The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 582

INTRODUCER: Commerce and Tourism Committee and Senator Galvano

SUBJECT: Manufacturing Development

DATE: April 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	**Fav/CS**
2.	Toman	Yeatman	CA	**Favorable**
3.	Pingree	Martin	ATD	**Favorable**
4.	Pingree	Hansen	AP	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [X] Statement of Substantial Changes

B. AMENDMENTS........................ [ ] Technical amendments were recommended

[ ] Amendments were recommended

[ ] Significant amendments were recommended

I. Summary:

CS/SB 582 creates the "Manufacturing Competitiveness Act," and authorizes local governments to adopt a local manufacturing development program to grant master development approval for the development, expansion, or modification of manufacturing facilities located within its jurisdiction. The bill provides that a local government may enact an ordinance to establish a local manufacturing development program. If a manufacturer chooses to develop or expand in the jurisdiction of that local government, the required applications for specified state permits must be reviewed by specified "participating agencies" in a coordinated and simultaneous manner, within prescribed timeframes. The bill provides that each participating agency must take final agency action on the application within 60 days after the application is filed, unless the deadline is waived by the manufacturer or a federally delegated permitting program mandates a different deadline. If an application is not approved or denied within 60 days, it is deemed approved.

The bill has an indeterminate fiscal impact to the departments of Economic Opportunity, Environmental Protection, Transportation, the Fish and Wildlife Conservation Commission and the state's five water management districts. See Section V. The Department of Economic Opportunity (DEO) is tasked with developing a model ordinance for use by local governments by December 1, 2013.

If the local government enacts an ordinance establishing a local manufacturing development program, it must be submitted to the DEO within 20 days of enactment. The ordinance must remain in effect for at least 24 months. If the ordinance is repealed, any application for a master development plan received by the local government is "vested" and entitled to participate in the coordinated approval process.

The bill directs the Department of Environmental Protection, the Department of Transportation, the Fish and Wildlife Conservation Commission and the state's five water management districts ("participating agencies") to establish a manufacturing development coordinated approval process. The approval process must provide for coordinated and simultaneous review of applications for permits by the participating agencies, under their respective authorities. A manufacturer may convene a meeting with one or more of the participating agencies to facilitate the process. The bill provides that each participating agency must take final agency action on the application within 60 days after the application is filed, unless the deadline is waived by the manufacturer or a federally delegated permitting program mandates a different deadline. If an application is not approved or denied within 60 days, it is deemed approved.

If a participating agency plans to deny an application, it must notify the manufacturer in writing and convene an informal meeting to facilitate a resolution, unless waived by the manufacturer. Throughout the process, the manufacturer may initiate an administrative hearing under ch. 120, F.S.

This bill creates the following sections of the Florida Statutes: 163.325, 163.3251, 163.3252, 163.3253, and 288.111.

II. Present Situation:

Manufacturing Industry in Florida

Florida's manufacturing industry includes companies in traditional manufacturing industries, such as plastics, food processing and printing, as well as those that are engaged in innovative technologies, like electronics, medical devices, and aviation/aerospace. The state is home to nearly 18,000 manufacturers accounting for approximately 5 percent of Florida's gross domestic product.[1] The manufacturing industry employs more than 311,000 individuals in Florida.[2]

Enterprise Florida, Inc. (EFI), has identified manufacturing as a targeted industry, along with corporate headquarters, research and development, clean technologies, life sciences, information technology, aviation/aerospace, homeland security/defense, financial/professional services, and emerging technologies. Of the 122 economic development incentive contracts project commitments by EFI for Fiscal Year 2011-2012, manufacturing ranked highest in terms of the number of project commitments by industry (38), and expected capital investment (over $425

[1] Enterprise Florida, Inc., *The Florida Economy* (Jan. 2013), *available at* http://www.eflorida.com/IntelligenceCenter/download/ER/SI_Florida_Economy_Glance.pdf (last visited Apr. 4, 2013).
[2] *Id.*

million). These manufacturing projects contracted to create 2,474 jobs paying an average annual wage of $37,352.[3]

Permits

Currently, the responsibility for issuance of permits for the development, expansion, or modification of manufacturing facilities resides in several state agencies, as well as local governments.

