HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 7023	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Economic Affairs Committee; Economic Development & Tourism Subcommittee; Hutson and Campbell	113 **Y's**	0 **N's**
COMPANION BILLS:	CS/CS/SB 1634	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/HB 7023 passed the House on April 24, 2014. The bill was amended by the Senate on May 2, 2014, and subsequently passed the House on May 2, 2014. The bill addresses the following areas:

Reemployment Assistance Program

- Repeals the requirement that applicants for reemployment assistance must complete an initial skills review to receive benefits and directs the Department of Economic Opportunity (DEO) to allow a claimant to choose whether to take the skills assessment;
- Requires DEO to provide an alternate means for filing initial and continued claims for reemployment assistance when electronic means of filing such claims is unavailable. DEO must provide public notice of the system's unavailability;
- Makes Reemployment Assistance installment plans a permanent option. Employers will continue to have the option to make quarterly contributions to the Unemployment Compensation Trust Fund for an annual $5 administrative fee; and amends Florida's Short-Time Compensation program to bring the state into conformity with new federal requirements.

Loan Programs Administered by DEO

- Establishes requirements to increase accountability and improve performance of all loan programs administered by DEO under chapter 288, F.S.; and
- Creates the Florida Microfinance Act to make short-term microloans to entrepreneurs and small businesses for start-up costs, working capital, and the acquisition of business supplies and equipment.

Rural Areas and Small Cities

- 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;
- Directs DEO to distribute Small Cities CDBG Program grants and loan guarantees through a competitive selection process established by rule and revises the program; and
- Renames "rural areas of critical economic concern" as "rural areas of opportunity" throughout Florida Statutes.

Economic Development Program Evaluation

- 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.

Permit Extension

- Extends and renews for two years after its previously scheduled date of expiration, any building permit and any permit issued by the Department of Environmental Protection (DEP) or a water management district (WMD), which is effective from January 1, 2014 until January 1, 2016. The extension includes any local government-issued development order or building permit including certificates of levels of service.

The bill also revises the terms of the initial appointments of the board of directors of Triumph Gulf Coast, Inc.; clarifies the audit requirements for the Recovery Fund and Triumph Gulf Coast, Inc.; provides an additional condition under which aggregation relating to developments of regional impact may not be applied; and increases the administrative costs of the Florida Defense Support Task Force. *See* FISCAL COMMENTS. The bill was approved by the Governor on June 20, 2014, ch. 2014-218, L.O.F., and will become effective on July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Economic Development Programs Evaluation

Present Situation

Economic Development Program Evaluation

In 2013,[1] the Legislature directed EDR to evaluate and determine the economic benefits[2] of each economic development incentive program over the previous three years. The analysis must also evaluate:[3]

- the number of jobs created;
- the increase or decrease in personal income; and
- the impact on 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 three 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.[4]

The following economic development programs must be evaluated:

- Capital Investment Tax Credit.[5]
- Qualified Target Industry Tax Refund.[6]
- Brownfield Redevelopment Bonus Tax Refund.[7]
- High-Impact Sector Performance Grants.[8]
- Quick Action Closing Fund.[9]
- Innovation Incentive Programs.[10]
- Enterprise Zone Program.[11]
- Entertainment Industry Financial Incentive Program.[12]
- Entertainment Industry Sales Tax Exemption Program.[13]
- VISIT Florida.[14]
- Florida Sports Foundation.[15]
- Qualified Defense Contractor and Space Flight Business Tax Refund Program.[16]

[1] Chapter 2013-39, L.O.F.
[2] "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.
[3] Section 288.0001, F.S.
[4] Id.
[5] Section 220.191, F.S.
[6] Section 288.106, F.S.
[7] Section 288.107, F.S.
[8] Section 288.108, F.S.
[9] Section 288.1088, F.S.
[10] Section 288.1089, F.S.
[11] Sections 212.0805, 212.0815, 212.096, 220.181, and 220.182, F.S.
[12] Section 288.1254, F.S.
[13] Section 288.1258, F.S.
[14] Sections 288.122, 288.1266, 288.12265, and 288.124, F.S.
[15] Sections 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171, F.S.
[16] Section 288.1045, F.S.

- Tax Exemption for Semiconductor, Defense, or Space Technology Sales.[17]
- Military Base Protection Program.[18]
- Manufacturing and Spaceport Investment Incentive Program.[19]
- Quick Response Training Program.[20]
- Incumbent Worker Training Program.[21]
- International Trade and Business Development Programs.[22]

New Markets Development Program

Established by the Legislature in 2009,[23] Florida's New Markets Development Program 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.[24]

Under the program, federally-certified Community Development Entities (CDEs), which have entered into allocation agreements with the U.S. Department of the 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 Program[25] 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, a county with a population of 125,000 or fewer which is contiguous

[17] Section 212.08(5)(j), F.S.
[18] Section 288.980, F.S.
[19] Section 288.1083, F.S.
[20] Section 288.047, F.S.
[21] Section 445.003, F.S.
[22] Section 288.826, F.S.
[23] Chapter 2009-50, L.O.F.
[24] Section 288.9912, F.S.
[25] Section 288.065, F.S.

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, units of local government, or economic development organizations substantially underwritten by a unit of local government, within a rural area of critical economic concern (RACEC).[26]

Requests for loans must be made by application to DEO 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 RACEC 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 RACEC.[27]

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.[28]

Economic Gardening Business Loan Pilot Program

The Economic Gardening Business Loan Pilot Program[29] 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:[30]

- 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.[31]
- 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.[32]

DEO is authorized to designate one or more qualified entities to serve as loan administrators for the program. A loan administrator must:[33]

- 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; and
- 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

[26] Section 288.065(2)(a), F.S.
[27] Section 288.065(2)(b) and (c), F.S.
[28] Section 288.065(3), F.S.
[29] Section 288.1081, F.S.
[30] *See* ss. 288.1081(3)(a), F.S., and 288.1082(4)(a), F.S.
[31] *See* s. 288.106(4)(b), F.S.
[32] Section 288.1081(4), F.S.
[33] Section 288.1081(5), F.S.

board of directors; and samples of its currently used loan documentation along with other required documents.

