30<sup>th</sup>, to the President of the Senate and the Speaker of the House of Representatives. The report must include the information provided quarterly, information regarding network services and programs, the use of funds specifically dedicated to the network, and the network's economic benefit to the state. The report must include specific information on performance-based metrics used by the network and the methodology used to calculate the network's economic benefit to the state.

## Evaluation of Incentive Program Applicants

The bill requires that the department evaluate each economic development incentive application for the “economic benefits” of the proposed award of state incentives for the project. The bill provides that “economic benefits” has the same meaning as in s. 288.005, Florida Statutes. Section 288.05(1), Florida Statutes, provides:

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.

EDR must review and evaluate the methodology and model used by the DEO to calculate the economic benefits. The department and EDR are authorized to develop an amended definition of “economic benefits” to evaluate applications. EDR must submit a report on the methodology and model by September 1, 2013, and every third year thereafter, to the President of the Senate and the Speaker of the House of Representatives. (**Section 9, amends s. 288.061, F.S.**)

The bill deletes similar language requiring an up-front analysis of “economic benefits” for a qualified target industry (QTI) tax refund application. The bill requires that applications for a QTI incentive be evaluated to determine if an applicant has previously received economic development incentives in other states, and if applicable, the outcome of those agreements.

Current law requires that QTI tax refund applications be evaluated for their *effect* on the *unemployment rate* in the county where a project will be located. The bill revises this requirement to require that applications be evaluated for the *expected effect* on the *unemployed and underemployed* in the county where a project will be located. The bill deletes the existing requirement that a QTI tax refund application be evaluated for the expected long-term commitment to economic growth and employment in Florida. (**Section 12, amends s. 288.106, F.S.**)

Current law requires that a project qualifying for the Innovation Incentive Program as a research and development program or as an alternative and renewable energy project demonstrate that the project will provide a *break-even “return on investment”* to the state over a 20-year period. The term “return on investment” as it relates to the Innovation Incentive Program is not defined under current law.

The bill changes this requirement to a demonstration that the project will provide a *cumulative break-even “economic benefit”* within a 20-year period. This change creates consistent terminology and ensures applicants for the Innovation Incentive Program will be evaluated similarly to other incentive programs. (**Section 16, amends s. 288.1089, F.S.**)

## Securitization of Economic Development Incentives

The Quick Action Closing Fund and the Innovation Incentive Program provide financial incentives that can be used in highly competitive negotiations or to attract high-value research and development, innovation business, and alternative and renewal energy projects. The funds

are generally distributed prior to the project's completion. Currently, the department uses payment schedules and sanctions, including clawbacks, to address a business's failure to comply with performance conditions.

**Section 9** amends s. 288.061, F.S., to require that applicants for Quick Action Closing Fund and Innovation Incentive Program economic development incentives obtain a surety bond for the entire amount of the award before any state funds can be disbursed. Up to half of the premium payment on the surety bond may be paid from the award amount, not to exceed 3 percent of the award.

The DEO is authorized to waive the surety bond requirement by certifying specific information, in writing, to the Governor, President of the Senate, and Speaker of the House of Representatives. If the DEO waives the surety bond requirement, the applicant must secure the award through an irrevocable letter of credit, cash or securities held in trust, or a secured transaction in collateral. The DEO may waive the surety bond or alternate security requirement if the DEO certifies to the Governor and the chair and vice-chair of the Legislative Budget Commission that the applicant has the financial ability to fulfill the requirements of the contract; has previously demonstrated timely compliance with any clawback provisions, if the applicant has received any incentives; and that the waiver is in the best interest of the state.

### **Florida Tourism and Industry Marketing Corporation**

The Florida Tourism Industry Marketing Corporation, d/b/a Visit Florida, is the not for profit corporation that is responsible for providing tourism promotion and marketing services, functions, and programs for the state.

