

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7023 PCB EDTS 14-03 Economic Development
SPONSOR(S): Economic Affairs Committee; Economic Development & Tourism Subcommittee; Hutson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee	10 Y, 1 N	Duncan	West
1) Transportation & Economic Development Appropriations Subcommittee	11 Y, 0 N	Proctor	Davis
2) Economic Affairs Committee	14 Y, 0 N, As CS	Duncan	Creamer

SUMMARY ANALYSIS

The bill relates to economic development and contains provisions intended to assist small business development, small cities, and rural areas; and modifies several programs administered by the Department of Economic Opportunity (DEO) to assist employers, improve accountability, and conform to federal requirements. The bill:

- Exempts certain new small business development from having to comply with impact fee, concurrency or proportionate share requirements for transportation impacts for three years.
- Directs DEO to distribute Small Cities CDBG Program grants and loan guarantees through a competitive selection process established by rule and revises provisions in the program to provide greater flexibility in addressing the diverse community and economic development needs of Florida's rural communities..
- Allows eligible businesses to receive a sales tax refund on electricity purchased in rural areas. Tax refunds for all eligible businesses may not exceed \$600,000 per calendar year.
- Renames "rural areas of critical economic concern" as "rural areas of opportunity" throughout Florida Statutes.
- Requires the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to include the New Markets Development Program in the Economic Development Programs Evaluation required under ch. 288, F.S.
- Establishes requirements to increase accountability and improve performance of all loan programs administered by DEO under chapter 288, F.S.
- Makes Reemployment Assistance installment plans a permanent option. Employers will continue to have the option to make quarterly contributions to the UC Trust Fund for an annual \$5 administrative fee.
- Amends Florida's Short-Time Compensation program to bring the state into conformity with new federal requirements.
- Requires Space Florida to consult with VISIT Florida in developing a space tourism marketing plan and authorizes Space Florida to develop a Center of Excellence for Aerospace.
- Increases the administrative costs of the Florida Defense Support Task Force from \$200,000 to \$250,000.
- Corrects a cross-reference relating to land development regulations.

See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/8/2014

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Concurrency and Proportionate Share

Present Situation

Transportation Concurrency

Concurrency requires public facilities and services to be available concurrent with the impacts of new development. Concurrency in Florida is required for sanitary sewer, solid waste, drainage, and potable water.¹ Concurrency was formerly required for transportation, schools, and parks and recreation, but in 2011 the Legislature made concurrency for these facilities optional with the passage of the Community Planning Act.² Many local governments continue to exercise the option to impose concurrency on transportation and school facilities.

Concurrency is tied to provisions requiring local governments to adopt level-of-service (LOS) standards, address existing deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan.³ Local governments are charged with setting LOS standards within their jurisdiction, and if the LOS standards are not met, development permits may not be issued without an applicable exception.

Proportionate-share is a tool local governments may use to require developers to help mitigate the impacts of their development. Proportionate-share requires developers to contribute to or build facilities necessary to offset a new development's impacts.⁴ The state provides specific formulas local governments must use when calculating proportionate share and specify criteria for when developers have satisfied proportionate-share requirements. Local governments may require proportionate-share contributions from developers for both transportation and school impacts.⁵

Chapter 2011-139, Laws of Florida, the Community Planning Act (Act), enacted fundamental changes to growth management, including the statutory requirements for transportation concurrency and the calculation of proportionate share contributions. Most notably, the Act made transportation concurrency optional. If local governments elect to retain transportation concurrency, then their comprehensive plans must comply with the requirements included in s. 163.3180(5), F.S.

According to data provided by the Florida Department of Transportation and the Department of Economic Opportunity (DEO), as of December 2013, 23 local governments in Florida have rescinded transportation concurrency.⁶ In several instances, these local governments replaced transportation concurrency with alternative transportation mitigation strategies such as mobility fees.

Impact Fees

Impact fees are enacted by local home rule ordinance. These fees require total or partial payment to counties, municipalities, special districts, and school districts for the cost of additional infrastructure

¹ Section 163.3180(1), F.S.

² Section 15, ch. 2011-139, L.O.F., "The Community Planning Act."

³ *Id.*

⁴ Florida Dept. of Community Affairs, Transportation Concurrency: Best Practices Guide pp. 64-66 (2007), retrieved from www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (Dec. 10, 2013).

⁵ Sections 163.3180(5), F.S., and 163.3180(6), F.S.

⁶ Email to House Economic Development & Tourism Subcommittee Staff from the Department of Transportation via the Department of Economic Opportunity, Local Governments Rescinding Transportation Concurrency: Counties: Citrus, Nassau, Pasco, Sumter, and Taylor; Municipalities: Bradenton, Bushnell, Cinco Bayou, Crestview, Eustis, Gainesville, Jacksonville Beach, Kissimmee, Longboat Key, Longwood, Maitland, Miami Springs, Ocala, Palmetto, Plant City, St. Augustine, Tavares, and Wildwood. Note: Jacksonville-Duval County and Alachua County notified DEO in their respective adoption ordinances that each has rescinded transportation concurrency and have adopted mobility plans. (Jan. 7, 2014).

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

The Legislature has found that impact fees are an important source of revenue for local governments to use in funding the infrastructure necessitated by growth. Due to the growth of impact fee collections and local governments' reliance on impact fees, the Legislature imposes minimum standards local governments must comply with when adopting impact fees.⁷

At minimum, an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must:

- Require that the calculation of the impact fee be based on the most recent and localized data.
- Provide for accounting and reporting of impact fee collections and expenditures. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity shall account for the revenues and expenditures of such impact fee in a separate accounting fund.
- Limit administrative charges for the collection of impact fees to actual costs.
- Require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.⁸

In 2009, the Legislature codified the burden of proof for impact fee ordinance challenges.⁹ Subsequently, several cities and counties and the Florida Association of Counties sued the Speaker of the Florida House of Representatives and the President of the Florida Senate claiming the bill was unconstitutional. One of the arguments raised by the plaintiffs was that the bill was an unconstitutional mandate.¹⁰ As a result of the litigation, the Legislature revisited the issue in 2011, passing SB 410 with a vote of over two-thirds of both chambers to ensure the constitutionality of the bill.¹¹

According to the 2012 National Impact Fee Survey,¹² 58 Florida jurisdictions have impact fees in place. The same source indicates that 41 of Florida's 67 counties had enacted impact fees which cover a variety of facilities (roads, water, wastewater, school, etc.). It should be noted that at least 17 counties had voluntarily suspended the collection of impact fees at the time of the survey. Of the counties presently suspending impact fees eight are rural or designated Rural Areas of Critical Economic Concern.

Effect of Proposed Changes

The bill creates a three-year window exempting certain new business development from satisfying transportation concurrency requirements and contributing to its corresponding proportionate share. The bill also exempts certain transportation impact fees from being imposed on new business development. The exemptions expire July 1, 2018.

Transportation Concurrency

The bill prohibits a local government from applying transportation concurrency within its jurisdiction or requiring a proportionate-share contribution or construction for new business development before July 1, 2017, unless authorized by majority vote of the local government's governing authority. This

⁷ Section 163.31801, F.S., the "Florida Impact Fee Act," s. 9, ch. 2006-218, L.O.F.

⁸ Section 163.31801(3), F.S.

⁹ Chapter 2009-49, L.O.F.

¹⁰ *Alachua County v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. 2010).

¹¹ Chapter 2011-149, L.O.F.

¹² Duncan Associates, ImpactFees.com. *The 2012 National Impact Fee Survey*, available at:

www.impactfees.com/publications%20pdf/2012_survey.pdf.

provision does not apply to proportionate-share contribution or construction assessed on an existing business development before July 1, 2014; a new business development that consists of more than 6,000 square feet and is classified as nonresidential; or a new business development that will include a business that employs 12 or more employees.

To maintain the exemption from transportation concurrency and proportionate-share contribution or construction, a new business development must receive a certificate of occupancy on or before July 1, 2018. If the certificate of occupancy is not received by July 1, 2018, the local government is authorized to apply transportation concurrency and require the appropriate proportionate-share contribution or construction for the business development that would otherwise be applied.

The bill further states that the exemption does not apply if it results in a reduction of previously pledged revenue of a local government for currently outstanding bonds or notes or to a local government with a mobility fee-based funding system in place by January 1, 2014.

Impact Fees

The bill prohibits a local government from imposing any new or existing impact fee or any new or existing fee associated with the mitigation of transportation impacts on new business development. This provision does not apply to any impact fee or fee associated with the mitigation of transportation impacts assessed on an existing business before July 1, 2014; a new business development that consists of more than 6,000 square feet and is classified as nonresidential; or a new business development that will include a business that employs more than 12 employees.