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.[34]

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. Thereafter, the loan administrator must collect the servicing fee from the payments made by the borrower, charging the fee against repayments of principal.[35]

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.[36]

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.[37]

Black Business Loan Program

Under the Black Business Loan Program,[38] 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 could otherwise compete successfully in the private sector.[39]

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.[40]

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.[41]

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

[34] Section 288.1081(5)(b), F.S.
[35] Section 288.1081(5)(d), F.S.
[36] Section 288.1081(5)(e), F.S.
[37] Section 288.1081(5)(f), F.S.
[38] Section 288.7102, F.S.
[39] Section 288.7102(1), F.S.
[40] Section 288.7102(2), F.S.
[41] Section 288.7102(3), F.S.

recently completed fiscal year. The audit must not reveal any material weaknesses or instances of material noncompliance.[42]

New recipients must demonstrate that:[43]

- 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.[44]

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.[45]

Effect of Proposed Changes

General Operation of Loan Programs

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. "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 by establishing requirements for the operation of all loan programs under ch. 288, F.S., that are administered by DEO.

State funds appropriated for any loan programs may only be used by an eligible recipient or loan administrator. 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 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.

[42] Section 288.7102(4), F.S.
[43] Section 288.7102(4)(c), F.S.
[44] Section 288.7102(4)(d), F.S.
[45] Section 288.7102(5), F.S.

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.

Florida Microfinance Act

The bill creates ss. 288.993 through 288.9937, F.S., designated as part XIV of ch. 288, F.S., and titled Microfinance Programs.

Microfinance Loan Program

The bill establishes the Microfinance Loan Program to make short-term, fixed-rate microloans in conjunction with business management training, business development training, and technical assistance to entrepreneurs and newly-established or growing small businesses for start-up costs, working capital, and the acquisition of materials, supplies, furniture, fixtures, and equipment. Participation in the loan program is intended to enable entrepreneurs and small businesses to access private financing upon completing the loan program.

1. Request for Proposal

By December 1, 2014, DEO must enter into a three-year contract[46] with up to three loan administrators to administer the Microfinance Loan Program. A prospective loan administrator must:

- be a corporation registered in the state;
- not offer checking or savings accounts;
- demonstrate that its board and managers are experienced in microlending and small business finance and development;
- demonstrate that it has established partnerships with public and private non-state funding sources, economic development agencies, workforce development entities, and job referral networks; and
- demonstrate that it has a plan that includes proposed microlending activities including the types of entrepreneurs and businesses to be assisted and the size and range of loans the loan administrator intends to make.

The request for proposals issued by DEO for loan administrators to administer the Microfinance Loan Program must include:

- a description of the types of entrepreneurs and small businesses the loan administrator has assisted, including the average size and terms of loans issued;
- a description of the experience of board members and managers in the areas of microlending and small business finance and development;
- a description of the loan administrator's underwriting and credit policies and procedures, credit decision-making process, monitoring policies and procedures, collection practices, and samples of any currently used loan documentation;
- a description of the non-state funding sources that will be used by the loan administrator in conjunction with the awarded funds to make microloans;
- the loan administrator's three most recent financial audits or three most recent unaudited financial statements if no prior audit has been made; and
- a conflict of interest statement from the loan administrator's governing board certifying that no board member, employee, agent, or other person connected to or affiliated with the loan administrator is receiving or will receive any type of compensation or remuneration from an entrepreneur or small business that has received or will receive funds from the loan program. DEO may waive this requirement if good cause is shown.

2. Contract

A selected loan administrator must enter into a contract with DEO for three years in order to receive state funds. Funds appropriated to the program must be reinvested and maintained as a long-term and stable source of funding for the program. The amount of state funds used in any microloan made through the program may not exceed 50 percent of the total microloan amount. DEO must establish financial performance measures and objectives for the loan program and for the loan administrators.

Funds awarded by DEO may only be used to provide direct microloans to entrepreneurs and small businesses according to the terms of the program. Aside from a one-time administrative fee provided by the program, no funds may be used to pay administrative costs or any other costs associated with administering the program.

A loan administrator is required to reserve 10 percent of the total award amount from DEO to provide microloans to businesses that employ five people or less and generate annual gross revenues averaging less than $250,000 for the previous two years.

If the loan program is appropriated funding, DEO must distribute the funds to the loan administrator within 30 days of contract execution. The total amount of funds allocated to a loan administrator in a

[46] In a manner consistent with s. 287.057, F.S.

single fiscal year may not exceed the amount appropriated for the program in that same fiscal year. Any excess funds will revert to General Revenue.

Within 30 days of contract execution, a loan administrator must enter into a memorandum of understanding with the Small Business Development Center Network (Network) for the provision of business management training, business development training, technical assistance, and to promote the program to underserved entrepreneurs and small businesses.

By September 1, 2014, DEO must review industry best practices and determine the minimum business management training, business development training, and technical assistance that must be provided by the Network.

A loan administrator must meet the program requirements, the terms of its contract with DEO, and any other applicable state or federal laws to be eligible to receive funds through the program. The contract must also specify any sanctions for a loan administrator's failure to comply.

3. Fees

DEO may not charge fees, interest, or require collateral from the loan administrator in excess of what is provided for by the program. DEO may charge a fee or interest of up to 80 percent of the Federal Funds Rate[47] as of the date specified in the contract for funds awarded. DEO will require collateral as an assignment of the notes receivable of the microloans made by a loan administrator under the program.

A loan administrator is entitled to receive a one-time administrative servicing fee of one percent of the total award amount to offset administrative costs. This fee may not be charged to or paid by microloan borrowers participating in the program. The loan administrator may not charge interest, fees, or costs except as authorized by the program. The loan administrator is not required to return the interest, fees, or costs authorized by the program except as required during a contract termination.

4. Repayment of Award Funds

After collecting interest and any fees or costs permitted by the program, the loan administrator must remit to DEO the microloan principal collected from all microloans made with funds awarded through the program. Repayment of microloan principal may be deferred by DEO for a period up to six months. However, the loan administrator may not provide a microloan through the program after the contract with DEO expires.

If for any reason a loan administrator is unable to make repayments to DEO as its contract dictates, DEO may accelerate maturity of the awarded funds and demand repayment in full. In this event, or if a loan administrator violates the terms of its contract, the loan administrator will surrender to DEO all collateral required. DEO may recover any loss greater than the value of the collateral from the loan administrator.

In the event of a default as specified in the contract, termination of the contract, or violation of the program requirements, the state may, in addition to any other remedy provided by law, bring suit to enforce its interest. A microloan borrower's default does not relieve a loan administrator of its obligation to repay an award to DEO.

