



Economic Development & Tourism Subcommittee

**Tuesday, March 22, 2011
12:00 PM
12 HOB**

**Dean Cannon
Speaker**

**Doug Holder
Chair**



The Florida House of Representatives

Economic Affairs Committee

Economic Development & Tourism Subcommittee

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AGENDA

12 HOB

Tuesday, March 22, 2011, 12:00 pm

I. CALL TO ORDER AND WELCOME REMARKS

II. CONSIDERATION OF THE FOLLOWING BILLS:

HB 143 Tax Credits by Workman

HB 493 TAX ON SALES, USE & OTHER TRANSACTIONS BY BRODEUR, PATRONIS, ABRUZZO

HB 669 ENTERPRISE ZONES BY WORKMAN

HB 671 RESEARCH AND DEVELOPMENT TAX CREDITS BY WORKMAN

HB 725 ENTERPRISE ZONES BY PERMAN

HB 873 CORPORATE TAX CREDITS FOR SPACEFLIGHT PROJECTS BY CRISAFULLI

HB 1069 CAPITAL INVESTMENT TAX CREDITS BY DORWORTH

HB 1301 ECONOMIC DEVELOPMENT BY NELSON

HB 1309 ECONOMIC RECOVERY FROM THE DEEPWATER HORIZON DISASTER BY COLEY

HB 1425 STATE MINIMUM WAGE BY TOBIA

III. CONSIDERATION OF THE FOLLOWING PROPOSED COMMITTEE BILL(S):

PCB EDTS 11-02 -- Department of Labor and Employment Security

PCB EDTS 11-03 -- Florida-Caribbean Basin Trade Initiative

PCB EDTS 11-04 -- Florida Trade Data Center

PCB EDTS 11-05 -- Microenterprises

PCB EDTS 11-06 -- United States Department of Defense Base Realignment Closure 2005 Process

PCB EDTS 11-07 -- Inner City Redevelopment Review Panel

PCB EDTS 11-08 -- Telecommunications Company Workers

PCB EDTS 11-09 -- Agency for Workforce Innovation

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 143 Tax Credits
SPONSOR(S): Workman and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 790

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Tecler AD	Kruse MK
2) Finance & Tax Committee			
3) Appropriations Committee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

Numerous changes have occurred in the space industry as NASA has moved towards the end of the space shuttle program. These changes have serious economic consequences for the space industry in the state and associated jobs in those businesses. Members of Congress, the Governor, Space Florida, Brevard County, economic development organizations, as well as many others have been looking for solutions to alleviate those consequences, including the expected loss in jobs (estimated to be 9,000), and the changes made to NASA's human space flight plans.

The bill creates s. 220.1811, F.S., which authorizes an aerospace-sector jobs tax credit and tuition reimbursement tax credit against state corporate income taxes, which may have the effect of encouraging private sector economic activity. The newly created statutes authorizing the aerospace-sector jobs tax credit and tuition reimbursement tax credit expire on December 31, 2021, with the exception of the carryover provisions.

The total amount of credits that may be granted for the aerospace-sector jobs tax credit and tuition reimbursement tax credit is \$2 million in any calendar year.

The bill has an effective date of January 1, 2012, for tax years beginning on or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

Numerous changes have occurred in the space industry as NASA has moved towards the end of the space shuttle program. These changes have serious economic consequences for the space industry in the state and associated jobs in those businesses. Members of Congress, the Governor, Space Florida, Brevard County, economic development organizations, as well as many others have been looking for solutions to alleviate those consequences, including the expected loss in jobs, and the changes made to NASA's human space flight plans.

Changes Made By the Bill

The bill creates s. 220.1811, F.S., which authorizes an aerospace-sector jobs tax credit and tuition reimbursement tax credit against state corporate income taxes. These credits are to be used for qualified employees employed or reemployed by aerospace businesses on or after January 1, 2012.