The Visit Florida board of directors consists of 31 tourist industry-related members, appointed by EFI, in conjunction with the DEO. Sixteen of its members are appointed to represent all geographic areas of the state in an equitable manner, with at least two members from each region. An additional 15 members are prescribed as follows: one from the statewide rental car industry, seven from tourist-related statewide associations, three from county destination marketing organizations, one from the cruise industry, one from an automobile and travel services membership organization that has at least 2.8 million members in Florida, one representative from the airline industry, and one representative from the space tourism industry, who will each serve for a term of 2 years.

**Section 17** amends s. 288.1226, F.S., to provide that the Governor will serve as an ex-officio, non-voting member of the Board of Directors of the Florida Tourism and Industry Marketing Corporation (Visit Florida). According to information provided by the DEO to staff of the Senate Commerce and Tourism Committee on February 17, 2013: "This board designation removes any barriers to the Governor acting as a spokesperson for Florida tourism".

### **Florida Small Cities Community Development Block Grant (CDBG) Programs**

Currently, the department administers the Community Development Block Grant program, a federally funded housing and community development program that targets assistance to low and moderate income populations. Rural or smaller area governments receive grants from the



department through a competitive rural distribution mechanism known as the Florida Small Cities Community Development Block Grant (Small Cities CDBG) program. Local governments in urban areas apply and receive funds directly from the U.S. Department of Housing and Urban Development (HUD).

**Section 31** amends the legislative intent and purpose of the Small Cities Community Development Block Grant Program Act to include economic need as one of the factors to make a Florida community eligible to participate in the program and includes economic development programs as an activity for such communities to undertake. (**Amends s. 290.0411, F.S.**)

**Section 32** amends s. 290.042, F.S., to clarify the definitions of “administrative closeout” and “person of low or moderate income” by including a reference to the definition used in the Code of Federal Regulations.

### *Program Funding and Distribution of Funds (Section 33)*

Currently, the statute outlines several grant categories for which grants may be distributed under the Small Cities CDBG. These categories include commercial revitalization, economic development, housing, neighborhood revitalization, and project planning and design. The bill **amends s. 290.044, F.S.**, to provide the department rule-making authority to establish guidelines to distribute the Small Cities CDBG program funds through a competitive selection process. The department is directed to define broad community development objectives for the distribution of CDBG funds that are consistent with the national objectives, as established by federal law. Current provisions requiring applicants to compete against each other in grant program categories and the categories themselves are repealed. The bill provides that emergency set-aside funds are only to be used when no other federal, state, or local disaster funds are available.

### *Section 108 Loan Guarantee Program (Section 34)*

The bill focuses on reducing risks associated with the Section 108 loan guarantee program by **amending s. 290.0455, F.S.**, to require an applicant approved by HUD to receive a Section 108 loan to enter into an agreement with the department that requires the applicant to pledge half the amount necessary to guarantee the loan in the event of default. The department must review all Section 108 loan applications in the order received, provided the applications meet all eligibility requirements and have been deemed financially feasible by a loan underwriter approved by the department. If the statewide maximum available for loan guarantees has not been met, the department may submit the application to HUD with a recommendation that the loan be approved, with or without conditions, or denied.

The bill reduces the maximum amount of an individual loan guarantee commitment from \$7 million to \$5 million and decreases the maximum statewide amount of loan guarantees from five times to two times the amount of the most recent grant received by the department under the Florida Small Cities CDBG Program. The \$5 million loan guarantee limit does not apply to loans guaranteed prior to July 1, 2013, so that they may be refinanced.

If a local government defaults on a Section 108 loan requiring the department to reduce its annual grant award to pay the annual debt service on the loan, any future CDBG program funds

that the local government receives must be reduced in the amount equal to the amount of the state's grant award used in payment of debt service on the loan.

If a local government, that has received a Section 108 loan through the Florida Small Cities CDBG Program, is granted entitlement community status by HUD, then the local government must pledge its entitlement allocation as a guarantee of its previous loan and request HUD to release the department as guarantor of the loan.