5. Contract Termination

[47] The Federal Funds Rate is the interest rate at which depository institutions lend balances to each other overnight. The Federal Open Market Committee establishes the target rate for trading in the federal funds market. More information can be found at the Federal Reserve Bank of St. Louis' webpage on the Effective Federal Funds Rate, http://research.stlouisfed.org/fred2/series/FEDFUNDS, (last accessed on May 9, 2014)

A loan administrator's contract with DEO may be terminated, and a loan administrator required immediately return all state funds awarded, including any interest, fees, and costs it would otherwise be entitled to retain for that fiscal year, upon a finding by DEO that:

- The loan administrator has, within the previous five years, participated in a state-funded economic development program in any state and was found to have failed to comply with the requirements of that program.
- The loan administrator is in material noncompliance with any statute, rule, or program administered by DEO.
- The loan administrator or any member of its board, officers, partners, managers, or shareholders has pled no contest or failed to meet or agree to the terms of the contract with DEO or failed to meet the requirements of the program.
- DEO finds that the loan administrator provided fraudulent or misleading information to DEO.

A loan administrator's contract with DEO may be terminated by DEO at any time for any reason upon 30 days' notice. The loan administrator is required to return all awarded funds within 60 days of termination, but may keep any interest, fees, or costs it has collected. A loan administrator may also terminate its contract at any time for any time for any reason upon 30 days' notice provided it returns all awarded funds, including fees, to DEO within 30 days of termination.

6. Audits and Reporting

Each participating loan administrator is required to submit an annual financial audit performed by an independent certified public accountant and an operational performance audit for the most recently completed fiscal year. Both must indicate whether any material weakness or instances of material noncompliance are indicated in the audit. A loan administrator must also submit quarterly reports and make its books and records related to the microloan program available to DEO or its designee for inspection upon reasonable notice.

7. Eligibility and Application

To be eligible for a microloan, an applicant must be an entrepreneur or small business located in the state. An applicant must submit a written application in the format prescribed by the loan administrator and will pay an application fee of $50 or less. DEO may not review microloans made by the loan administrator before approval by the loan administrator. The minimum terms of a microloan are:

- The amount of the microloan may not exceed $50,000.
- A borrower may not receive more than $75,000 per year in microloans.
- A borrower may not receive more than two microloans per year and may not receive more than five microloans in any three-year period.
- The proceeds of the microloan may only be used for startup costs, working capital, and the acquisition of materials, supplies, furniture, fixtures, and equipment.
- The period of any microloan may not exceed one year.
- The interest rate may not exceed the prime rate published in the Wall Street Journal as of the date specified in the microloan, plus 1,000 base points.
- All microloans must be personally guaranteed.
- The borrower must participate in business management training, business development training, and technical assistance as determined by the loan administrator in the microloan agreement.
- The borrower will provide information required by the loan administrator, including monthly job creation and financial data, in the manner prescribed by the loan administrator.
- The loan administrator may collect fees for late payments consistent with standard business lending practices and may recover costs and fees associated with any collection efforts stemming from a borrower's default.

Microloans may not be made if the direct or indirect purpose or result of granting the microloan would be to:

- pay off any creditors of the applicant, including the refund of a debt owed to a small business investment company;[48]
- provide funds, directly or indirectly, for payment, distribution, or as a microloan to owners, partners, or shareholders of the applicant's business, except as ordinary compensation for services rendered;
- finance the acquisition, construction, improvement, or operation of real property which is, or will be, held primarily for sale or investment;
- pay for lobbying activities; or
- replenish funds used for any of the above purposes.

8. Other Program Requirements

In implementing the program, DEO is guided by the five-year strategic plan pursuant to s. 20.60(5), F.S. DEO is also directed to promote and advertise the program.

By December 1, 2014, DEO must commence or commission a study to identify methods and best practices that will increase access to credit for entrepreneurs and small businesses in the state. The study must also explore the ability of, and limitations on, Florida nonprofits and private financial institutions to expand access to credit for entrepreneurs and small businesses.

The credit of the state may not be pledged, with the exception of funds appropriated to the loan program. The state is not liable for any claims on the loan program or against the loan administrator or DEO.

Microfinance Guarantee Program

The bill establishes the Microfinance Guarantee Program within DEO to stimulate access to credit for entrepreneurs and small businesses by providing targeted guarantees to loans. Funds appropriated must be reinvested and maintained as a long-term and stable source of funding for the program. DEO is required to enter into a contract with EFI to administer the program. In administering the program EFI must, at a minimum:

- establish lender[49] and borrower eligibility requirements in addition to those provided by the bill;
- determine a reasonable leverage ratio of loan amounts guaranteed to state funds;[50]
- establish reasonable fees and interest;
- promote the program to financial institutions that provide loans to entrepreneurs and small businesses in order to maximize the number of lenders throughout the state which participate in the program;
- enter into a memorandum of understanding with the Network to promote the program to underserved entrepreneurs and small businesses;
- establish limits on the total amount of loan guarantees a single lender may receive;
- establish an average loan guarantee amount for loans guaranteed by the program;
- establish a risk-sharing strategy to be employed in the event of a loan failure; and
- establish financial performance measures and objectives for the program in order to maximize state funds.

EFI is limited to providing loan guarantees for loans with total loan amounts between $50,000 and $250,000. A loan guarantee may not exceed 50 percent of the total loan amount. EFI may not use funds appropriated from the state for costs associated with administering the guarantee program. EFI may not guarantee a loan if the direct or indirect purpose or result of the loan would be to:

[48] Organized pursuant to 15 U.S.C. s. 681.
[49] As used in s. 288.9935, F.S., the term "lender" means a financial institution as defined in s. 655.005, F.S.
[50] Not to exceed 3:1.

- pay off any creditors of the applicant, including the refund of a debt owed to a small business investment company;[51]
- provide funds, directly or indirectly, for payment, distribution, or as a microloan to owners, partners, or shareholders of the applicant's business, except as ordinary compensation for services rendered;
- finance the acquisition, construction, improvement, or operation of real property which is, or will be, held primarily for sale or investment;
- pay for lobbying activities; or
- replenish funds used for any of the above purposes.

To be eligible to receive a loan guarantee under the program, a borrower must:

- be an entrepreneur or small business located in the state;
- employ 25 or fewer people;
- generate average annual gross revenues of $1,500,000 over the previous two years; and
- meet any additional requirements established by EFI.