State Permits

The Department of Transportation (DOT), Fish and Wildlife Conservation Commission (FWCC), Department of Environmental Protection (DEP), and water management districts[4] may each have responsibilities in the permitting process.

The DOT is responsible for regulating work activities that impact state roads, such as access permits,[5] utility permits,[6] and drainage permits,[7] among other things. The FWCC is responsible for protecting threatened or endangered species.[8] The DEP works in conjunction with the water management districts to regulate and issue permits for such programs as stormwater management, surface water management, and consumptive use of water.[9] The DEP also issues permits for items relating to air quality, among other things.

Current State Expedited Permitting Programs

Section 403.973, F.S., directs the DEP to create and implement regional permit action teams for the purpose of expediting the review of permit applications and local comprehensive plan amendments for certain projects.[10] Section 380.0657, F.S., directs the DEP and the water management districts to adopt programs to expedite the processing of wetland resource and environmental resource permits for economic development projects that have been identified as a target industry business.[11]

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[3] Enterprise Florida, Inc., *2012 Annual Incentives Report* (2012), *available at* http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf (last visited on Apr. 4, 2013).
[4] There are five water management districts: Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, South Florida Water Management District, and Southwest Florida Water Management District.
[5] Sections 335.18 – 335.199, F.S.
[6] Section 337.401, F.S.
[7] Section 334.044(15), F.S.
[8] Section 379.2291, F.S.
[9] DEP, Water Management Districts, *available at* http://www.dep.state.fl.us/secretary/watman/default.htm (last visited Apr 4, 2013).
[10] Those projects that may apply for expedited permitting under this provision include businesses creating at least 50 jobs (or at least 25 jobs if the project is located in an enterprise zone or in a county with limited population), projects located in a designated brownfield area, projects that are a part of the state-of-the-art biomedical research institution and campus, and certain projects relating to the production of biofuels. Certain other projects may be considered for expedited permitting at the request of the local government.
[11] Section 288.106, F.S.

The DOT has implemented a One Stop Permitting process for the permits it administers. The DOT staff indicates that most applications are processed within 30 days of receipt of the completed application.[12]

Local Permits

Local governmental agencies are responsible for issuing building permits within their respective jurisdictions. Chapter 163, F.S., requires local governments to adopt comprehensive plans and land development regulations to regulate the development and growth in their jurisdictions. However, no uniform, statutory process exists for local governments to approve master development plans for manufacturing facilities.

III. Effect of Proposed Changes:

Section 1 creates s. 163.325, F.S., providing that the act may be cited as the "Manufacturing Competitiveness Act (the act)."

Section 2 creates s. 163.3251, F.S., providing definitions for the following terms used in the act: "department," "local government development approval," "local manufacturing development program," "manufacturer," "participating agency," and "state development approval." A "participating agency" means the Department of Environmental Protection, the Department of Transportation, the Fish and Wildlife Conservation Commission, and water management districts.

Section 3 creates s. 163.3252, F.S., providing the process a local government may use to implement a local manufacturing development program. Specifically, a local government is authorized to adopt an ordinance to establish a local manufacturing development program through which it can grant master development approval to manufacturers for the development or expansion of sites at specified locations within the local government's geographic boundaries.

The establishment of a local manufacturing development program is voluntary; however, if a local government elects to establish one, it must submit a copy of the ordinance to the DEO within 20 days of enacting the ordinance.

The DEO must develop a model ordinance[13] by December 1, 2013, which must include:

- Application procedures for a manufacturer to apply for a master development plan and procedures for the local government to review and approve a master development plan;
- Identification of those areas within the local government's jurisdiction which are subject to the program;
- Minimum elements for a master development plan, including but not limited to:
  - A site map;
  - A list proposing the site's land uses;

[12] Department of Transportation, *Legislative Bill Review HB 357* (Feb. 11, 2013) (on file with the Senate Commerce and Tourism Committee).

[13] A local government is not required to adopt the model ordinance.