To maintain the exemption from impact fees and fees associated with the mitigation of transportation impacts, a new business development must receive a certificate of occupancy on or before July 1, 2018. If the certificate of occupancy is not received by July 1, 2018, the local government is authorized to impose the appropriate impact fees and fees associated with the mitigation of transportation impacts on the business development that otherwise would have been applied.

The bill further states that the exemption does not apply if it results in a reduction of previously pledged revenue of a local government for currently outstanding bonds or notes or to a local government with a mobility fee-based funding system in place by January 1, 2014.

Rural Job Tax Credit

Present Situation

The Rural Job Tax Credit Program offers an incentive for eligible businesses located within a designated qualified areas to create new jobs. The tax credit ranges from \$1,000 to \$1,500 per qualified employee and can be taken against either the corporate income tax or the sales and use tax. The tax credits are provided to encourage meaningful employment opportunities that will improve the quality of life of those employed and to encourage economic expansion of new and existing businesses in rural areas of Florida.¹³

An “eligible business” means a sole proprietorship, firm, partnership, or corporation that is located in a qualified county and is predominately¹⁴ engaged in, or is headquarters for a business predominately engaged in activities classified within the following standard industrial classifications (SIC):¹⁵

SIC	Description
01-09	Agriculture, forestry, and fishing

¹³Section 2, ch. 97-50, L.O.F.

¹⁴ “Predominately” means that more than 50 percent of the business’s gross receipts from all sources is generated by those activities usually provided for consideration by firms in the specified standard industrial classification. Section 212.098(1)(a), F.S.

¹⁵ Section 212.098(1)(a), F.S. The Standard Industrial Classification (SIC) was replaced by the North American Industry Classification System (NAICS) in 1997. NAICS is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

<http://www.census.gov/eos/www/naics/> (last visited April 3, 2014).

20-39	Manufacturing
70	Hotels and other lodging places
422	Public Warehousing and storage
781	Motion Picture production and allied services
7391	Research and development
7992	Public golf courses
7996	Amusement parks
	A targeted industry eligible for the qualified target industry business tax refund ¹⁶

A “qualified area” is:¹⁷

- any area that is contained within a rural area of critical economic concern;
- a county that has a population of fewer than 75,000 persons; or
- a county that has a population of 125,000 or less and is contiguous to a county that has a population of less than 75,000.

Every third year, DEO is required to rank and tier the state’s counties according to the following factors:¹⁸

- Highest unemployment rate for the most recent 36-month period.
- Lowest per capita income for the most recent 36-month period.
- Highest percentage of residents whose incomes are below the poverty level, based upon the most recent data available.
- Average weekly manufacturing wage, based upon the most recent data available.

According to DEO, there are 36 qualified rural areas as follows:¹⁹

QUALIFIED RURAL AREAS		
Baker County	Gulf County	Madison County
City of Belle Glade (Palm Beach County)	Hamilton County	Nassau County
Bradford County	Hardee County	Okeechobee County
Calhoun County	Hendry County	City of Pahokee (Palm Beach County)
Columbia County	Highlands County	Putnam County
DeSoto County	Holmes County	City of South Bay (Palm Beach County)
	Immokalee Area	

¹⁶ See s. 288.106, F.S.

¹⁷ Section 212.98(1)(c), F.S. DEO refers to such areas as “qualified rural areas.”

¹⁸ *Id.*

¹⁹ Florida Department of Economic Opportunity, Division of Community Development, Email to House Economic Development & Tourism Subcommittee staff – April 3, 2014. Email on file.

Dixie County	(Collier County)	Suwannee County
Flagler County	Jackson County	Taylor County
Franklin County	Jefferson County	Union County
Gadsden County	Lafayette County	Wakulla County
Gilchrist County	Levy County	Walton County
Glades County	Liberty County	Washington County

A new eligible business may apply for a tax credit once at any time during its first year of operation. A new eligible business in a qualified area that has at least 10 qualified employees on the date of application may receive a \$1,000 tax credit for each such employee.²⁰

An existing eligible business may apply for a tax credit at any time it is entitled to such credit. An existing eligible business with *fewer than 50 employees* in a qualified area that on the date of application has at least 20 percent more qualified employees than it had one year prior to its date of application may receive a \$1,000 tax credit for each such additional employee. An existing eligible business that has *more than 50 employees* in a qualified area that, on the date of application, has at least 10 more qualified employees than it had one year prior to its date of application may receive a \$1,000 tax credit for each additional employee. An existing eligible business that received a tax credit when it was a new eligible business must wait 12 months before it can apply for a tax credit as an existing eligible business.²¹

For any new or existing eligible business receiving a tax credit, an additional \$500 credit must be provided for any qualified employee who is a welfare transition program participant. The employee must be employed on the application date and have been employed less than one year. This credit is in addition to other credits under the rural job tax credit.²²

The maximum credit amount that may be approved during any calendar year is \$5 million. The Department of Revenue (DOR), in conjunction with DEO, must notify the governing bodies in areas designated as qualified counties when the \$5 million maximum amount has been reached. Applications must be considered for approval in the order in which they are received without regard to whether the tax credit is for a new or existing business.²³ A business may not receive more than \$500,000 of tax credits during any one calendar year.²⁴

Effect of Proposed Changes

The bill provides that a new or existing business that receives a rural job tax credit is eligible for a tax refund of up to 50 percent of the amount of sales tax on purchases of electricity paid by the business during the one-year period after the date the tax credit is received. The total amount of tax refunds approved for all eligible businesses may not exceed \$600,000 during any calendar year. DOR is authorized to adopt rules to administer this provision.

Economic Development Programs Evaluation

Present Situation

Economic Development Program Evaluation

²⁰ Section 212.098(2), F.S.

²¹ Section 212.098(3), F.S.

²² Section 212.098(4), F.S.

²³ Section 212.098(6)(c), F.S.

²⁴ Section 212.098(6)(d), F.S.

In 2013,²⁵ the Legislature directed EDR to evaluate and determine the economic benefits²⁶ of each economic development incentive program over the previous three years. The analysis must also evaluate.²⁷

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

OPPAGA is directed to evaluate each program over the previous 3 years for effectiveness and value to the state's taxpayers and include recommendations on each program for consideration by the Legislature. The analysis may include relevant economic development reports or analyses prepared by DEO, Enterprise Florida, Inc. (EFI), or local or regional economic development organizations; interviews with parties involved; or any other relevant data.²⁸

The following economic development programs must be evaluated:

- Capital Investment Tax Credit.²⁹
- Qualified Target Industry Tax Refund.³⁰
- Brownfield Redevelopment Bonus Tax Refund.³¹
- High-Impact Sector Performance Grants.³²
- Quick Action Closing Fund.³³
- Innovation Incentive Programs.³⁴
- Enterprise Zone Program.³⁵
- Entertainment Industry Financial Incentive Program.³⁶
- Entertainment Industry Sales Tax Exemption Program.³⁷
- VISIT Florida.³⁸
- Florida Sports Foundation.³⁹
- Qualified Defense Contractor and Space Flight Business Tax Refund Program.⁴⁰
- Tax Exemption for Semiconductor, Defense, or Space Technology Sales.⁴¹
- Military Base Protection Program.⁴²

²⁵ Chapter 2013-39, L.O.F.

²⁶ "Economic benefits" means the direct, indirect, and induced gains in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives. Section 288.005, F.S.

²⁷ Section 288.0001, F.S.

²⁸ Id.

²⁹ Section 220.191, F.S.

³⁰ Section 288.106, F.S.

³¹ Section 288.107, F.S.

³² Section 288.108, F.S.

³³ Section 288.1088, F.S.

³⁴ Section 288.1089, F.S.

³⁵ Sections 212.0805, 212.0815, 212.096, 220.181, and 220.182, F.S.

³⁶ Section 288.1254, F.S.

³⁷ Section 288.1258, F.S.

³⁸ Sections 288.122, 288.1266, 288.12265, and 288.124, F.S.

³⁹ Sections 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171, F.S.

⁴⁰ Section 288.1045, F.S.

⁴¹ Section 212.08(5)(j), F.S.

⁴² Section 288.980, F.S.

- Manufacturing and Spaceport Investment Incentive Program.⁴³
- Quick Response Training Program.⁴⁴
- Incumbent Worker Training Program.⁴⁵
- International Trade and Business Development Programs.⁴⁶

New Markets Development Program

Florida's New Markets Development Program, established by the Legislature in 2009,⁴⁷ encourages capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against certain taxes by investing in community development entities that make investments in community businesses to create and retain jobs.⁴⁸

Under the program, federally-certified Community Development Entities (CDEs), which have entered into allocation agreements with the U.S. Department of Treasury, have the ability to apply to DEO for a certification of Florida tax credits. The CDE must show that it is prepared to invest capital into qualified businesses in Florida's low-income communities. The certification process includes proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding how the investments will be used, and a description of the CDE's efforts to partner with local community-based groups.