By October 1 of each year, EFI must submit a complete and detailed annual report for inclusion in DEO's annual report.[52] This must include:

- a comprehensive description of the program, including an evaluation of its application and guarantee activities, recommendations for change, and identification of any other state programs that overlap with the program;
- an assessment of the current availability of and access to credit for entrepreneurs and small businesses in the state;
- a summary of the financial and employment results of the entrepreneurs and small businesses receiving microloans, including the number of full-time equivalent jobs created as a result of the guaranteed loans and the amount of wages to employees in the newly created jobs;
- industry data about the borrowers, including North American Industry Classification System (NAICS)[53] codes;
- the name and location of lenders that receive loan guarantees;
- the amount of state funds received by EFI;
- the number of loan guarantee applications received;
- the number, duration, location, and amount of loan guarantees made;
- the number and amount of guaranteed loans outstanding, if any;
- the number and amount of guaranteed loans with payments overdue, if any;
- the number and amount of guaranteed loans in default, if any;
- the repayment history of guaranteed loans made; and
- an evaluation of the program's ability to meet the financial performance measures and objectives specified in the program.

The credit of the state or EFI may not be pledged except for funds appropriated by law to the program. The state is not liable or obligated in any way for claims on the program or against EFI or DEO.

1. Annual Report of the Microfinance Loan Program

The bill requires DEO to include in its annual report a complete and detailed report on the Microfinance Loan Program. This must include:

- a comprehensive description of the program, including an evaluation of its application and funding activities, recommendations for change, and identification of any other state programs that overlap with the program;

[51] Organized pursuant to 15 U.S.C. s. 681.
[52] As required under s. 20.60(10), F.S.
[53] *See infra* note 84.

- the financial institutions, the public and private organizations, and individuals participating in the program;
- an assessment of the current availability of and access to credit for entrepreneurs and small businesses in the state;
- a summary of the financial and employment results of the entities receiving microloans;
- the number of full-time equivalent jobs created as a result of the microloans and the amount of wages paid to employees in the newly created jobs;
- the number and location of prospective loan administrators that responded to the request for proposals;
- the amount of state funds awarded to the loan administrator;
- the number of microloan applications received by the loan administrator;
- the number, duration, and location of microloans made by the loan administrator;
- the number and amount of microloans outstanding, if any;
- the number and amount of microloans with payments overdue, if any;
- the number and amount of microloans in default, if any;
- the repayment history of the microloans made;
- the repayment history and performance of funding awards;
- an evaluation of the program's ability to meet the financial performance measures and objectives specified in the Microfinance Loan Program; and
- a description and evaluation of the technical assistance and business management and development training provided by the Network pursuant to its memorandum of understanding with the loan administrator.

DEO must submit the report provided by EFI for inclusion in its annual report. DEO must also require at least quarterly reports from the loan administrator. The loan administrator's report must include:

- the number of microloan applications received;
- the number of microloans made;
- the amount and interest rate of each microloan made;
- the amount of technical assistance, business management training, or business development training provided;
- the number of full-time equivalent jobs created as a result of the microloans;
- the amount of wages paid to employees in the newly created jobs;
- the NAICS code associated with the borrower's business; and
- the location of each borrower.

OPPAGA is directed to conduct a study to evaluate the effectiveness and return on investment of the State Small Business Credit Initiative operated in the state.[54] The report must be submitted to the President of the Senate and Speaker of the House of Representatives by January 1, 2015.

2. Evaluation of Programs

OPPAGA is also directed to analyze, evaluate, and determine the economic benefits of the first three years of the Microfinance Loan Program and the Microfinance Guarantee Program. The analysis must also evaluate the number of jobs created, the increase or decrease in personal income, and the impact on state GDP from the direct, indirect, and induced effects of the state's investment. The analysis must also identify any inefficiencies in the program and provide recommendations for changes to the programs. OPPAGA must submit a report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2018. The bill allows for this provision to sunset January 31, 2018.

3. Emergency Rules

[54] Pursuant to 12 U.S.C. ss. 5701 et seq.

The bill allows for DEO to adopt emergency rules to implement this act. Such rules may remain in effect for six months after adoption and may be renewed. The bill allows this provision to sunset October 1, 2015.

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.[55]

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.[56]

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.[57]

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.[58]

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

[55] 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).
[56] *Id*.
[57] *Id*.
[58] 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.

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.[59]

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; and
- submit comments on the performance of the applicant.[60]

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.[61]

State of Florida Administered CDBG 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 CDBG Program

1. Intent and Purpose

Chapter 290, F.S., provides that the intent of the Florida Small Cities CDBG 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.[62]

"Persons of low or moderate income" means any person who meets the definition established by HUD.[63] 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.[64]

The purpose of the Act is to assist local governments in carrying out effective community development and project planning/design activities to reverse community decline.[65]

2. Powers

[59] *See* 24 C.F.R. 570.431, Subpart F, Citizen Participation.
[60] *Id*.
[61] *Id*.
[62] Section 290.0411, F.S.
[63] Section 290.042(6), F.S.
[64] 42 U.S.C 5302 a.20.
[65] *Id*.

Current law grants DEO the power to carry out the provisions of the Florida Small Cities CDBG Program, including the power to:[66]

- 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 rules[67] 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;
- 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; and
- 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.

3. Administration

The Florida Small Cities CDBG Program provides grants and loans on a competitive basis to eligible municipalities and county governments[68] (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.[69] 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.[70]

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.[71]

4. Grant Categories

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[66] Section 290.048, F.S.
[67] Chapter 73C-23, F.A.C.
[68] 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.
[69] Section 290.044(2) and (3), F.S.
[70] 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
[71] Section 290.044(5), F.S.

DEO provides specific requirements for the competitive grant categories.[72] Below are the grant categories and examples of activities DEO has authorized for funding during Federal Fiscal Year 2012:[73]

a) 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.
- 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.[74]

b) 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.[75]

c) 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.[76]

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[72] Rule 73C-23.0045, F.A.C.
[73] 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.
[74] *Id*. at 13.
[75] *Id*. at 13-14.
[76] *Id*. at 9.

d) 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.
- 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.[77]

5. 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.[78]

6. 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; and
- 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.[79]

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

[77] *See supra* note 55 at 2-82.
[78] Section 290.044(4), F.S.
[79] Section 290.046(5) and (6), F.S.

community development resources.[80] According to DEO, this advisory committee has not been active since 2004.[81]

FFY 2012 Funding Distribution[82]

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

[80] Section 290.048(7), F.S.
[81] House Economic Development & Tourism Subcommittee staff conversation with staff of the Florida Small Cities Community Development Block Grant Program, January 24, 2013.
[82] *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.