- o Maximum square footage, floor area ratio, and building heights for future development on the site;
- o Development conditions;
- o A list of development impacts which the local government will require to be addressed, if applicable, in a master development plan, including but not limited to, drainage, wastewater, vehicular and pedestrian entrance and exit from the site, and offsite transportation impacts;
- o A provision vesting any existing development rights authorized by the local government prior to approval of a master development plan, if requested by the manufacturer;
- o If required, a provision stating that the expiration date of the master development plan may not be earlier than 10 years after the plan's adoption;
- o A provision limiting the circumstances that require an amendment to an approved master development plan, such as the enactment of a state or local law that addresses a direct and immediate threat to public safety or a revision to the master development plan initiated by the manufacturer;
- o A provision limiting the scope of review for an amendment to a master development plan to a review of the proposed amendment and no other provisions of the plan;
- o A provision stating that during the term of a master development plan, a local government may not require additional local development approvals other than a building permit to ensure compliance with the state building code and any other applicable state-mandated life and safety code,
- o A provision requiring the manufacturer, prior to commencement of work, to submit a certification signed by an appropriate professional attesting that the construction or site development work complies with the master development plan; and
- o A provision establishing the form the local government will use to certify that a manufacturer is eligible to participate in the local manufacturing development program adopted by that jurisdiction.

Any local ordinance established must be consistent with the DEO's model ordinance and must establish procedures for the review and approval of a master development plan, the development of the site in a manner consistent with the master development plan without requiring additional local approvals other than building permits, and the certification that a manufacturer is eligible to participate in the local manufacturing development program.
If the local government has enacted an ordinance prior to the effective date of the act, it is deemed to have established a local manufacturing development program, as long as it meets the minimum standards, as outlined above. A copy of such an ordinance must be submitted to the department on or before September 1, 2013.

If a local government establishes a local development program ordinance, the ordinance must remain in effect for at least 24 months. If the ordinance is repealed, any application for a master development plan submitted prior to the effective date of the repeal is vested and remains subject to the local manufacturing development plan in effect at the time the application is submitted.

Section 4 creates s. 163.3253, F.S., which outlines the manufacturing development coordinated approval process (process). Participating agencies must coordinate the manufacturing development approval process for manufacturers that are developing or expanding in a jurisdiction that has a local manufacturing development process. The participating agencies must

coordinate, collaborate, and simultaneously review applications for the following state development approvals: wetland or environmental permits, surface water management permits, stormwater permits, consumptive water use permits, wastewater permits, air emission permits, permits relating to listed species, highway or roadway access permits, and any other state development approval within the scope of a participating agency's authority.

At the time the manufacturer files its application for state development approval with a participating agency, it must also file proof that its development or expansion is located in the jurisdiction of a local government that has a local development-manufacturing program. If the local government repeals its local manufacturing development program, a manufacturer that has submitted its application for a state or local government development application prior to the date of repeal, remains eligible to participate in the process. During the process, if a manufacturer requests a meeting with one or more of the participating agencies, such participating agency must convene and attend such meeting.

If a participating agency determines that the application is incomplete, it must notify the applicant in writing. Unless the manufacturer waives the deadline in writing, a request for additional information from a participating agency must be provided to the manufacturer within 20 days after the application is filed with the agency. If a participating agency fails to request additional information within the 20-day period, it cannot later deny the application based on the manufacturer's failure to provide such information. Once the manufacturer has responded to the request for additional information, the participating agency has 10 days to make a second request for additional information, but such request is limited to obtaining clarification of the manufacturer's response.

Unless the manufacturer waives the deadline in writing, each participating agency must take final agency action on a state development approval within 60 days after a complete application is filed.[14] If a participating agency intends to deny an application, it must notify the manufacturer and timely convene an informal meeting to facilitate a resolution, unless waived by the manufacturer in writing. An application will be deemed approved if the approving agency failed to act within the specified time frames unless the time limit is waived by the manufacturer in writing:

- Within the 60-day period;
- Within the time allowed by a federally-delegated permit program; or
- Within 45 days of a recommended order issued under ss.120.569 and 120.57, F.S.[15]

If a manufacturer seeks to claim approval by default, it must notify the clerk of the participating agency in writing. No action may be taken by the manufacturer until such notification is received by the clerk.