Effect of Proposed Changes

The bill requires EDR and OPPAGA to include the New Markets Development Program in the Economic Development Programs Evaluation beginning in 2017.

Loan Programs Administered by the Department of Economic Opportunity

Present Situation

DEO administers several loan programs under chapter 288, F.S., designed to stimulate business activity and expand economic opportunities. These programs include:

- Rural Community Development Revolving Loan Program.
- Economic Gardening Business Loan Pilot Program.
- Black Business Loan Program.

Each program has specific program requirements; however, there are no standard requirements to ensure accountability and proper management of such programs.

Rural Community Development Revolving Loan Program

The Rural Community Development Revolving Loan Program⁴⁹ provides long-term loans, loan guarantees, and loan loss reserves to units of local governments, or economic development organizations substantially underwritten by a unit of local government. Eligible counties include those with populations of 75,000 or fewer, or a county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer, including those residing in incorporated areas and those residing in unincorporated areas of the county, or to units of local government, or

⁴³ Section 288.1083, F.S.

⁴⁴ Section 288.047, F.S.

⁴⁵ Section 445.003, F.S.

⁴⁶ Section 288.826, F.S.

⁴⁷ Chapter 2009-50, L.O.F.

⁴⁸ Section 288.9912, F.S.

⁴⁹ Section 288.065, F.S.

economic development organizations substantially underwritten by a unit of local government, within a rural area of critical economic concern.⁵⁰

Requests for loans must be made by application to DEO and are made pursuant to agreements specifying the terms and conditions agreed to between the applicant and DEO. All repayments of principal and interest must be returned to the loan fund and made available for loans to other applicants. However, in a rural area of critical economic concern designated by the Governor, and upon approval by DEO, repayments of principal and interest may be retained by the applicant if such repayments are dedicated and matched to fund regionally based economic development organizations representing the rural area of critical economic concern.⁵¹

DEO is directed to manage the fund, establishing loan practices that must include, but are not limited to, procedures for establishing loan interest rates, uses of funding, application procedures, and application review procedures. DEO is granted the authority for final approval for any loan under the provision of law relating to the Rural Community Development Revolving Loan Program.⁵²

Economic Gardening Business Loan Pilot Program

The Economic Gardening Business Loan Pilot Program⁵³ provides low-interest, short-term loans to eligible businesses to assist them with their infrastructure, networking, and mentoring needs. For eligibility in the loan program, businesses must meet the following criteria:⁵⁴

- It must be a for-profit, privately held, investment-grade business that employs between 10 and 50 persons.
- The business has been in existence in Florida for a period of at least two years.
- The business generates between \$1 million and \$25 million in annual revenue.
- The business is eligible for the Qualified Targeted Industry (QTI) tax refund program pursuant to s. 288.106, F.S. A key requirement of the QTI program is that businesses must pay an annual average wage of at least 115 percent of the average private sector wage in the area where the business is located or the statewide private sector average wage.⁵⁵
- During three of the last five years, the company has experienced steady growth in its gross revenues and employment.

The maximum amount of the loan received under the pilot program is \$250,000. The proceeds of the loan may be used for working capital purchases, employee training, or salaries for newly created jobs in the state and the period of the loan is four years.⁵⁶

DEO is authorized to designate one or more qualified entities to serve as loan administrators for the program. A loan administrator must:⁵⁷

- Be a Florida corporation not for profit incorporated under chapter 617, F.S., which has its principal place of business in the state.
- Have five years of verifiable experience of lending to businesses in this state.
- Submit an application to DEO. The application must include the loan administrator's business plan for its proposed lending activities under the pilot program, including, but not limited to, a description of its outreach efforts, underwriting, credit policies and procedures, credit decision processes, monitoring policies and procedures, and collection practices; the membership of its

⁵⁰ Section 288.065(2)(a), F.S.

⁵¹ Section 288.065(2)(b) and (c), F.S.

⁵² Section 288.065(3), F.S.

⁵³ Section 288.1081, F.S.

⁵⁴ See ss. 288.1081(3)(a), F.S., and 288.1082(4)(a), F.S.

⁵⁵ See s. 288.106(4)(b), F.S.

⁵⁶ Section 288.1081(4), F.S.

⁵⁷ Section 288.1081(5), F.S.

board of directors; and samples of its currently used loan documentation. The application must also include a detailed description and supporting documentation of the nature of the loan administrator's partnerships with local or regional economic and business development organizations.

DEO, upon selecting a loan administrator, must enter into a grant agreement with the administrator to issue the available loans to eligible applicants. The grant agreement must specify the aggregate amount of the loans authorized for award by the loan administrator. The term of the grant agreement must be at least four years, except that DEO may terminate the agreement earlier if the loan administrator fails to meet minimum performance standards set by DEO. The grant agreement may be amended by mutual consent of both parties.⁵⁸

Loan administrators are entitled to receive a loan origination fee, payable at closing, of 1 percent of each loan issued by the loan administrator and a servicing fee of 0.625 percent per annum of the loan's outstanding principal balance, payable monthly. During the first 12 months of the loan, the servicing fee must be paid from the disbursement from the Economic Development Trust Fund, and thereafter the loan administrator must collect the servicing fee from the payments made by the borrower, charging the fee against repayments of principal.⁵⁹

Loan administrators, after collecting the servicing fee, must remit the borrower's collected interest, principal payments, and charges for late payments to the department on a quarterly basis. If the borrower defaults on the loan, the loan administrator must initiate collection efforts to seek repayment of the loan. The loan administrator, upon collecting payments for a defaulted loan, must remit the payments to DEO but, to the extent authorized in the grant agreement, may deduct the costs of the administrator's collection efforts. DEO must deposit all funds received into the General Revenue Fund.⁶⁰

Loan administrators are required to submit quarterly reports to DEO, which include the information required in the grant agreement. A quarterly report must include, at a minimum, the number of full-time equivalent jobs created as a result of the loans, the amount of wages paid to employees in the newly created jobs, and the locations and types of economic activity undertaken by the borrowers.⁶¹

Black Business Loan Program

Under the Black Business Loan Program,⁶² DEO is directed to annually certify eligible recipients and subsequently disburse funds appropriated by the Legislature, through such eligible recipients, to black business enterprises that cannot obtain capital through conventional lending institutions but that could otherwise compete successfully in the private sector.⁶³

DEO must establish an application and annual certification process for entities seeking funds to participate in providing loans, loan guarantees, or investments in black business enterprises pursuant to the Florida Black Business Investment Act.⁶⁴

If the Black Business Loan Program is appropriated any funding in a fiscal year, DEO must distribute an equal amount of the appropriation, calculated as the total annual appropriation divided by the total number of program recipients certified, on or before July 31 of that fiscal year.⁶⁵

⁵⁸ Section 288.1081(5)(b), F.S.

⁵⁹ Section 288.1081(5)(d), F.S.

⁶⁰ Section 288.1081(5)(e), F.S.

⁶¹ Section 288.1081(5)(f), F.S.

⁶² Section 288.7102, F.S.

⁶³ Section 288.7102(1), F.S.

⁶⁴ Section 288.7102(2), F.S.

⁶⁵ Section 288.7102(3), F.S.

Eligible recipients must be a corporation registered in the state. Existing recipients must annually submit to DEO a financial audit performed by an independent certified public accountant for the most recently completed fiscal year. The audit must not reveal any material weaknesses or instances of material noncompliance.⁶⁶

New recipients must demonstrate that:⁶⁷

- Their board of directors includes citizens of the state experienced in the development of black business enterprises.
- The recipient has a business plan that allows the recipient to operate in a manner consistent with state law and DEO's rules.
- The recipient has the technical skills to analyze and evaluate applications by black business enterprises for loans, loan guarantees, or investments.
- The recipient has established viable partnerships with public and private funding sources, economic development agencies, and workforce development and job referral networks.
- The recipient can provide a private match equal to 20 percent of the amount of funds provided by the department.

Both existing and new recipients must agree to maintain the recipient's books and records relating to funds received by DEO according to generally accepted accounting principles and in accordance with the requirements of s. 215.97(7), F.S., and to make those books and records available to DEO for inspection upon reasonable notice.⁶⁸

Each eligible recipient must meet the requirements of the provisions of law relating to this loan program, the terms of the contract between the recipient and DEO, and any other applicable state or federal laws. An entity may not receive funds unless the entity meets annual certification requirements.⁶⁹

Effect of Proposed Changes

The bill adds the terms "loan program" and "loan administrator" to the list of definitions under ch. 288, F.S., relating to commercial development and capital improvements. "Loan program" means a program established to provide appropriated funds to an eligible entity to further a specific state purpose for a limited period and which requires such appropriated funds to be repaid to the state. The term also includes "loan fund" and "loan pilot program" administered by DEO under ch. 288, F.S. "Loan administrator" means an entity that is statutorily eligible to receive state funds and authorized by DEO to make loans under a loan program.