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; and
- 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.

Rural Job Tax Credit

Present Situation

The Rural Job Tax Credit Program offers an incentive for eligible businesses located within 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.[83]

An "eligible business" means a sole proprietorship, firm, partnership, or corporation that is located in a qualified county and is predominately[84] engaged in, or is headquarters for a business predominately engaged in activities classified within the following standard industrial classifications (SIC):[85]

SIC	Description
01-09	Agriculture, forestry, and fishing
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[86]

A "qualified area" is:[87]

- 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

[83] Section 2, ch. 97-50, L.O.F.
[84] "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.
[85] 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).
[86] *See* s. 288.106, F.S.
[87] Section 212.98(1)(c), F.S. DEO refers to such areas as "qualified rural areas."

- 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:[88]

- 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; and
- average weekly manufacturing wage, based upon the most recent data available.

According to DEO, there are 36 qualified rural areas as follows:[89]

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)
Dixie County	Immokalee Area (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.[90]

An existing eligible business may apply for a tax credit at any time it qualifies for 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

[88] *Id*.
[89] Florida Department of Economic Opportunity, Division of Community Development, Email to House Economic Development & Tourism Subcommittee staff – April 3, 2014. Email on file.
[90] Section 212.098(2), F.S.

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.[91]

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.[92]

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.[93] A business may not receive more than $500,000 of tax credits during any one calendar year.[94]

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.

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 the 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:[95]

- 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.

[91] Section 212.098(3), F.S.
[92] Section 212.098(4), F.S.
[93] Section 212.098(6)(c), F.S
[94] Section 212.098(6)(d), F.S
[95] Section 288.0656(6)(a), F.S.

- 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.
- 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 as a RACEC if it presents a unique economic development opportunity of regional impact.[96]

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.[97] 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.

Reemployment Assistance

Present Situation

Reemployment Assistance Overview

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.

Benefit Structure

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 Federal Unemployment Tax Act (FUTA) or the Social Security Act.[98] DEO is the agency responsible for administering the Reemployment Assistance Program (RA).[99]

[96] Section 288.0656(2)(d), F.S.
[97] Section 288.0656(7)(1), F.S.
[98] Title III, Title IX, and Title XII of the Social Security Act.
[99] Sections 20.60(5)(c)(3) and 443.171, F.S.

Qualified claimants may receive state reemployment benefits equal to 25 percent of their wages, not to exceed $6,325 in a benefit year.[100] 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.[101]

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 percent or higher, a claimant is eligible for up to a maximum of 23 weeks. If the Florida average unemployment rate is 5 percent or below, the maximum number of available weeks is 12. Each 0.5 percent increment in the unemployment rate above 5 percent adds an additional week of benefits.

To receive unemployment compensation benefits, claimants must meet certain monetary and non-monetary eligibility requirements.[102] 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

Florida's 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 FUTA.[103] 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.

Through FUTA, the Internal Revenue Service levies an unemployment tax of 6.0 percent 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 percent 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.[104]

An employer's initial state tax rate is 2.7 percent.[105] After an employer is subject to benefit charges for eight-calendar quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 0.1 percent.[106] The adjustment in the tax rate is determined by calculating a statutory formula that incorporates an employer's experience rating,[107] 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.

Initial Skills Review

After RA benefits eligibility has been established, a claimant must complete an initial skills review as a reporting requirement under s. 443.091, F.S. As established by DEO, the online initial skills review

[100] Section 443.111(5), F.S.
[101] Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday.
[102] Section 443.091(1), F.S.,
[103] Federal Unemployment Tax Act is codified at 26 U.S.C. 3301-3311.
[104] Section 443.1217(2), F.S.
[105] Section 443.131(2)(a), F.S.
[106] Section 443.131(3)(e)2.a., F.S.
[107] Section 443.131(3)(b), F.S.

assessment contains three required sections: applied mathematics, reading for information, and locating information. Test scores measure skill level by dividing each section into three proficiency levels, ranging from a minimum of three to a maximum of five.[108] The initial skills review administrator reports the results of the review to DEO and the appropriate workforce board or one-stop career center. The workforce board must develop a plan for referring individuals to training and employment opportunities.

Filing Claims

Initial and continued claims for benefits must be made by approved electronic means and in accordance with rules adopted by DEO. DEO is required to notify claimants and employers regarding monetary and nonmonetary determinations of eligibility.

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.[109] 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 DOR. This option expires after 2014.[110]

Effect of Proposed Changes

Initial Skills Review

The bill deletes the requirement that applicants for the RA Program must complete an initial skills review to receive benefits. The bill directs DEO to offer an online assessment that identifies an individual's skills, abilities, and career aptitude. The voluntary assessment must be made available to any person seeking services from a regional workforce board or a one-stop career center. The results of the online assessment must be made available to the claimant, the regional workforce board, and the CareerSource Center. The individual must be informed of and encouraged to participate in services, including career counseling, provision of skill match and job market information, skills upgrade, and other training opportunities offered at no cost to the individual through the CareerSource Center delivery service. The bill also deletes the definition of the term "initial skills review."

Aggregate data on the assessment outcomes may also be made available to Workforce Florida, Inc., also known as CareerSource Florida, and EFI for use in developing policies related to education and training programs to ensure that businesses in this state have access to a skilled and competent workforce.

DEO is authorized to contract with an entity to create the online assessment in accordance with competitive bidding requirements established pursuant to s. 287.057, F.S. The online assessment must work seamlessly with the Reemployment Assistance Claims and Benefits Information System also known as CONNECT.

Filing Claims

The bill directs DEO to provide an alternate means, such as telephone, for filing initial and continued claims for reemployment assistance when it determines that CONNECT is or will be unavailable for the filing of claims. DEO must provide public notice of the system's unavailability.

Installment Plans

[108] Scoring a "5," indicates foundational career readiness skills for on average 90 percent of jobs. Conversely, scoring a "3," indicates foundational career readiness skills for on average 30 percent of jobs.
[109] Section 443.141(1)(d), F.S.
[110] Section 443.141(1)(f), F.S.

The bill makes RA 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.