*Grant Application Procedures and Requirements (Section 35)*

Section 290.046, F.S., currently provides the application procedures that the department must employ. The bill **substantially amends s. 290.046, F.S.**, to grant the department rule-making authority to establish application procedures for the Florida Small Cities CDBG Program. Eligible local governments may only submit one application for a noneconomic development project during an application cycle. An eligible local government may apply for an economic development grant up to three times each funding cycle and is permitted to have more than one open economic development grant.

The department is directed to establish minimum criteria pertaining to the number of jobs created for low or moderate-income persons, the degree of private sector financial commitment, the economic feasibility of the proposed project, and any other criteria it deems appropriate. A grant may not be awarded until the department has completed a site visit to verify the information contained in the award application.

The department must rank each application received based on criteria established by rule. The rule must allow the department to consider factors such as community need, unemployment, poverty levels, low and moderate-income populations, health and safety, and the condition of physical structures. The rankings must incorporate a procedure intended to reduce or eliminate any existing population-related bias that places exceptionally small communities at a competitive disadvantage.

Project funding must be determined by the rankings established in each application cycle. If, at the conclusion of a funding cycle, economic development funding remains, those funds will be awarded to eligible projects on a first-come, first-served basis until funding for this category is fully obligated.

The bill repeals the requirement that a local government establish a citizen advisory board to provide input relative to all phases of the project process. However, citizen participation provisions required by HUD are retained. Those provisions include conducting an initial public hearing to inform the public of the available funding opportunities and eliciting input on community needs; publishing a summary of the proposed application so that the public can examine the contents of the application and submit comments; and conducting a second public hearing to obtain public comment about the proposed application and make appropriate modifications.

### *Establishment of Grant Ceilings (Section 36)*

The bill maintains the department's current rule-making authority for establishing grant ceilings, the maximum percentage of block grants funds that may be spent on administrative costs, and the grant administration procurement procedures for eligible local governments.

However, the bill **substantially amends s. 290.047, F.S.**, to prohibit an eligible local government from contracting with the same individual or business entity for more than one service to be performed in connection with a Small Cities CDBG, unless it can demonstrate that the individual or business entity is the sole source of the service or is the responsive proposer whose proposal is determined, in writing from a competitive process, to be the most advantageous to the local government. The department must adopt a rule that provides a methodology to determine the maximum amount of block grant funds that an eligible local government may spend on architectural and engineering costs.

### *Rejection of Applications (Section 37)*

The bill **amends s. 290.0475, F.S.**, to update references to statutes and department rule. It repeals a provision that an application is deemed ineligible if it is found to contain a misrepresentation of information that is not attributable to a mathematical error that may be readily corrected by computation of numbers or formulas provided in the application.

### *General Powers of the Department (Section 38)*

The bill **repeals ss. 290.048(5) and (7), F.S.**, which grants the department the power to adopt and enforce requirements concerning an applicant's written description of a service area, and to establish an advisory committee to solicit participation in the design, administration, and evaluation of the program, respectively.

### **Reemployment Assistance Program**

The bill **amends s. 443.131, F.S.**, to provide that no assessment will be levied against contributing employers if the amount of assessments on deposit, plus any earned interest, is at least 80 percent of the estimated amount of interest. The bill further provides that any assessments that remain on deposit, including associated interest, 4 months after all federal advances and associated interest have been repaid are to be transferred to the Unemployment Compensation Trust Fund. The provisions relating to interest assessments on federal advances will expire on July 1, 2014. **(Section 45)**

### *Reemployment Assistance Claims and Benefits Information System*

In 2009, the Legislature authorized the Department of Economic Opportunity to upgrade and enhance its Unemployment Compensation Claims and Benefits Information System.<sup>22</sup> The statute provides a project completion date of no later than June 30, 2013.

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<sup>22</sup> Chapter 2009-73, L.O.F. At the time, the Unemployment Compensation program was housed in the Agency for Workforce Innovation, whose functions were transferred to the Department of Economic Opportunity in 2011.