The bill states that it is the intent of the Legislature to promote goals of accountability and proper stewardship by recipients of loan program funds and establishes the requirements for the operation of all loan programs under ch. 288, F.S., that are administered by DEO.

The state funds appropriated for any loan programs may only be used by an eligible recipient or loan administrator and such funds may only be used to carry out the specific state purpose of the loan program, subject to any compensation due to a loan administrator as provided under ch. 288, F.S. Funds may be awarded directly by DEO to an eligible recipient or awarded by DEO to a loan

⁶⁶ Section 288.7102(4), F.S.

⁶⁷ Section 288.7102(4)(c), F.S.

⁶⁸ Section 288.7102(4)(d), F.S.

⁶⁹ Section 288.7102(5), F.S.

administrator. All state funds, including interest earned, remain state funds unless otherwise stated in the statutory requirements of the loan program.

When a loan program is terminated by the Legislature or by statute, all appropriated funds must revert to the General Revenue Fund. DEO must pay the entity any allowable administrative expenses due to the loan administrator provided under ch. 288, F.S., unless otherwise required by law.

When a contract between DEO and an eligible recipient or loan administrator is terminated, any remaining appropriated funds must revert to the fund from which the appropriation was made. DEO must become the successor entity for any outstanding loans. Except in the case of the termination of a contract for fraud or failure of a loan administrator to meet the terms of the program, DEO is directed to pay the former loan administrator for any allowable administrative expenses due the loan administrator as provided under ch. 288, F.S.

The former loan administrator or successor entity is required to execute all appropriate instruments to reconcile any remaining accounts involved with a terminated loan program or contract. The entity must execute all appropriate instruments to ensure that DEO is authorized to collect all receivables for outstanding loans, including, but not limited to, assignments of promissory notes and mortgages.

An eligible recipient or loan administrator must avoid any potential conflict of interest regarding the use of appropriated funds for a loan program. Eligible recipients, loan administrators and their board members, employees, and agents; or immediate family members of board members, employees, or agents may not have a financial interest in the eligible entity awarded a loan under a loan program. "Immediate family" means a parent, spouse, child, sibling, grandparent, or grandchild related by blood or marriage. The bill prohibits loans from being awarded to a person or entity if there is a conflict of interest between the parties involved.

When determining the eligibility for entities applying to be awarded funds directly from DEO or applying to be selected as a loan administrator for a loan program, DEO must evaluate the applicant's business practices, financial stability, and the past performance of the applicant in any other state programs. Such eligibility criteria are in addition to each loan program's specific statutory requirements. The applicant's eligibility for program participation may be conditioned or denied if DEO determines that the applicant is not in compliance with any law, rule, or program requirement.

State funds appropriated to a loan program that are loaned to an eligible recipient and repaid to a loan administrator may, if permitted by the law authorizing the loan program, be returned to the loan fund and made available for loans to other eligible recipients of the loan program. However, all revolving loans or new negotiable instruments made by a loan administrator remain subject to the loan program requirements and compensation to a recipient or administrator is prohibited from exceeding the provisions that are permitted under ch. 288, F.S.

The bill authorizes the Auditor General to perform audits to verify that loan funds are expended by eligible recipients and loan administrators as required for each loan program. If the Auditor General determines that the funds are not expended as required, DEO must be notified so that it may pursue recovery of the funds. However, this authority will not prevent DEO from pursuing recovery of program funds to protect the funds or as permitted by law. DEO is authorized to adopt rules to implement these provisions.

Small Cities Community Development Block Grant Program

Present Situation

U.S. Department of Housing and Urban Development – State Administered Community Development Block Grant (CDBG) Program

Congress amended the Housing and Community Development Act of 1974 in 1981 to give each state the opportunity to administer Community Development Block Grant (CDBG) funds for non-entitlement areas. Non-entitlement areas include local governments, which do not receive CDBG

funds directly from the U.S. Department of Housing and Urban Development (HUD) as part of the entitlement program (Entitlement Cities and Urban Counties). Non-entitlement areas are cities with populations of less than 50,000 (except cities that are designated principal cities of Metropolitan Statistical Areas), and counties with populations of less than 200,000.⁷⁰

The objective of the CDBG program is to develop viable communities by providing adequate housing and a suitable living environment by expanding economic opportunities, principally for persons of low and moderate income (LMI). The state must ensure that at least 70 percent of its CDBG grant funds are used for activities that benefit LMI persons over a one, two, or three-year time period selected by the state. This general objective is achieved by granting "maximum feasible priority" to activities which benefit LMI families or aid in the prevention or elimination of blighted areas. Under unique circumstances, states may also use their funds to meet urgent community development needs. A need is considered urgent if it poses a serious and immediate threat to the health or welfare of the community and has arisen in the past 18 months.⁷¹

HUD distributes funds to each state through a statutory formula based on population, poverty, incidence of overcrowded housing, and age of housing. Neither HUD nor states distribute funds directly to citizens or private organizations; all funds (other than administrations and the technical assistance set-aside) are distributed by states to local governments.⁷²

Flexibility

According to HUD, state officials may, within reasonable limits, employ their own guidelines for interpreting the Housing and Community Development Act (HCDA). States may even apply more restrictive eligibility requirements than the HCDA, provided that state's restrictions are not inconsistent with or contradictory to the HCDA. For example, the HCDA prohibits a state from declaring certain statutorily eligible activities as ineligible for funding in that state's program, but allows a state to establish relative funding priorities among types of eligible activities.⁷³

Citizen Participation

HUD requires a minimum of two public hearings, for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program. Together, the hearings must address community development and housing needs, development of proposed activities and a review of program performance. There must be reasonable notice of the hearings and they must be held at times and accessible locations convenient to potential or actual beneficiaries, with reasonable accommodations including material in accessible formats for persons with disabilities. Citizen participation is encouraged, particularly by low and moderate-income persons who reside in areas in which CDBG funds are proposed to be used.⁷⁴

The applicant shall publish a proposed application consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

- Examine the application's contents to determine the degree to which they may be affected.
- Submit comments on the proposed application.
- Submit comments on the performance of the applicant.⁷⁵

⁷⁰ U.S. Department of Housing and Urban Development, State Administered CDBG, State Administration, http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/stateadmin, (last visited Nov. 12, 2013).

⁷¹ *Id.*

⁷² *Id.*

⁷³ U.S. Department of Housing and Community Development, State Community Development Block Grant Program, Categories of Eligible Activities, at 2-1, available at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_16361.pdf.

⁷⁴ See 24 C.F.R. 570.431, Subpart F, Citizen Participation.

⁷⁵ *Id.*

In the preparation of the final application, the applicant must consider comments and views received related to the proposed application and may, if appropriate, modify the final application to include recommendations. The final application must be made available to the public and include the community development objectives, projected use of funds, and the community development activities.⁷⁶

State of Florida Administered Community Development Block Grant Programs

DEO administers three Community Development Block Grant Programs:

- Florida Small Cities Community Development Block Grant Program.
- Disaster Recovery Initiative.
- Neighborhood Stabilization Program.

Florida Small Cities Community Development Block Grant (CDBG) Program

Intent and Purpose

Chapter 290, F.S., provides that the intent of the Florida Small Cities Community Development Block Grant Program Act (Act) is to provide the necessary means to develop, preserve, redevelop, and revitalize Florida communities exhibiting signs of decline or distress by enabling local governments to undertake necessary community development programs. Mirroring the federal law, the overall objective of the program is to create viable communities by eliminating slum and blight, fortifying communities in urgent need, providing adequate housing and suitable living environments, and expanding economic opportunities, principally for persons of low or moderate income.⁷⁷

“Persons of low or moderate income” means any person who meets the definition established by HUD.⁷⁸ HUD defines “persons of low income” as families and individuals whose incomes do not exceed 50 percent of the median income of a service area, as determined by HUD. “Persons of moderate income” are defined as families and individuals whose incomes exceed 50 percent, but do not exceed 80 percent of a service area, as determined by HUD.⁷⁹

The purpose of the Act is to assist local governments in carrying out effective community development and project planning and design activities to reverse community decline.⁸⁰

Powers

Current law grants DEO the power to carry out the provisions of the Florida Small Cities CDBG Program, including the power to:⁸¹

- Make contracts and agreements with the federal government; other state agencies; any other public agency; or public person, association, corporation, local government, or entity in exercising its powers and performing its duties under the Act.
- Seek and accept funding from any public or private source.
- Adopt and enforce rules⁸² consistent with the Act for the administration of the Small Cities CDBG Program fund.
- Assist in training employees of local governing authorities to help increase their capacity to administer programs pursuant to the Act and provide technical assistance and advice to local governing authorities involved with these programs.

⁷⁶ *Id.*

⁷⁷ Section 290.0411, F.S.

⁷⁸ Section 290.042(6), F.S.

⁷⁹ 42 U.S.C 5302 a.20.