Short-Time Compensation

Present Situation

Short-time compensation (STC) is a state-voluntary RA Program[111] 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. [112]

STC Plans

Employers wishing to participate in the STC program are required to submit a STC plan proposal to DEO for approval.[113] DEO will approve a proposed plan if all of the following conditions[114] 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-season or as a subsidy to employers who traditionally use part-time employees.
- The plan certifies the manner in which the employer will treat fringe benefits[115] 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 only eligible to receive STC benefits for any week 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.,[116] and the ratio of the number of normal weekly

[111] Section 443.1116, F.S.
[112] 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 (Last visited March 4, 2014).
[113] Section 443.1116(2), F.S.
[114] Section 443.1116(2)(a)-(h), F.S.
[115] 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.

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 2012[117] (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 $5.9 million in 2012 to improve its existing STC program.[118] 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.[119]

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.[120]

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 Act[121] 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.

Development of Regional Impact Statewide Guidelines and Standards

Present Situation

Florida law defines a development of regional impact (DRI) as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." The law, which was originally created by the Legislature in 1972, provides for both state and regional review of local land use decisions involving DRIs.

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[116] 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.
[117] Public Law No: 112-96.
[118] 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).
[119] *Id*.
[120] 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).
[121] Public Law 105-220.

Developments that meet the DRI thresholds and standards provided by law[122] and the rules adopted by the Administration Commission[123] are required to undergo DRI review, unless the Legislature has provided an exemption, the development is located within a dense urban land area (DULA), or is located in a planning area receiving a legislative exemption such as a sector plan or rural land stewardship area.[124]

The types of developments required to undergo DRI review upon meeting the specified thresholds and standards include certain airports, attraction and recreation facilities, office development, retail and service development, multiuse development, residential development, schools, and recreational vehicle development.[125]

Aggregation

State law provides that the impacts of two or more purportedly separate developments that nonetheless share a unified plan of development should be aggregated during the DRI designation process.[126] The criteria for identifying projects subject to aggregation include whether:

- the same person owns or controls the developments;
- common management exists controlling the form of physical development or disposition of the parcels of the developments;
- a reasonable closeness in time exists between the completion of 80 percent of one development and submission of the master plan for the other development;
- a master plan or series of plans or drawings exists that covers the developments; and
- a common advertising scheme or promotional plan is in effect for the developments.

Aggregation is not applicable when the following circumstances and provisions of ch. 380, F.S., apply:

- Developments which are otherwise subject to aggregation with a DRI which has received approval through the issuance of a final development order cannot be aggregated with the approved DRI. However, the state land planning agency is not prohibited from evaluating an allegedly separate development as a substantial deviation[127] or as an independent DRI.
- Two or more developments, each of which is independently a DRI that has or will obtain a development order pursuant to s. 380.06, F.S.
- Completion of any development that has been vested pursuant to laws relating to areas of critical state concern[128] or DRIs, including vested rights arising out of agreements entered into with the state land planning agency for purposes of resolving vested rights issues. DRI review of additions to vested DRIs must not include review of the impacts resulting from the vested portions of the development.
- The developments sought to be aggregated were authorized to commence development prior to September 1, 1988, and could not have been required to be aggregated under the law existing prior to that date.

DRI Exemptions

[122] Section 380.0651, F.S.
[123] Chapter 28-24, F.A.C., Land Planning – Part II Developments Presumed to be of Regional Impact.
[124] Section 380.06, F.S., authorizes the exemption of several types of developments from DRI review. *See* s. 380.06(24), F.S.; and s. 55, ch. 2011-139, L.O.F.
[125] *See* s. 380.0651, F.S., relating to statewide standards and guidelines.
[126] Section 380.0651(4), F.S.
[127] Section 380.06(19), F.S., provides the specific criteria which constitute a substantial deviation and require a development to be subject to additional review. The numerical standards are also automatically increased if a project is job-creating or located wholly within an urban infill and redevelopment area. During the 2011 Session, the Legislature increased the substantial deviation standards by approximately 50 percent for attraction or recreational facilities, office development, and commercial development. Section 380.06(19), F.S., also specifies changes that individually or cumulatively with any previous changes are not substantial deviations.
[128] *See* s. 380.05, F.S.

The Legislature has exempted many types of development from DRI review.[129] The Legislature has also exempted projects from DRI review within certain counties and municipalities that qualify as a DULA.[130] Currently, eight counties and 242 cities meet, or have met, the population and density criteria necessary to qualify as a DULA.[131] The exemption for projects within a DULA reflects state policy to encourage development within urban areas, the increased sophistication of local planning staffs and the progress that larger, urban counties and municipalities have made in the area of large-scale land use planning since the DRI program was instituted in 1972. Additionally, the Legislature has provided two alternative large-scale planning tools known as the sector plan[132] and rural land stewardship program.[133] Large scale projects within a sector plan or rural land stewardship area are exempt from DRI review.

Exemptions for Dense Urban Land Areas

Under current law the following are exempt from DRI review as dense urban land areas (DULAs):[134]

- any proposed development in a municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;
- any proposed development within a county, including the municipalities located in the county, that has an average of at least 1,000 people per square mile of land area and is located within an urban service area as defined in s. 163.3164, F.S., which has been adopted into the comprehensive plan;
- any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan; or
- any proposed development within a county, including the municipalities located therein, which has a population of at least 1 million and is located within an urban service area as defined in s. 163.3164, F.S., which has been adopted into the comprehensive plan.

EDR annually calculates the population and density criteria needed to determine which jurisdictions meet the density criteria to be a DULA by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates. EDR submits a list of jurisdictions which meet the total population and density criteria to DEO.[135]

If a municipality that does not qualify as a DULA designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the DRI process:[136]

- urban infill;[137]
- community redevelopment areas;[138]
- downtown revitalization areas;[139]

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[129] *See* s.380.06(24), F.S.; ch. 2011-139, L.O.F., exempted from DRI review- movie theaters; industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities; and hotel or motel development.
[130] Section 380.06(29), F.S. (S*ee* section Dense Urban Land Areas).
[131] The following counties currently qualify as a DULA: Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas, and Seminole. For a complete list of municipalities qualifying as a DULA. *See* http://edr.state.fl.us/Content/local-government/reports/DULA-21June2013.pdf (Last Visited January 2, 2014).
[132] Section 163.3245, F.S.
[133] Section 163.3248, F.S.
[134] Section 380.06(29)(a), F.S.
[135] *Id*.
[136] Section 380.06(29)(b), F.S.
[137] *See* s. 163.3164, F.S.
[138] *See* s. 163.340, F.S.
[139] *See* s. 163.3164, F.S.

- urban infill and redevelopment;[140] or
- urban service areas[141] or areas within a designated urban service boundary.[142]

If a county that does not qualify as a dense urban land area designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the DRI process:[143]

- urban infill;
- urban infill and redevelopment; or
- urban service areas.