In early 2012, the vendor indicated that an extension of the timeline would be required. The vendor paid \$1,965,000 in liquidated damages and provided a credit of \$2,500,000 to cover the costs incurred by the DEO caused by the delay. After negotiations and a corrective action plan, the revised project schedule calls for an October 28, 2013, implementation date.<sup>23</sup>

The bill **amends s. 443.1113, F.S.**, to extend the operational deadline for the Reemployment Assistance Claims and Benefits Information System to June 30, 2014. (**Section 44**)

### *Fraudulent Claims*

A fraudulent claim is one that knowingly contains a false or fraudulent statement or fails to disclose a material fact for the purpose of obtaining or increasing reemployment benefits.<sup>24</sup> A claimant found to be collecting benefits fraudulently is disqualified from received benefits beginning the week that the fraudulent claim was made. The disqualification will continue for a period not to exceed 1 year after the DEO discovered the fraud and until any resulting overpayment of benefits has been repaid. Reemployment Assistance fraud can also be prosecuted as a third degree felony.

Federal law requires states to assess a penalty, of at least 15 percent of the amount of the erroneous payment, on any claimant who fraudulently obtained benefits.<sup>25</sup> Florida does not currently assess a penalty for fraudulent overpayments.

The bill **amends s. 443.151, F.S.**, to impose a penalty equal to 15 percent of the amount overpaid, on any claimant who fraudulently receives reemployment benefits. (**Section 46**) This provision will bring Florida into compliance with federal law. Any amounts collected for penalties are to be deposited into the Unemployment Compensation Trust Fund. (**Section 50, amends s. 443.191, F.S.**)

### *Confidentiality*

Information received from an employing unit or individual that reveals an employing unit's or individual's identity under the administration of the RA program is confidential and exempt from disclosure.<sup>26</sup>

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<sup>23</sup> See Project Connect, Executive Steering Committee Meeting Minutes for August 8, 2012, [http://sitefinity.floridajobs.org/Unemployment/UC\\_ModernizationProject/documents/MinutesAgendas/20120808%20RA%20OESC%20Meeting%20Minutes%20%20FINAL.pdf](http://sitefinity.floridajobs.org/Unemployment/UC_ModernizationProject/documents/MinutesAgendas/20120808%20RA%20OESC%20Meeting%20Minutes%20%20FINAL.pdf) (last visited February 7, 2013).

<sup>24</sup> Sections 443.071 and 443.101(6), F.S., discuss fraud and associated penalties.

<sup>25</sup> 42 U.S.C. s. 503(a)(11).

<sup>26</sup> Section 443.1715, F.S. This subsection authorizes a number of exceptions for disclosure. Information may be released to the extent necessary for presentation of a claim or upon written authorization of a claimant who has a workers' compensation claim pending or is receiving compensation benefits. Public employees may receive this information in the performance of their public duties but must maintain the confidentiality of the information. A claimant or his or her legal representative is entitled to this information, to the extent necessary, to present a claim at a hearing before an appeals referee or the commission. DEO or DOR may provide a copy of any report submitted by an employer to the employer or a copy of any report submitted by the claimant to the claimant, upon request. Confidential information may also be released pursuant to 20 C.F.R. part 603.

In 2012, the statute was amended and the language that made disclosure of such confidential information a second-degree misdemeanor was inadvertently repealed.<sup>27</sup> Federal regulations require Florida to provide penalties for the unlawful disclosure of confidential information related to reemployment assistance.<sup>28</sup>

**Section 443.1715, F.S., is amended** to restore penalties for the disclosure of confidential information that were inadvertently repealed in 2012. This provision will bring Florida into compliance with federal law. **(Section 49)**

#### *Disqualification for Reemployment Assistance Benefits*

Under current law, an individual may be disqualified from receiving reemployment assistance benefits for any week in which the department finds that he or she was discharged by his or her employer for misconduct. The bill adds specific examples of “misconduct” to be included in the definition, but the examples are not intended to limit the definition. **(Section 41, amends s. 443.036(30), F.S.)**

Current law also provides additional grounds for which an individual may be disqualified from obtaining reemployment benefits, such as voluntarily leaving employment. The bill adds loss of employment due to failure without good cause to maintain a license, registration, or certification, required by law for the employee to perform her or his assigned duties. “Good cause” is defined as failure of the employer to submit required information for the license, registration, or certification; short term physical injury that prevents the employee from completing a required test; and inability to complete a required test that is outside the employee’s control. **(Section 43, creates subsection (13) of s. 443.101, F.S.)**