Definitions

The bill provides several definitions:

- "Aerospace business" means a business located in Florida that is engaged in the aerospace industry, as defined in s. 331.303, F.S.
 - "Aerospace" means the industry that designs and manufactures aircraft, rockets, missiles, spacecraft, satellites, space vehicles, space stations, space facilities or components thereof, and equipment, systems, facilities, simulators, programs, and related activities, including, but not limited to, the application of aerospace technologies in air-based, land-based, and sea-based platforms for commercial, civil, and defense purposes.
- "Qualified employee" means a resident of Florida who:
 - Is first employed or reemployed by an aerospace business on or after January 1, 2012;
 - Received an undergraduate or graduate degree from a nationally accredited college or university, a technical degree or certification related to aerospace from a technical training institution, or completed an aerospace development workforce training program coordinated by Workforce Florida, Inc.;
 - Is not an owner, partner, or majority stockholder of an aerospace business; and
 - Is employed for at least 6 months.
- "Tuition reimbursed to a qualified employee" means a lump-sum payment by an aerospace business to a qualified employee, which may not exceed the average annual tuition, as reported by the Board of Governors of the State University System, for a Florida resident who is a full-time undergraduate student enrolled in a public college or university. The term does not include the cost of books, fees, or room and board.

Tax Credits

The aerospace-sector jobs tax credit is equal to 10 percent of the compensation paid for the 1st through 5th years of employment for an eligible employee, with an annual limit of \$12,500 per employee. This credit applies only to wages subject to unemployment tax. If the credit is not fully used in any one year, the unused credit may be carried forward for up to 5 years.

The tuition reimbursement tax credit is equal to 50 percent of tuition reimbursed to a qualified employee in a tax year. The tuition reimbursed to a qualified employee is limited to a lump-sum payment by the aerospace business to a qualified employee, which cannot exceed the average annual tuition for a Florida resident enrolled at a public college or university as a full-time undergraduate student, and excludes the cost of books, fees, or room and board. For the 2010-2011 academic year, tuition per credit hour at Florida's public universities was \$95.67, but the average cost per credit hour of tuition

and required fees (including the tuition differential fee) was \$165, a difference of \$69.33 per credit hour.¹

The tuition reimbursement tax credit may be claimed only if the qualified employee was awarded an undergraduate or graduate degree, a technical certification, or a certification from a training program offered by Workforce Florida, Inc. within 1 year of starting employment with the aerospace business. The credit may be claimed within 4 years after employment of the qualified employment. If the credit is not fully used in any one year, the unused credit may be carried forward for up to 5 years.

Any single aerospace company may not claim more than \$200,000 in aerospace-sector jobs tax credits and tuition reimbursement tax credits in a calendar year. A business may not claim both an aerospace-sector jobs tax credit and a tuition reimbursement tax credit for the same qualified employee. The total amount of credits that may be granted for the aerospace-sector jobs tax credit and tuition reimbursement tax credit is \$2 million in any calendar year.

Carryover Provisions

The bill places limits on the carryover of tax credits. An aerospace business may not carryover more tax credits in an amended return than were claimed on the original return for the taxable year, but does not limit increases in the amount of credit claimed on an amended return due to the use of any credit amount previously carried over.

Application

Aerospace businesses must apply to the Department of Revenue for authorization to claim an aerospace-sector jobs tax credit or a tuition reimbursement tax credit. The application must be filed under oath, and must include a statement as to which type of tax credit the applicant is seeking for each qualified employee. If seeking the tuition reimbursement tax credit, the applicant must include the location of the school or training program from which the qualified employee received his or her degree or certification.

Penalties

The bill also provides penalties for misusing the tax credits. Any person who fraudulently claims the credits is liable for repayment of the credit, plus a mandatory penalty of 200 percent of the credit and interest at the rate provided in s. 220.807, F.S. In addition, the person commits a felony of the third degree, punishable as provided in s. 775.082, F.S.; s. 775.083, F.S; or s. 775.084, F.S. Any person who makes an underpayment of tax as a result of a grossly overstated claim of the credits also commits a felony of the third degree. The term "grossly overstated claim" means a claim in excess of 100 percent of the amount of tax credits allowed.