A development that is located partially outside an area that is exempt from the DRI review must undergo the DRI review. However, if the total acreage that is included within the area exempt from DRI review exceeds 85 percent of the total acreage and square footage of the approved DRI, then the DRI development order may be rescinded in both local governments unless the portion of the development outside the exempt area meets the threshold criteria of a DRI.[144]

Effect of Proposed Changes

The bill provides that aggregation is not applicable for any development which qualifies for an exemption from the DRI review process under the provisions of law relating to DULAs as provided pursuant to s. 380.06(29), F.S.

Thus, two or more of such developments that qualify as a DULA and are not required to undergo the DRI Review process would be prohibited from being aggregated and treated as a single development when they are determined to be part of a unified plan of development and are physically close in proximity to one another.

Two-year Extensions for Building and Development Permits

Present Situation

In 2009,[145] the Legislature provided a retroactive two-year extension and renewal from the date of expiration for:

- any permit issued by the Department of Environmental Protection (DEP) or a water management district (WMD) under Part IV of ch. 373, F.S.;
- any development order issued by the Department of Community Affairs[146] pursuant to s. 380.06, F.S.; and
- any development order, building permit, or other land use approval issued by a local government that expired on or after September 1, 2008, but before January 1, 2012.

The extension applied to phase, commencement, and buildout dates, including a buildout date extension previously granted under s. 380.016(19)(c), F.S., for development orders and land use approvals, including but not limited to certificates of concurrency and development agreements.

[140] *See* s. 163.2517, F.S.
[141] *See* s. 163.3164, F.S.
[142] *See* s. 163.3177(14), F.S.
[143] Section 380.06(29)(c), F.S.
[144] Section 380.06(29)(d), F.S.
[145] Section 14, ch. 2009-96, L.O.F. (CS/CS/SB 360 by Policy and Steering Committee on Ways and Means; Community Affairs; Bennett and others)
[146] Most of the programs administered by the Department of Community Affairs are now administered by the Department of Economic Opportunity. *See* ch. 2011-142, L.O.F.

Those requesting an extension were required to notify the authorizing agency in writing. The notification was required to specify which permit was intended to be extended, and the timeframe for acting on the authorization. Requests were due no later than December 31, 2009.[147]

The extension did not apply to a permit or authorization:

- under a programmatic or regional general permit issued by the United States Army Corps of Engineers;
- for owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension; and
- that would delay or prevent compliance with a court order if extended.

The rules in place at the time the initial permit or authorization was issued applied to the extension. Modifications to the permits and authorizations were also governed by rules in place at the time the permit or authorization was issued. However, a modification could not extend the time limit beyond two years.[148]

In 2010,[149] the Legislature reauthorized the two-year time extension granted in 2009 because the underlying law was being challenged in court.[150] Entities requesting an extension and renewal of the permit were required to notify the authorizing agency in writing.[151]

Chapter 2010-147, L.O.F., also extended and renewed the expiration date for permits that expired between September 1, 2008, and January 1, 2012. This extension was in addition to the extension granted in 2009 and applied to the same types of permits. The permit holder was required to request the extension in writing from DEP no later than December 31, 2010. The request was to include the authorization the permit holder intended to use the extension for and the timeframe for acting on the authorization.[152]

In 2011, the Legislature extended and renewed the permits that were previously extended in 2009 and 2010 for an additional two years from their previously scheduled expiration date. The permit holder was required to request the extension in writing from DEP no later than December 31, 2011. The request was to include the authorization the permit holder intended to use the extension for and the timeframe for acting on the authorization.[153]

The legislation included a provision to extend and renew a building permit or environmental resource permit that had an expiration date of January 1, 2012, through January 1, 2014. The extension included any development order or building permit issued by a local government, including certificates or levels of services. The extension was in addition to any existing permit extension. DRI order extensions under s. 380.06(19)(c)2., F.S., were not eligible for this extension and any permit that received a cumulative extension of four years due to previous extension was not eligible for this extension.[154]

In 2012,[155] the Legislature again provided that any building permit, and any permit issued by the DEP or a WMD, which has an expiration date from January 1, 2012, through January 1, 2014, is extended and

[147] *Id*.
[148] *Id*.
[149] Sections 46 and 47, ch. 2010-147, L.O.F. (CS/SB 1752 by Policy and Steering Committee on Ways and Means; Gaetz and others).
[150] CS/CS/SB 360 codified as ch. 2009-96, L.O.F., was challenged by a group of local governments. The lawsuit, filed in Leon County Circuit Court was based on two counts: violation of the single subject provision in Article III, section 6 of the Florida Constitution and a violation of Article VII, section 18(a) charging the law constituted an unfunded mandate. *See* City of Weston v. Crist, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).
[151] Section 46, ch. 2010-147, L.O.F.
[152] Section 46, ch. 2010-147, L.O.F.
[153] Section 79, ch. 2011-139, L.O.F.
[154] *Id*.
[155] Section 24, ch. 2012-

renewed for two years after its previously scheduled date of expiration. The extension included any local government-issued development order or building permit including certificates of levels of service. This does not prohibit conversion from the construction phase to the operation phase upon completion of construction. Any permit extensions granted pursuant to this section, section 14 of chapter 2009-96, L.O.F. (as reauthorized by section 47 of chapter 2010-147, L.O.F.), section 46 of chapter 2012-147, L.O.F., or section 74 or section 79 of chapter 2011-139, L.O.F., must not exceed four years in total.

Effect of Proposed Changes

The bill creates an unnumbered section of Florida law to extend and renew the permit extensions from previous years. The bill extends the expiration date by two years for any environmental resource permit issued by DEP or a WMD with an expiration date from January 1, 2014, through January 1, 2016. The extension includes local government-issued development orders or building permits, including certificates of level of service. The bill does not prohibit the conversion from the construction phase to the operation phase upon completion of construction. The extension is in addition to any existing permit extensions; however, the total permit extension time for this bill or the 2009,[156] 2010,[157] 2011,[158] and 2012[159] extensions cannot exceed four years in total.

The bill requires that the dates for commencement and completion of any required mitigation associated with a phased construction project are also extended so that mitigation occurs in the same timeframe relative to the phase as originally permitted. The eligible permit holder must notify the authorizing agency in writing by December 31, 2014.