#### *Work Registration Requirements*

The bill **amends s. 443.091, F.S.**, to require unemployed individuals to complete the department’s online work registration. Individuals unable to complete the online work registration or initial skills review due to illiteracy, physical or mental impairment, a legal prohibition from using a computer, or a language impediment are exempt from the online work registration and initial skills review. **(Section 42)**

Section 443.1715, F.S., is amended to restore penalties for the disclosure of confidential information that were inadvertently repealed in 2012. This provision will bring Florida into compliance with federal law. **(Section 49)**

#### *Reemployment Assistance Benefits- Determinations, Redeterminations and Appeals*

The DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements<sup>29</sup> for reemployment assistance benefits. Determinations and redeterminations are statements by the department regarding the application of law to an

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<sup>27</sup> Chapter 2012-30, L.O.F.

<sup>28</sup> 20 C.F.R. part 603.

<sup>29</sup> Section 443.151(3), F.S.

individual's eligibility for benefits or the effect of the benefits on an employer's tax account. A party who believes a determination is inaccurate may request reconsideration within 20 days from date the determination was mailed. The DEO must review the information on which the request is based and issue a redetermination.

If a party disagrees with either the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee. Appeals referees in the DEO's Office of Appeals hold hearings and issue decisions to resolve disputes related to eligibility for unemployment compensation and the payment and collection of unemployment compensation taxes.<sup>30</sup> Special deputies within the Office of Appeals handle appeals related to matters on tax, reimbursement, and liability protests. Generally, an appeal must be filed within 20 days of the determination date.

Upon receiving an appeal, the Office of Appeals will schedule a hearing involving all interested parties to address the issues. The parties will be mailed a *Notice of Hearing* telling them when the hearing will be held and whether they are expected to participate in-person or by telephone... The parties are expected to present all of their evidence and testimony to the appeals referee, who will then make a decision based only upon the evidence and testimony presented during the hearing. An audio recording of the hearing will be made by the referee. When the hearing is completed, the referee will issue a written decision.<sup>31</sup>

In the 2012 calendar year, there were a total of 116,534 appeals filed, and the Office of Appeals issued 128,968 decisions. Most appeals were filed by applicants (about 74 percent of the filed appeals), but the outcomes of the decisions were evenly split between decisions to pay or deny benefits to the applicants.<sup>32</sup> A decision by an appeals referee can be appealed to the Reemployment Assistance Appeals Commission.

Currently, appeals referees are not required to be licensed attorneys. The DEO currently employs 79 appeals referees, of which approximately 12% are attorneys in good standing with the Florida Bar. The bill **amends s. 443.151, F.S.**, to require that an appeals referee employed by the DEO be an attorney in good standing with the Florida Bar within a specified timeframe depending upon whether the referee is a current employee (must be an attorney by September 30, 2014) or a new employee hired on or after January 1, 2014 (must be an attorney within 8 months of his or her employment date). Effective January 1, 2014, an appeals referee currently employed by the DEO that does not have a degree from a law school accredited by the American Bar Association would no longer meet the qualifications for the appeals referee position. (**Sections 47 and 48**)

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<sup>30</sup> Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S. Information about the Office of Appeals and the appeals process may be found on the DEO website at <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-an-appeal> (last visited 1/13/2013).

<sup>31</sup> The DEO, "Reemployment Assistance Appeals Process, Reemployment Assistance Appeals Commission," available at <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/reemployment-assistance-appeals-commission/reemployment-assistance-appeals-process> (last visited 1/13/2013).

<sup>32</sup> Data from the DEO, "Reemployment Assistance Data, 1<sup>st</sup> Quarter 2007 through 4<sup>th</sup> Quarter 2012," January 7, 2013, on file with the Senate Commerce and Tourism Committee. Note, that not all outcomes that award benefits impact an employer's taxes, as some cases find that the former employee separated from work due to reasons not attributable to the employer.