⁸⁰ *Id.*

⁸¹ Section 290.048, F.S.

⁸² Chapter 73C-23, F.A.C.

- Adopt and enforce strict requirements concerning an applicant's written description of a service area.
- Pledge CDBG revenues from the federal government in order to guarantee notes or other obligations of a public entity approved to receive funding through the Section 108 Loan Program.
- Establish an advisory committee of no more than 13 members to solicit participation in designing, administering, and evaluating the program and linking the Small Cities CDBG Program with other housing and community development resources.

Administration

The Florida Small Cities CDBG Program provides grants and loans on a competitive basis to eligible municipalities and county governments⁸³ (non-entitlement) to serve low and moderate-income families. DEO is directed to define the broad community development objective to be achieved by the activities in the five categories of funding (excluding state administration): housing, neighborhood revitalization, commercial revitalization, economic development, and project planning and design.⁸⁴ Planning and design grants provide for engineering and architectural plans and designs for CDBG infrastructure or public facility projects. Priorities are defined annually and funds are allocated according to the state's Annual Action Plan.⁸⁵

As part of its administrative responsibilities, DEO is required to establish a system of monitoring grants, including site visits, to ensure the proper expenditure of funds and compliance with the conditions of the recipient's contract.⁸⁶

Grant Categories

DEO provides specific requirements for the competitive grant categories.⁸⁷ Below are the grant categories and examples of activities DEO has authorized for funding during Federal Fiscal Year 2012.⁸⁸

1. Housing Rehabilitation

Objective: To improve housing conditions and expand housing opportunities for very low, low, and moderate income persons. The following are examples of eligible housing rehabilitation activities:

- Rehabilitation of housing or publicly owned or acquired properties.
- Demolition of dilapidated housing and the relocation of residents to replacement housing.
- Code enforcement.

⁸³ Eligible local governments are non-entitlement cities with fewer than 50,000 residents; counties with fewer than 200,000 residents; and cities that opt out of the entitlement program. <http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/florida-small-cities-community-development-block-grant-program> (last visited Nov. 16, 2013). See FFY 2012 List of Small Cities CDBG Program Eligible Communities available at <http://www.floridajobs.org/fhcd/cdbg/Files/Misc/EligibleCommunities.pdf>.

⁸⁴ Section 290.044(2) and (3), F.S.

⁸⁵ The U.S. Department of Housing and Urban Development (HUD) requires each state to annually develop funding priorities and criteria for selecting projects. U.S. Department of Housing and Community Development, State Administered CDBG, http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/stateadmin (last visited January 25, 2013). The One-Year Action Plan or Annual Action Plan is a document submitted to HUD annually, which describes the method used by the State of Florida to distribute HUD funds. It also contains information on priorities to be addressed and program objectives. The plan covers one state fiscal year and one allocation of federal funding. Florida Department of Economic Opportunity, Division of Community Development, State of Annual Action Plan for Programs Funded by the U.S. Department of Housing and Urban Development, Federal Fiscal Year 2012, at 9, available at <http://www.floridajobs.org/fhcd/cdbg/Files/ConsolidatedPlan/DRAFT2012AnnualActionPlan.pdf>

⁸⁶ Section 290.044(5), F.S.

⁸⁷ Rule 73C-23.0045, F.A.C.

⁸⁸ Florida Department of Economic Opportunity, Division of Community Development, State of Annual Action Plan for Programs Funded by the U.S. Department of Housing and Urban Development, Federal Fiscal Year 2012, at 9, available at <http://www.floridajobs.org/fhcd/cdbg/Files/ConsolidatedPlan/DRAFT2012AnnualActionPlan.pdf>.

- Weatherization and energy-efficiency improvements.
- Installation of wells or septic tanks where water or sewer service is unavailable.
- Mitigation of future natural disaster hazards in housing.

Housing rehabilitation is intended to keep affordable housing owned or occupied by LMI persons within the community. Substandard conditions can be addressed using CDBG housing funds. Communities that do not have the capacity to undertake large scale affordable housing projects are able to maintain the stock of affordable housing by using CDBG and state housing funds for rehabilitation and replacement.⁸⁹

2. Neighborhood Revitalization

Objective: To revitalize declining neighborhoods and improve infrastructure. A neighborhood revitalization project may involve a single activity or various activities. The following are examples of eligible neighborhood revitalization activities:

- Improvements to deteriorating infrastructure.
- Construction or rehabilitation of handicapped facilities.
- Constructing roads and drainage facilities.
- Construction or rehabilitation of neighborhood facilities which provide health, social, recreational or other community services for a neighborhood.⁹⁰

3. Commercial Revitalization

Objective: To revitalize commercial areas that are showing signs of decline by addressing problems that cause deterioration. The following are examples of eligible commercial revitalization activities:

- Installation or reconstruction of streets, utilities, parks, playgrounds, public spaces, public parking facilities, pedestrian malls, and other necessary public improvements.
- Selling, leasing or otherwise making available land in commercial areas for public use.
- Correction of architectural barriers to handicap access.
- Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of building facades or other exterior improvements and repair of code violations.

All activities in the commercial revitalization category must assist the local government in achieving the objectives of its community redevelopment plan. A proposal under this category may involve a single type of activity, such as rehabilitation of commercial facades, or several activities designed to address various aspects of the local government's community redevelopment plan.⁹¹

Economic Development

The objectives associated with the economic development category are to promote investment of private capital; to retain local economic enterprises; and provide long-term jobs with growth potential, primarily for very low, low, and moderate-income households. The following are examples of eligible economic development activities:

- Acquisition of real property.
- Acquisition, construction or rehabilitation of commercial and industrial buildings and structures, funding for local governments to provide loans for the purchase of capitalized machinery and equipment with a useful life of at least five years.
- Energy conservation improvements designed to encourage the efficient use of energy.

⁸⁹ *Id.* at 13.

⁹⁰ *Id.* at 13-14.

⁹¹ *Id.* at 9.

- Public, commercial or industrial real property or infrastructure improvements, including railroad spurs or similar extensions, tied to a specific project in a public or private easement.
- Activities to remove barriers that restrict access for elderly or handicapped to publicly owned or privately owned buildings, facilities, and improvements.
- Activities designed to provide job training and placement.

According to HUD, each state takes a different approach to economic development in its CDBG Program, reflecting the unique needs and established priorities of the state. One state may choose to fund only single-user deals emphasizing manufacturing facilities which promote economic diversification or another state may encourage regional revolving loan funds focusing on revitalizing small town business districts.⁹²

Emergency Set-Aside Funding

DEO is authorized to set aside up to five percent of the funds annually for use in any eligible local government for which an emergency or natural disaster has been declared by executive order. Such funds may only be provided to a local government to fund eligible emergency-related activities when no other federal, state, or local funds are available.⁹³

Citizen Participation

Local governments applying for Small Cities CDBG Program funding are required to:

- Make available to the public information concerning the amounts of funds available for various activities and the range of activities that may be undertaken.
- Hold at least one public hearing to obtain the views of citizens on community development needs.
- Develop and publish a summary of the proposed application that will provide citizens with an opportunity to examine the application's contents and submit comments.
- Consider any comments and views expressed by citizens on the proposed application and, if appropriate, modify the proposed application.
- Hold at least one public hearing in the jurisdiction in which the project is to be implemented to obtain the views of citizens on the final application prior to its submission to DEO.

The local government is required to establish a citizen advisory task force composed of citizens in the jurisdiction in which the proposed project is to be implemented to provide input relative to all phases of the project.⁹⁴

At the state level, DEO is required to establish an advisory committee to participate in designing, administering, and evaluating the program and linking the program with other housing and community development resources.⁹⁵ According to DEO, this advisory committee has not been active since 2004.⁹⁶

FFY 2012 Funding Distribution⁹⁷

⁹² See *supra* note 70 at 2-82.

⁹³ Section 290.044(4), F.S.

⁹⁴ Section 290.046(5) and (6), F.S.

⁹⁵ Section 290.048(7), F.S.

⁹⁶ House Economic Development & Tourism Subcommittee staff conversation with staff of the Florida Small Cities Community Development Block Grant Program, January 24, 2013.

⁹⁷ *Id.* Funds are not available for new Planning and Design Specifications grants in FFY 2012; however, construction funding for previously awarded planning grants will be made available from deobligated funds. (Deobligated funds are funds left over from grants that close out at amounts lower than the original funding.) See *supra* note 88 at 4. For FFY 2013, \$22.78 million will be available to eligible applicants in the four program areas. The application cycle begins Jan. 27, 2014 and closes at 5:00 p.m. on March 12, 2014. Florida Administrative Register & Florida Administrative Code, Rule No.: 73C023.0041, Application Process and Administrative Requirements, Notice of Funding Availability, Vol. 39/249, Dec. 27, 2013.