The extension provided by the bill does not apply to:

- a permit or authorization under a programmatic or regional permit issued by the United States Army Corps of Engineers;
- a permit or authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization; or
- a permit authorization that would be out of compliance with a court order if extended.

The bill provides that permits extended under this section are subject to the rules in effect at the time the permit was issued, unless the rules would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit, which lessens the environmental impact. A modification cannot extend the time limit beyond two additional years.

The bill does not prevent a county or municipality from requiring a property owner that has requested an extension to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws.

Triumph Gulf Coast, Inc.

Present Situation

In 2013, the Legislature established Triumph Gulf Coast, Inc., to manage, distribute, and assess the use of certain funds related to the Deepwater Horizon oil spill. Triumph Gulf Coast, Inc., is organized as a nonprofit corporation, administratively housed within DEO. The corporation is a separate entity from state government and not subject to control, supervision, or direction of DEO.

[156] *See* s. 14, ch. 2009-96, L.O.F.
[157] See ss. 46 or 47, ch. 2010-47, L.O.F.;
[158] *See* ss. 73 or 79, ch. 2011-139, L.O.F.
[159] *See* s. 24, ch. 2012-205, L.O.F.

Triumph Gulf Coast, Inc., is required to administer the Recovery Fund and all programs created under the Gulf Coast Economic Corridor Act in a transparent manner and in accordance with all applicable laws, bylaws, or contractual requirements. Further, the corporation is required to monitor, review, and evaluate awardees and related projects or programs. The evaluation process must be used to determine funding priorities and determine whether an award should be reauthorized or terminated. The corporation is also required to maintain a website that provides information related to meetings, issuance of awards, and the status of projects and programs.

A 5-member board of directors governs Triumph Gulf Coast, Inc. The board is composed of individuals from the private sector, with the Trustees of the State Board of Administration, the President of the Senate, and the Speaker of the House of Representatives each appointing one member to the board.[160] The board is required to meet at least quarterly to:

- review the Recovery Fund;
- establish priorities for economic recovery in disproportionately affected counties; and
- determine how available earnings are used.

In addition to the powers and duties prescribed in ch. 617, F.S., and in the articles and bylaws of the corporation, the board of directors may:

- enter into certain contracts or instruments;
- make expenditures from earnings consistent with the board's powers;
- adopt, use, and alter a common corporate seal; and
- in certain cases, use the state seal for certain standard corporate identity applications.

Effect of Proposed Changes

The bill clarifies that the Auditor General is directed to conduct an operational audit of the Recovery Fund and Triumph Gulf Coast, Inc., annually and further provides that Triumph Gulf Coast, Inc., must retain an independent certified auditor to annually audit the expenditure of the earnings and available principal disbursed by Triumph Gulf Coast, Inc.

The bill provides that the terms of the initial board of directors for Triumph Gulf Coast, Inc., begin upon a legislative appropriation of funds to the Recovery Fund. The bill also provides that the initial appointments to the board of directors by the President of the Senate and the Speaker of the House of Representatives will be for a term of five years to achieve staggered terms. The remaining initial appointments will each serve a four-year term. The bill provides that the certified public accountant that Triumph Gulf Coast, Inc., retains must annually audit its financial records.

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.[161] 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.[162] Space Florida[163] 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;

[160] The Governor, the Chief Financial Officer, and the Attorney General are the Trustees of the State Board of Administration.
[161] Section 331.3011(1), F.S.
[162] Section 331.3011(2), F.S.
[163] Space Florida was created by ch. 2006-60, L.O.F., and codified in ch. 331, F.S.

- 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; and
- 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.[164]

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.[165] 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.[166] Securing funding for aerospace related infrastructure is one of the many duties and responsibilities of the board of directors.[167]

The Space Florida Act defines "launch support facilities" as "facilities located at launch sites or launch ranges that are required to support launch activities, including launch vehicle assembly, launch vehicle operations and control, communications, and flight safety functions, as well as payload operations, control, and processing."

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.[168]

Additionally, the bill authorizes, rather than requires, Space Florida to develop a proposal for a Center of Excellence for Aerospace.[169] 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.

The bill provides that Space Florida must carry out its responsibility for research and development by supporting universities in the state that are members of the Federal Aviation Administrations' Center of Excellence for Commercial Space Transportation to assure a safe, environmentally compatible, and efficient commercial space transportation system.

The bill authorizes the Department of Transportation, in consultation with Space Florida, to fund strategic spaceport launch facilities investment projects at up to 100 percent of the project's costs if:

- important access and on-spaceport and commercial launch facility capacity improvements are made;
- capital improvements that strategically position the state to maximize opportunities in international trade are achieved;
- goals of an integrated intermodal transportation system for the state are achieved; and

[164] *Id*.
[165] *Id*.
[166] Section 331.3081, F.S.
[167] Section 331.310(1)(d), F.S.
[168] Section 331.3051(5), F.S.
[169] Section 331.3051(8)(b), F.S.

- feasibility and availability of matching funds through federal, local, or private partners are demonstrated.

Florida Defense Support Task Force

Present Situation

In 2011,[170] 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.[171]

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.[172] The executive director of DEO, or his or her designee, serves as the ex officio, nonvoting executive director of the task force.[173] In 2012, the task force conducted 10 meetings and one conference call. In 2013, the task force conducted 9 meetings.[174]

DEO is required to contract with the task force for the expenditure of appropriated funds, which may be used by the task force for:[175]

- economic and product research and development;
- 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[170] Section 38, ch. 2011-76, L.O.F.
[171] Section 288.987(2), F.S.
[172] Section 288.987(3), F.S.
[173] Section 288.987(5), F.S.
[174] 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).
[175] Section 288.987(7), F.S.

Rural Job Tax Credit

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.

Florida Defense Support Task Force

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:

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:

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 DOR.

Florida Microfinance Act

The bill appropriates $10 million in nonrecurring funds from the General Revenue Fund for the 2014-2015 fiscal year to DEO to implement the programs created by the act. From these nonrecurring funds,

DEO and EFI may spend up to $100,000 to market and promote the programs created by the act. For the 2014-2015 fiscal year, one full-time equivalent position is authorized with $55,000 of salary rate, and $64,759 of recurring funds and $3,018 of nonrecurring funds from the State Economic Enhancement and Development Trust Fund, $12,931 of recurring funds and $604 of nonrecurring funds from the Tourism Promotional Trust Fund, and $3,233 of recurring funds and $151 of nonrecurring funds from the Florida International Trade and Promotion Trust Fund are appropriated to DEO to implement the programs created by the act.