The bill takes effective upon becoming law, except as otherwise expressly provided in the act. (Section 51).

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The transfer of any remaining funds to the Unemployment Compensation Trust Fund after the final federal interest payment is made may have a positive impact on employer contribution rates.

Revenues generated by the imposition and collection of the penalty created in the bill for fraudulently obtaining unemployment compensation benefits could have a positive impact on employer contribution rates.

B. Private Sector Impact:

To the extent that more small businesses are assisted through increased performance by the network and regional centers, the bill may have a positive impact on the private sector.

The bill may impose costs on prospective economic development incentive applicants due to the requirement to secure or guarantee the award amount. The costs imposed may be in the form of premiums or other professional fees related to creating the secured transaction.

To the extent that more eligible local governments apply for and receive funding for eligible activities under the Florida Small Cities CDBG Program, the private sector will benefit.

If the amount of assessments collected in previous years to pay the interest due on federal advances is at least 80 percent of the estimated interest payment, the Department of

Revenue may not make an assessment against employers, which would have a positive fiscal impact to the private sector.

Also, see Tax/Fee Issues.

C. Government Sector Impact:

This bill is projected to have a fiscal impact to the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability, as follows:

- Office of Economic and Demographic Research (EDR)
  - Economic Development Program Evaluation Workload - three positions and \$302,324 to cover salaries, benefits and expenses associated with the new positions (\$37,002 of the expenses are nonrecurring).
  - Modifications to Statewide Model - \$34,400 to design and develop an employment module for the statewide model.

Funding for EDR would need to be appropriated in the General Appropriation Bill.

- Office of Program Policy Analysis and Government Accountability (OPPAGA)
  - Economic Development Program Evaluation Workload - two positions and a part-time intern - \$178,163 for salaries and benefits. OPPAGA has indicated that they can absorb the additional workload within existing resources.

These estimates assume that EDR and OPPAGA will obtain access to all information related to economic development programs that is needed to complete the Economic Development Program Evaluations without cost to EDR or OPPAGA.

Failure to provide a penalty for individuals who fraudulently collect unemployment benefits or restore the penalty for disclosing confidential information puts Florida at risk of being deemed out of conformity with federal law. If the United States Department of Labor made such a finding, it may not certify the state's reemployment assistance program and could withhold all administrative funding (approximately \$77 million for Federal FY 2013) or cause the employer federal tax rates to increase to the total of 6.0 percent because of loss of the entire Federal Unemployment Tax Act tax credit.

Imposing the 15 percent penalty upon individuals who fraudulently receive unemployment compensation benefits could have a positive impact to the Unemployment Compensation Trust Fund. According to the department, during FY 2011-12, the department made 25,294 fraud determinations totaling \$33.2 million in benefit overpayments. If these benefit overpayments had been subject to the 15 percent penalty, approximately \$4.9 million could have been deposited in the Unemployment Compensation Trust Fund. Revenues generated by the imposition and collection of the penalty created in the bill could have a positive impact on employer contribution rates.



The provisions of the bill that streamline reporting requirements, delete duplicative reports, and consolidate reporting due dates may improve efficiencies and are not expected to have a fiscal impact to the Department of Economic Opportunity, Enterprise Florida, Inc., the Office of Film and Entertainment, or Space Florida.

The provisions of the bill related to the Small Business Development Center Network are expected to have a minimal, but indeterminate, impact on the operating budgets of the Board of Governors and the department. The Senate proposed General Appropriations Bill, SPB 7040, includes \$7 million of recurring general revenue funds for Small Business Development Centers in Specific Appropriation 142 (Grants and Aids – Education and General Activities appropriation category).

The bill requires the department to establish a process for determining compliance with, or waiving, the securitization requirements created in the bill. The department may promulgate rules to implement the bill. The costs associated with establishing and maintaining processes and rulemaking that the department may incur are indeterminate, but anticipated to be insignificant.