[14] The 60-day period is tolled if a proceeding is initiated under ch. 120, F.S.
[15] Section 120.569, F.S., requires the agency to issue a final order within 90 days of the recommended order. Section 120.57, F.S., requires a final order to be issued within 30 days of the recommended order.

The timeframes described above do not apply to permit applications for federally-delegated or approved permitting programs to the extent they are prohibited by, or inconsistent with, such program requirements.

If the manufacturer initiates a proceeding under ch. 120, F.S., it may, at any time, demand an expeditious resolution by noticing the administrative law judge (ALJ) and all other parties to the proceeding. The ALJ must set the matter for hearing within 30 days of receipt of the notice.

Section 5 creates s. 288.111, F.S., to provide that the DEO will develop materials identifying local governments that have established local manufacturing development programs. Enterprise Florida, Inc., must provide these materials to prospective, new, expanding, and relocating manufacturing businesses seeking to conduct business in Florida. Other state agencies are also authorized to distribute such materials.

Section 6 provides that this act takes effect July 1, 2013.

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:

None.

B. Private Sector Impact:

Manufacturers may benefit from the coordinated approval process for state permit applications in those communities that implement a local manufacturing development program.

C. Government Sector Impact:

The Department of Environmental Protection, the Department of Transportation, the Fish and Wildlife Conservation Commission, and the five water management districts ("participating agencies") may incur costs associated with implementing the manufacturing development coordinated approval process created in the bill. The participating agencies must coordinate and simultaneously review applications for

permits within specified timeframes. Costs incurred by participating agencies will be based on how many local governments enact ordinances that establish a local manufacturing development program and how many manufacturers apply for various state permits. The costs are indeterminate at this time.

The DEO may incur costs associated with developing:

- A model ordinance to guide local governments that intend to establish a local manufacturing development program; and
- Materials identifying those local governments that establish a local manufacturing development program as provided in the bill.[16]

The DEO is required to update the local manufacturing development program information at least annually. The bill requires Enterprise Florida, Inc., and allows other state agencies, to distribute the materials to prospective, new, expanding, and relocating manufacturing businesses seeking to conduct business in Florida. The costs associated with these requirements of the bill are indeterminate at this time.

To the extent that local governments adopt a local manufacturing development program, the streamlined process may reduce administrative costs for those communities.[17]

VI. Technical Deficiencies:

The bill requires that participating agencies simultaneously review applications for various state development approvals, but does not address how such a simultaneous review among participating agencies would function, or what repercussions would exist for participating agencies who fail to simultaneously review applications.

The bill may need to be clarified to indicate that the initial review period does not begin until the appropriate application fee is received.

VII. Related Issues:

According to the DEO, use of the term "vested" in the bill may need clarification. The department's analysis of SB 582 noted in part:

> "Vested" generally means a land use can be developed notwithstanding changes to statutes or regulations. It is unclear whether "vested" in this bill means the applicant is authorized to develop the program described in the application even if the local government and the reviewing agencies have not reviewed and approved the application. Another interpretation is that the application is entitled to be reviewed under the local manufacturing development

[16] Florida Department of Economic Opportunity, *Agency Analysis of SB 582* (Feb. 18, 2013) *available at* http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=499&yr=2013.
[17] *Id.*

program ordinance in effect when the application was submitted.[18]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Commerce and Tourism on April 1, 2013:
The committee substitute does the following:

- Places provisions of the bill under ch. 163, F.S., rather than ch. 288, F.S.
- Adds a definition for the term "department."
- Deletes the definition for the term "local government."
- Removes the Department of Economic Opportunity from the coordinated manufacturing development approval process.
- Deletes the grant of rule-making authority to the Department of Economic Opportunity.
- Requires Enterprise Florida, Inc., to distribute materials that identify local governments that have established a local manufacturing development program, as provided in the bill, to prospective, new, expanding, and relocating manufacturers seeking to conduct business in Florida.

B. Amendments:

None.

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

[18] *Id.*