2012 Allocation	\$22,887,374
State Administration (unmatched)	\$100,000
2% State Administration (matched with GR)	\$457,747
2.5% Emergency Set-Aside	\$572,184
1% Training/Technical Assistance	\$228,874
TOTAL PASS THROUGH	\$21,528,569
Neighborhood Revitalization	\$8,826,713
Housing Rehabilitation	\$3,444,571
Economic Development	\$8,611,428
Commercial Revitalization	\$645,857

Effect of Proposed Changes

Legislative Intent and Purpose

The bill amends the legislative intent and purpose of the Small Cities Community Development Block Grant Program Act (Small Cities CDBG Program) to include economic need as one of the factors that makes a Florida community eligible to participate in the program and includes economic development programs as an activity for such communities to undertake. The bill also clarifies that community and economic development activities will assist communities in reversing community decline and restoring community vitality.

Program Administration and Distribution of Funds

The bill requires DEO to distribute Small Cities CDBG Program grants and loan guarantees through a competitive application selection process established by rule. The bill renames the “housing” category “housing rehabilitation” to clarify that the eligible activities under this category do not include the provision of new housing units and removes project planning and design as an eligible activity. Thus, more of the program funds may be used to fund housing rehabilitation, economic development, neighborhood revitalization, and commercial revitalization projects.

Current law directs DEO to define broad community development objectives. The bill clarifies that the objectives must meet at least one of the national objectives provided in the Housing and Community Development Act of 1974.

Grant Applications, Procedures, and Requirements

The bill provides that with the exception of economic development projects, each local government eligible to apply for a grant may submit one grant application during each application cycle. A local government that is eligible to apply for an economic development grant may apply up to three times each annual funding cycle for an economic development grant, but the local government is prohibited from receiving more than one such grant per annual funding cycle. A local government is permitted to have more than one open economic development grant.

A grant may not be awarded until DEO conducts a site visit to verify the information provided in the local government’s application. The bill deletes unnecessary and obsolete language relating to information provided in the application and mathematical errors, which may be discovered. Current law directs DEO to rank each application and assigns weights to specific criteria as follows: community need - 25 percent; program impact - 65 percent; and outstanding performance in equal opportunity employment and housing – 10 percent. The bill maintains the requirement for DEO to rank each application. However, to allow flexibility and provide clarity for the application and scoring processes, the bill removes the weight percentages assigned to community need, program impact, equal opportunity employment, and housing. The bill also provides that the rankings must be made according to the criteria established by rule. The ranking system must incorporate a procedure intended

to eliminate or reduce any existing population-related bias that places exceptionally small communities at a disadvantage in the competition for funds.

Project funds must be distributed according to the rankings established in each application cycle. If economic development funds remain available after an application cycle closes, then funds must be awarded to eligible projects on a first-come, first-served basis until funds for this category have been fully obligated.

The application's program impact score; equal employment opportunity and fair housing score; and communitywide needs score may take into consideration scoring factors, including, but not limited to:

- Unemployment.
- Poverty levels.
- Low-and moderate- income populations.
- Benefits to low-and moderate- income residents.
- Use of minority-owned and woman-owned business enterprises in previous grants.
- Health and safety issues.
- The condition of physical structures.

The bill also removes specific criteria and procedures for scoring applications.

Citizen Participation

Current law requires the applicant (local government) to provide an opportunity for the public to provide input before the application is submitted to DEO. However, the law is not clear as to the timing of the required public hearings. The bill revises the citizen participation requirements to clarify such requirements and to specifically require the applicant to hold a minimum of two public hearings in the local jurisdiction within which the project is to be located to obtain the views of citizens before submitting the final application to DEO. The purpose of the initial public hearing is to solicit public input concerning community needs, inform the public about funding opportunities available to meet community needs, and discuss eligible activities that may be undertaken. The bill also requires a summary of the proposed application to be published prior to the second public hearing. This provides citizens with an opportunity to examine the application's contents and submit comments. The second public hearing is required to obtain citizens' comments regarding the proposed application and to modify the application if appropriate.

Current law requires the applicant to establish a citizen advisory task force to provide input relative to all phases of the project's process. The bill authorizes rather than requires the local government to establish a citizen advisory task force. According to DEO, often it is difficult for local governments to secure citizen participation to meet this requirement.

Grant Ceilings and Administrative Costs

The bill maintains the allowable administrative cost percentages established for each category. However, the bill provides that the maximum amount that may be spent on administrative costs under the economic development program category must not exceed \$120,000.

Rather than providing that the maximum percentage of block grant funds that may be spent on engineering costs must be in accordance with a schedule adopted by DEO by rule, the bill provides that the maximum amount of block grant funds that may be spent on engineering and architectural costs must be in accordance with a schedule adopted in rule by DEO.

General Powers

The bill removes the authority for DEO to adopt and enforce strict requirements concerning an applicant's written description of a service area. Information relating to the service area would be provided by rule.

Space Florida

Present Situation

Florida's aerospace industry is integral to the state's long-term success in diversifying and building a knowledge-based economy that is able to support the creation of high-value-added businesses and jobs.⁹⁸ As such, the Legislature found that a strong public and private commitment was required to foster the growth and development of a sustainable and world-leading aerospace industry in the state.⁹⁹ Space Florida¹⁰⁰ is one manifestation of this commitment, and among many other things, fosters economic development by:

- Enhancing the state's workforce, education and research capabilities, with an emphasis on mathematics, science, engineering and related fields.
- Focusing on the state's economic development efforts in order to capture a larger share of activity in aerospace research, technology, production and commercial operations, while maintaining the state's historical leadership in space launch activities.
- Preserving the unique national role served by the Cape Canaveral Air Force Station and the John F. Kennedy Space Center by reducing costs and improving the regulatory flexibility for commercial sector launches, while pursuing the development of complementary sites for commercial horizontal launches.
- Facilitating business financing, and when necessary, entering into memoranda of agreement with municipalities, counties, regional authorities, state and federal agencies and other organizations, as well as other interested persons or groups.¹⁰¹

As an independent special district and political subdivision of the state, Space Florida has all the powers, rights, privileges and authority as provided under Florida law.¹⁰² This authority allows Space Florida to act as a special purpose government and financing vehicle to carry out the legislative intent behind its creation. In doing so, Space Florida is governed by an independent board of directors.¹⁰³ Securing funding for aerospace related infrastructure is one of the many duties and responsibilities of the board of directors.¹⁰⁴

Effect of Proposed Changes

The bill requires Space Florida to consult with VISIT Florida in developing a space tourism marketing plan, and allows Space Florida and VISIT Florida to enter into a mutually beneficial agreement to implement such a plan. Presently, Space Florida is directed to consult with EFI for this purpose.¹⁰⁵

Additionally, the bill authorizes, rather than requires, Space Florida to develop a proposal for a Center of Excellence for Aerospace.¹⁰⁶ Space Florida will still be directed to work with public and private universities and other public or private entities to promote the research necessary to develop commercially promising, advanced, and innovative science and technology for the purpose of transferring any advancements or discoveries to the commercial sector.

⁹⁸ Section 331.3011(1), F.S.

⁹⁹ Section 331.3011(2), F.S.

¹⁰⁰ Space Florida was created by ch. 2006-60, L.O.F., and codified in ch. 331, F.S.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Section 331.3081, F.S.

¹⁰⁴ Section 331.310(1)(d), F.S.

¹⁰⁵ Section 331.3051(5), F.S.

¹⁰⁶ Section 331.3051(8)(b), F.S.

Short-Time Compensation

Present Situation

Short-time compensation (STC) is a state-voluntary reemployment assistance (RA) program¹⁰⁷ administered by DEO that helps employers retain their workforce in times of temporary slowdown by encouraging work sharing as an alternative to layoff. The program allows employees to receive prorated RA benefits when their work hours and earnings have been reduced as part of a DEO-approved STC plan.¹⁰⁸

STC Plans

Employers wishing to participate in the STC program are required to submit a STC plan proposal to DEO for approval.¹⁰⁹ DEO will approve a proposed plan if all of the following conditions¹¹⁰ are met:

- The plan applies to and identifies each specific unit.
- The individuals in the affected unit are identified by name and social security number.
- The normal weekly hours of work for individuals in the affected unit are reduced by at least 10 percent, but not more than 40 percent.
- The plan includes a certified statement by the employer that the aggregate reduction in work hours is in lieu of temporary layoffs that would affect at least 10 percent of the employees in the affected unit and that would have resulted in an equivalent reduction in work hours.
- The plan applies to at least 10 percent of the employees in the affected unit.
- The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement covering any individual in the affected unit.
- The plan does not serve as a subsidy to seasonal employers during the off-season¹¹¹ or as a subsidy to employers who traditionally use part-time employees.
- The plan certifies the manner in which the employer will treat fringe benefits¹¹¹ of the individuals in the affected unit if the hours of the individuals are reduced to less than their normal weekly hours of work.