The provisions of the bill that authorize the department to adopt rules to implement the revisions to the Florida Small Cities CDBG Program will have an indeterminate fiscal impact to the department. It is anticipated that this impact could be absorbed by the department within existing resources.

The Department of Economic Opportunity projects that the provisions of the bill that require the DEO's appeals referees to be attorneys in good standing with the Florida Bar will have a fiscal impact of approximately \$1.6 million in Fiscal Year 2013-2014, of which approximately \$1.2 million is recurring. The impact is based on the following assumptions:

- Average annual Salaries and Benefits paid to 79 appeals referees will increase from \$58,870 to \$73,688 (\$1,170,622)
- New Employee Training Costs - \$45,000
- 50 current employees will not obtain law degrees and become attorneys in good standing with the Florida Bar and will lose their jobs, making them eligible for reemployment assistance benefits (for an average of 10 weeks, the employer's cost is \$137,500) and leave payouts (average of 250 hours per employee - \$250,000).

The department indicates that federal funding received to administer the state's reemployment assistance program could be redirected to cover the increased salaries and benefits and training costs. Indirect cost assessments would be used to cover the costs associated with current employees losing their jobs because they do not meet the new job qualifications.

## **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill authorizes the department to adopt rules relating to the guidelines for the distribution of Small Cities CDBG Program grants; application procedures; grant ceilings; the maximum percentage of funds which can be spent on administrative costs by a local government; and the methodology used to determine the maximum amount of funding that may be spent on architectural and engineering costs by an eligible local government.

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

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

**Recommended CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on March 27, 2013:**

- Creates a rotating, 3-year review schedule for all incentives and programs to be evaluated by the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA).
- Provides EDR and OPPAGA access to all data necessary to complete its evaluations of the economic development programs.
- Defines “jobs” as full-time equivalent positions, and excludes any temporary construction jobs involved with the construction of facilities for a project.
- Repeals duplicative evaluations of economic development programs.
- Aligns the Small Business Development Center Network’s (network) statewide policies with the statewide strategic economic development plan and statewide goals of the university system.
- Specifies the composition of the network’s statewide advisory board.
- Specifies the support services offered by the network.
- Requires the network to provide a match to any direct state appropriation.
- Requires the network to set up incentives for the regional centers to create jobs, institute best practices, and serve new areas of the state or underserved areas.
- Requires regular reporting by the network on programs, services, and outcomes, including information on the network’s economic benefits to the state.
- Requires the department to evaluate each application for economic incentives for the economic benefits of the proposed award to the state, and EDR is to review and report on the methodology used to calculate the economic benefit.
- Requires recipients of incentives under the Quick Action Closing Fund and the Innovation Incentive Programs to secure the award with a surety bond, letter of credit, or other security; provides procedures for the department to waive securitization requirements.
- Eliminates school boards as entities for which funds from the Grants and Donations Trust Fund in the Department of Economic Opportunity may be used to provide community planning technical assistance.
- Creates specific examples of misconduct for which an individual may be disqualified for benefits.
- Prohibits a claimant from counting the same prospective employer at the same location more than once during his or her claim as proof of work search efforts,

unless the employer indicates that it is hiring after the initial contact by the claimant.

- Provides that an individual is disqualified from receiving benefits if his or her unemployment is due to a discharge from employment for failure, without good cause, to maintain a license, registration, or certification required by law for the performance of his or her assigned duties and provides examples of good cause.
- Requires an appeals referee to be a member in good standing with the Florida Bar or be successfully admitted to the Florida Bar within 8 months of his or her employment date, effective January 1, 2014, and current appeals referees who have law degrees but are not members in good standing in the Florida Bar must be successfully admitted by September 30, 2014.

**CS by Community Affairs on March 7, 2013:**

The CS provides the \$5 million loan guarantee limit for the Florida Small Cities Community Development Block Grant Program does not apply to loans guaranteed prior to July 1, 2013, that may be refinanced. The CS creates an exemption for people who are unable to complete the online work registration due to various stated reasons from having to complete the department's online work registration.

**B. Amendments:**

None.