An individual is eligible to receive STC benefits for any week only if DEO finds that:

- The individual is employed as a member of an affected unit in an approved plan that was approved before the week and is in effect for the week.
- The individual is able to work and is available for additional hours of work or for full-time work with the short-time employer.
- The normal weekly hours of work of the individual are reduced by at least 10 percent but not by more than 40 percent, with a corresponding reduction in wages.

The weekly STC benefit amount payable to an individual is equal to the product of her or his weekly benefit amount as provided in s. 443.111(3), F.S.,¹¹² and the ratio of the number of normal weekly

¹⁰⁷ Section 443.1116, F.S.

¹⁰⁸ Florida Department of Economic Opportunity, [Short Time Compensation Program for Employers](http://www.floridajobs.org/office-directory/division-of-workforce-services/reemployment-assistance-programs/short-time-compensation-program-for-employers), <http://www.floridajobs.org/office-directory/division-of-workforce-services/reemployment-assistance-programs/short-time-compensation-program-for-employers> (Last visited March 4, 2014).

¹⁰⁹ Section 443.1116(2), F.S.

¹¹⁰ Section 443.1116(2)(a)-(h), F.S.

¹¹¹ The term “fringe benefits” includes, but is not limited to, health insurance, retirement benefits under defined benefit pension plans, paid vacation and holidays, and sick leave.

¹¹² An individual’s “weekly benefit amount” is an amount equal to 1/26th of the total wages for insured work paid during that quarter of the base period in which the total wages paid were the highest, but not less than \$32 or more than \$275. The “base period” is the first four of the last five completed calendar quarters immediately preceding the first day of an individual’s benefit year.

hours of work for which the employer would not compensate the individual to the individual's normal weekly hours of work.

Changes to Federal Law

The Middle Class Tax Relief and Job Creation Act of 2012¹¹³ (Act) modified the federal requirements for STC programs in order to increase the enrollment of such programs. With funding made available through the Act, the U.S. Department of Labor (USDOL) awarded the state a grant award of over \$5.9m in 2012 to improve its existing STC program.¹¹⁴ USDOL required that one-third of the grant award be used for the implementation or improvement of an STC program, and the remaining two-thirds be made available to promote and enroll employers in the program.¹¹⁵

States are not required to enact an STC program, but must conform to the Act in order to continue to offer an STC program backed by USDOL.¹¹⁶

Effect of Proposed Changes

The bill amends s. 443.1116, F.S., to bring Florida's STC program into compliance with federal law. As a part of its STC plan, the employer must certify that if fringe benefits are provided to an employee whose workweek is reduced under the program, the employer will continue to provide the fringe benefits while the employee is participating in the STC program under the same terms and conditions as if the employee were not a participant or to the same extent as other employees not participating in the STC program.

The STC plan must also describe the manner in which it will be implemented, including the provision of notice and an estimate of layoffs that would have occurred in the absence of the ability to participate in the STC program. The employer's written plan and its implementation must be consistent with the employer's obligations under applicable state and federal law.

The bill prohibits DEO from denying STC benefits to an individual who is otherwise eligible due to her or his participation in employer-sponsored training or a training program under the Workforce Investment Act¹¹⁷ to improve job skills when the training is approved by DEO. The bill defines "employer-sponsored training" as training sponsored by an employer to improve the skills of the employer's workers.

Reemployment Assistance Installment Plans

Present Situation

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own, as determined by state law, and meet the requirements of state law. The program is administered as a partnership of the federal government and the states.

Florida's Reemployment Assistance (RA) Program is funded solely by employers who pay quarterly state reemployment taxes provided for in ch. 443, F.S., and annual payroll taxes under the Federal

¹¹³ Public Law No: 112-96.

¹¹⁴ U.S. Department of Labor, US Labor Department announces nearly \$100 million in grants available for states to implement, improve short-time compensation or 'work sharing', <http://www.dol.gov/opa/media/press/eta/ETA20121618.htm> (last visited March 17, 2014).

¹¹⁵ *Id.*

¹¹⁶ U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Program Letter No. 22-12, http://wdr.doleta.gov/directives/attach/UIPL/UIPL_22_12_Acc.pdf (last visited March 17, 2014).

¹¹⁷ Public Law 105-220.

Unemployment Tax Act (FUTA).¹¹⁸ State reemployment taxes are deposited into the Unemployment Compensation Trust Fund (UC Trust Fund), which are then used to pay reemployment benefits at no cost to eligible workers. Taxes collected from employers pursuant to FUTA fund the administrative costs of the RA Program. A portion of these funds is also used to finance the federal share of the Extended Benefits program, which is available during periods of high unemployment.

In general, states are permitted to set eligibility conditions for benefit recipients, the amount and duration of benefits, and the state tax structure, so long as state provisions are not in conflict with FUTA or the Social Security Act.¹¹⁹ DEO is the agency responsible for administering the RA program.¹²⁰

Benefit Structure

Qualified claimants may receive state reemployment benefits equal to 25 percent of their wages, not to exceed \$6,325 in a benefit year.¹²¹ Benefits range from a minimum of \$32 to a maximum weekly benefit amount of \$275 for up to 23 weeks, depending on the claimant's length of prior employment and wages earned.¹²²

The number of benefit weeks and total benefit amount is subject to the "Florida average unemployment rate," which is used to determine the maximum benefit weeks a claimant may receive. If the Florida average unemployment rate is 10.5% or higher, a claimant is eligible for up to a maximum of 23 weeks. If the Florida average unemployment rate is 5% or below, the maximum number of available weeks is 12. Each 0.5% increment in the unemployment rate above 5% adds an additional week of benefits.

To receive unemployment compensation benefits, claimants must meet certain monetary and non-monetary eligibility requirements.¹²³ Key eligibility requirements include a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.

Tax Structure

Through the FUTA, the Internal Revenue Service levies an unemployment tax of 6.0% on employers. This tax is applied to a taxable wage base of \$8,000 per employee. Federal law provides employers up to a 5.4% credit against that tax.

In addition to FUTA, Florida employers pay a state reemployment tax which funds the UC Trust Fund, an account used to pay weekly benefits. Currently, employers pay quarterly state reemployment taxes on the first \$8,000 of each employee's annual wages.¹²⁴

An employer's initial state tax rate is 2.7 percent.¹²⁵ After an employer is subject to benefit charges for 8-calendar quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 0.1 percent.¹²⁶ The adjustment in the tax rate is determined by calculating a statutory formula that incorporates an employer's experience rating¹²⁷, size of the UC Trust Fund, and other socialized costs. The maximum rate for 2014 is .0540 or \$432.00 per employee; the minimum rate is .0059 or \$47.20 per employee. The maximum rate is unchanged from 2013, but the minimum rate has been reduced by over 40 percent.

¹¹⁸ Federal Unemployment Tax Act is codified at 26 U.S.C. 3301-3311.

¹¹⁹ Title III, Title IX, and Title XII of the Social Security Act.

¹²⁰ Sections 20.60(5)(c)(3) and 443.171, F.S.

¹²¹ Section 443.111(5), F.S.

¹²² Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday.

¹²³ Section 443.091(1), F.S.,

¹²⁴ Section 443.1217(2), F.S.

¹²⁵ Section 443.131(2)(a), F.S.

¹²⁶ Section 443.131(3)(e)2.a., F.S.

¹²⁷ Section 443.131(3)(b), F.S.

Installment Plans

Since 2010, state law has allowed employers to elect to make quarterly contributions to the UC Trust Fund, as opposed to a single annual contribution.¹²⁸ An annual administrative fee of \$5 is assessed on each employer who chooses this option, but otherwise, there is no penalty. This fee is deposited into the Operating Trust Fund of the Department of Revenue. This option expires after 2014.¹²⁹

Effect of Proposed Changes

The bill makes Reemployment Assistance installment plans a permanent option. Employers will continue to have the option to make quarterly contributions to the UC Trust Fund for an annual \$5 administrative fee as they have since 2010.

Rural Areas of Critical Economic Concern

Present Situation

Florida's Rural Economic Development Initiative (REDI), housed within DEO, is a multi-agency endeavor that coordinates the efforts of regional, state, and federal agencies to address the issues that affect the fiscal, economic and community viability of the state's economically distressed rural communities. REDI works with local governments, community-based organizations, and private entities that have an interest in the growth and development of these communities to find ways to balance environmental and growth management issues with local needs and economic development. The following agencies and organizations are directed to designate a staff person to serve as REDI representatives:¹³⁰

- The Department of Transportation.
- The Department of Environmental Protection.
- The Department of Agriculture and Consumer Services.
- The Department of State.
- The Department of Health.
- The Department of Children and Family Services.
- The Department of Corrections.
- The Department of Education.
- The Department of Juvenile Justice.
- The Fish and Wildlife Conservation Commission.
- Each water management district.
- Enterprise Florida, Inc.
- Workforce Florida, Inc.
- VISIT Florida.
- The Florida Regional Planning Council Association.

¹²⁸ Section 443.141(1)(d), F.S.

¹²⁹ Section 443.141(1)(f), F.S.

¹³⁰ Section 288.0656(6)(a), F.S.

- The Agency for Health Care Administration.
- The Institute of Food and Agricultural Sciences.

A Rural Area of Critical Economic Concern (RACEC) is a rural community, or a region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, a natural disaster, or severe or chronic distress. The area may also be classified if it presents a unique economic development opportunity of regional impact.¹³¹

The Governor may designate up to three RACEC areas for five-year periods upon recommendation by REDI. This allows these areas to receive priority assignments for REDI, and allows the Governor, acting through REDI, to waive certain criteria or requirements of any economic development incentives.¹³² Currently, there are three designated RACEC areas:

- North West RACEC – Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla and Washington Counties, and the City of Freeport in Walton County.
- South Central RACEC – DeSoto, Glades, Hardee, Hendry, Highlands and Okeechobee Counties, the Cities of Pahokee, Belle Glade and South Bay in Palm Beach County, and a portion of the Immokalee area in Collier County.
- North Central RACEC – Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor and Union Counties.

Effect of Proposed Changes

The bill replaces the term “rural area of critical economic concern” with “rural area of opportunity” throughout the various sections of the Florida Statutes.

Florida Defense Support Task Force

Present Situation

In 2011,¹³³ the Legislature created the Florida Defense Support Task Force (task force) with the mission to: make recommendations to preserve and protect military installations to support the state’s position in research and development related to or arising out of military missions and contracting; and to improve the state’s military-friendly environment for service members, military dependents, military retirees, and businesses that bring military and base-related jobs to the state.¹³⁴

The task force is comprised of the Governor, or his or her designee, and 12 members representing defense-related industries or communities that host military bases and installations. The Governor, President of the Senate, and Speaker of the House of Representatives each appoint four members to serve on the task force.¹³⁵ The executive director of DEO, or his or her designee, serves as the ex officio, nonvoting executive director of the task force.¹³⁶ In 2012, the task force conducted 10 meetings and one conference call and in 2013, the task force conducted 9 meetings.¹³⁷

DEO is required to contract with the task force for the expenditure of appropriated funds, which may be used by the task force for:¹³⁸

- economic and product research and development,

¹³¹ Section 288.0656(2)(d), F.S.

¹³² Section 288.0656(7)(1), F.S.

¹³³ Section 38, ch. 2011-76, L.O.F.

¹³⁴ Section 288.987(2), F.S.

¹³⁵ Section 288.987(3), F.S.

¹³⁶ Section 288.987(5), F.S.

¹³⁷ Enterprise Florida, Inc., The Florida Defense Support Task Force, Meetings, available at <http://www.enterpriseflorida.com/the-florida-defense-support-task-force/meetings/> (last visited April 3, 2014).

¹³⁸ Section 288.987(7), F.S.

- joint planning with host communities to accommodate military missions and prevent base encroachment,
- advocacy on the state's behalf with federal civilian and military officials,
- assistance to school districts in providing a smooth transition for large numbers of additional military-related students,
- job training and placement for military spouses in communities with high proportions of active duty military personnel, and
- promotion of the state to military and related contractors and employers.

The task force is authorized to spend up to \$200,000 of funds appropriated to DEO for staffing and administrative expenses, including travel and per diem costs incurred by task force members who are not otherwise eligible for state reimbursement.

Effect of Proposed Changes

The bill increases the amount of funds provided to the Florida Defense Support Task Force through DEO for staffing and administrative expenses from \$200,000 to \$250,000.

B. SECTION DIRECTORY:

- Section 1 Creates subsection (7) in s. 163.3180, F.S., relating to concurrency.
- Section 2 Creates subsection (6) in s. 163.31801, F.S., relating to impact fees.
- Section 3: Amends s. 163.3202(1), F.S., relating to land development regulations to correct a cross-reference.
- Section 4: Creates subsection (12) of s. 212.098, F.S., relating to the rural job tax credit.
- Section 5: Amends s. 288.001(2), F.S., relating to the economic development programs evaluation conducted by EDR and OPPAGA.
- Section 6: Amends s. 288.005, F.S., relating to definitions used in chapter 288, F.S., to define the terms "loan program" and "loan administrator."
- Section 7: Creates s. 288.006, F.S., relating to the general operation of loan programs.
- Section 8: Amends s. 288.987(7), F.S., relating to the Florida Defense Support Task Force
- Section 9: Amends s. 290.0411, F.S., relating to the legislative intent and purpose of the Florida Small Cities Community Development Block Grant Act.
- Section 10: Amends s. 290.044(2), (3), and (4), F.S., relating to the Florida Small Cities Community Development Block Grant Act (CDBG) Program Fund.
- Section 11: Amends s. 290.046, F.S., relating to the Small Cities CDBG Program application procedures and requirements.
- Section 12: Amends s. 290.047, F.S., relating to the establishment of grant ceilings and maximum administrative cost percentages.
- Section 13: Amends s. 290.0475, F.S., relating to the rejection of grant applications.
- Section 14: Amends s. 290.048, F.S., relating to the general powers of DEO under the Florida Small Cities CDBG Act.

Section 15 Amends s. 331.3051(5) and (8)(b), F.S., relating to the duties of Space Florida.

Section 16: Amends s. 443.116(1), (2), and (5), F.S., relating to short-time compensation.

Section 17: Amends s. 443.141(1)(f), F.S., relating to collection of reemployment assistance contributions and reimbursements.

Sections 18 – 38:

Amend s. 288.0656, F.S., and others, relating to definitions for the Rural Economic Development Initiative.

Section 39: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill allows a new or existing eligible business that receives a rural job tax credit to receive a tax refund of up to 50 percent of the amount of sales tax on purchases of electricity paid by the business during the one-year period after the credit is received. Such tax refunds have a cap of \$600,000 per calendar year.

The bill increases the administrative costs of the Florida Defense Support Task Force from \$200,000 to \$250,000.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Impact Fees, Concurrency and Proportionate Share

The bill may impact the ability of some local governments to collect impact fees and proportionate share contributions from certain new business development unless repealed by a majority vote of the local government's governing board.

Rural Job Tax Credit

Rural counties may be impacted by the tax refund permitted on purchases of electricity by certain eligible businesses.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Impact Fees, Concurrency and Proportionate Share

May lower or eliminate certain fees imposed on some types of new business development for a three year period.

Rural Areas of Critical Economic Concern

The bill may have a slight positive effect on economic development in rural areas.

D. FISCAL COMMENTS:

Rural Job Tax Credit

The bill places a cap of \$600,000 on the sales tax refunds on electricity in qualified areas. On March 28, 2014, the Revenue Estimating Conference estimated that this provision in the bill will have a negative fiscal impact of \$600,000 on state revenues and \$200,000 on local revenues for FY 2014-15.

Small Cities Community Development Block Grant Program

The bill may enable a larger portion of federal funds provided through the Small Cities Community Development Block Grant Program to be used for economic development activities by local governments.

Reemployment Assistance

The bill indefinitely extends the option for an employer to pay a \$5 annual administrative fee to make quarterly contributions to the UC Trust Fund, as opposed to a single annual contribution. The option would have expired after 2014. Extending this option appears to have an insignificant impact on both employers and the Department of Revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants DOR the authority to adopt rules to administer the sales tax exemption on electricity purchased in rural areas.

The bill grants DEO the authority to adopt rules relating to the operation of all loan programs administered by the agency under ch. 288, F.S.

The bill grants DEO the authority to distribute the Small Cities CDBG funds using a competitive selection process established by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 4, 2014, the House Economic Affairs Committee adopted a strike-all amendment and passed the bill as a committee substitute. The committee substitute:

- Places a cap of 12 or less employees as a qualification for the 3-year exemption from impact fees, concurrency and proportionate share requirements for certain small business developments.

- Requires EDR and OPPAGA to include the New Markets Development Program in the Economic Development Programs Evaluation.
- Amends the state law relating to the Short-Time Compensation program to bring Florida into compliance with new federal law requirements.
- Includes a sales tax exemption on electricity purchased in rural areas. A new or existing eligible business that receives a rural job tax credit is eligible for a tax refund of up to 50 percent of the amount of sales tax on purchases of electricity paid by the business during the one-year period after the credit is received.
- Increases the administrative costs of the Florida Defense Support Task Force from \$200,000 to \$250,000.
- Authorizes, rather than requires, Space Florida to develop a proposal for a Center of Excellence for Aerospace.
- Corrects a cross-reference that inadvertently left newly-created cities out of the requirement to update comprehensive plans.
- Corrects the title of the Housing & Community Development Act of 1974 under the Small Cities CDBG Program.

The analysis has been updated to reflect the strike-all amendment.