Rulemaking

The Department of Revenue is permitted to adopt rules to prescribe any necessary forms required to claim the aerospace-sector jobs tax credit and tuition reimbursement tax credit. The department is also given authorization to provide guidelines and procedures required to administer the program.

Expiration

The statutes authorizing the aerospace-sector jobs tax credit and tuition reimbursement tax credit expire on December 31, 2021, with the exception of the carryover provisions. After December 31, 2021, an aerospace business may not claim a new aerospace-space jobs tax credit or tuition reimbursement tax credit; however, an aerospace business may claim a credit from a previous year for up to five years after the credit was initially granted.

The bill amends s. 220.02, F.S., which establishes the order in which a corporate taxpayer may claim the research and development tax credit, compared to all other potential corporate income tax credits. The aerospace-sector jobs tax credit and tuition reimbursement tax credit are to be applied last.

¹Tuition and required fees for new students in main campus: http://www.flbog.org/about/_doc/budget/tuition/2010-11Fees.xls.
Cost per credit hour of tuition, out-of-state fee and local fees for 2010-2011 main campus and new students:
http://www.flbog.org/resources/factbooks/2009-2010/xls/t35_00_0910_F.xls. (last visited 03/16/2011).

The bill also amends s. 220.13, F.S., which defines the term "adjusted federal income." The bill adds the amount taken as an aerospace-sector jobs tax credit or tuition reimbursement tax credit to the adjusted federal income. As a result, a taxpayer will not receive both a credit and a deduction for the amount of the credit received under s. 220.1811, F.S.

The bill has an effective date of January 1, 2012, for tax years beginning on or after that date.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 220.02, F.S., relating to the order in which credits against the corporate income tax or the franchise tax are applied.
- Section 2:** Amends s. 220.13, F.S., redefining the term "adjusted federal income" to include credits issued under s. 220.1811, F.S.
- Section 3:** Creates s. 220.1811, F.S., relating to the aerospace-sector jobs tax credit and the tuition reimbursement tax credit.
- Section 4:** Provides an effective date of January 1, 2012, for tax years beginning on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimates the bill will have a negative recurring impact of \$2 million and a negative \$2 million cash impact in FY 2012-2013 and future years.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax credits provided by this bill may induce the expansion of eligible Florida companies and may attract out-of-state corporations to relocate to Florida.

D. FISCAL COMMENTS:

The total amount of credits that may be granted for the aerospace-sector jobs tax credit and tuition reimbursement tax credit is \$2 million in any calendar year. As credits may be carried forward to a subsequent year, this may result in more than \$2 million in credits being used in any calendar year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue is permitted to adopt rules to prescribe any necessary forms required to claim the aerospace-sector jobs tax credit and tuition reimbursement tax credit. The department is also given authorization to provide guidelines and procedures required to administer the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill may allow an aerospace business to count the same eligible employee that qualifies for tax credits under this bill toward other state business incentive programs.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to tax credits; amending s. 220.02, F.S.;
 3 revising the priority of tax credits that may be taken
 4 against the corporate income tax or the franchise tax;
 5 amending s. 220.13, F.S.; redefining the term "adjusted
 6 federal income" to include the amount of certain tax
 7 credits; creating s. 220.1811, F.S.; authorizing
 8 aerospace-sector jobs tax credits and tuition
 9 reimbursement tax credits; defining terms; authorizing a
 10 tax credit to aerospace businesses based on the salary or
 11 tuition reimbursed to certain employees; specifying the
 12 maximum annual amount of tax credits for an aerospace
 13 business; limiting the annual amount of tax credits
 14 available; prohibiting a business from claiming an
 15 aerospace-sector jobs tax credit and a tuition
 16 reimbursement tax credit for the same employee; providing
 17 for the Department of Revenue to approve applications for
 18 tax credits; prohibiting increases in the amount of unused
 19 tax credits carried over in amended tax returns; providing
 20 fines and criminal penalties for certain unlawful claims
 21 of tax credits; authorizing the Department of Revenue to
 22 adopt rules; providing for the expiration of the tax
 23 credit program; providing for applicability; providing an
 24 effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Subsection (8) of section 220.02, Florida

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29 Statutes, is amended to read:

30 220.02 Legislative intent.—

31 (8) ~~It is the intent of the Legislature that~~ Credits
 32 against ~~either~~ the corporate income tax or the franchise tax
 33 shall be applied in the following order: those enumerated in s.
 34 631.828, those enumerated in s. 220.191, those enumerated in s.
 35 220.181, those enumerated in s. 220.183, those enumerated in s.
 36 220.182, those enumerated in s. 220.1895, those enumerated in s.
 37 221.02, those enumerated in s. 220.184, those enumerated in s.
 38 220.186, those enumerated in s. 220.1845, those enumerated in s.
 39 220.19, those enumerated in s. 220.185, those enumerated in s.
 40 220.1875, those enumerated in s. 220.192, those enumerated in s.
 41 220.193, those enumerated in s. 288.9916, those enumerated in s.
 42 220.1899, and those enumerated in s. 220.1896, and those
 43 enumerated in s. 220.1811.

44 Section 2. Paragraph (a) of subsection (1) of section
 45 220.13, Florida Statutes, is amended to read:

46 220.13 "Adjusted federal income" defined.—

47 (1) The term "adjusted federal income" means an amount
 48 equal to the taxpayer's taxable income as defined in subsection
 49 (2), or such taxable income of more than one taxpayer as
 50 provided in s. 220.131, for the taxable year, adjusted as
 51 follows:

52 (a) *Additions.*—There shall be added to such taxable
 53 income:

54 1. The amount of any tax upon or measured by income,
 55 excluding taxes based on gross receipts or revenues, paid or
 56 accrued as a liability to the District of Columbia or any state

57 of the United States which is deductible from gross income in
 58 the computation of taxable income for the taxable year.

59 2. The amount of interest which is excluded from taxable
 60 income under s. 103(a) of the Internal Revenue Code or any other
 61 federal law, less the associated expenses disallowed in the
 62 computation of taxable income under s. 265 of the Internal
 63 Revenue Code or any other law, excluding 60 percent of any
 64 amounts included in alternative minimum taxable income, as
 65 defined in s. 55(b)(2) of the Internal Revenue Code, if the
 66 taxpayer pays tax under s. 220.11(3).

67 3. In the case of a regulated investment company or real
 68 estate investment trust, an amount equal to the excess of the
 69 net long-term capital gain for the taxable year over the amount
 70 of the capital gain dividends attributable to the taxable year.

71 4. That portion of the wages or salaries paid or incurred
 72 for the taxable year which is equal to the amount of the credit
 73 allowable for the taxable year under s. 220.181. This
 74 subparagraph shall expire on the date specified in s. 290.016
 75 for the expiration of the Florida Enterprise Zone Act.

76 5. That portion of the ad valorem school taxes paid or
 77 incurred for the taxable year which is equal to the amount of
 78 the credit allowable for the taxable year under s. 220.182. This
 79 subparagraph shall expire on the date specified in s. 290.016
 80 for the expiration of the Florida Enterprise Zone Act.

81 6. The amount of emergency excise tax paid or accrued as a
 82 liability to this state under chapter 221 which tax is
 83 deductible from gross income in the computation of taxable
 84 income for the taxable year.

85 7. That portion of assessments to fund a guaranty
86 association incurred for the taxable year which is equal to the
87 amount of the credit allowable for the taxable year.

88 8. In the case of a nonprofit corporation which holds a
89 pari-mutuel permit and which is exempt from federal income tax
90 as a farmers' cooperative, an amount equal to the excess of the
91 gross income attributable to the pari-mutuel operations over the
92 attributable expenses for the taxable year.

93 9. The amount taken as a credit for the taxable year under
94 s. 220.1895.

95 10. Up to nine percent of the eligible basis of any
96 designated project which is equal to the credit allowable for
97 the taxable year under s. 220.185.

98 11. The amount taken as a credit for the taxable year
99 under s. 220.1875. The addition in this subparagraph is intended
100 to ensure that the same amount is not allowed for the tax
101 purposes of this state as both a deduction from income and a
102 credit against the tax. This addition is not intended to result
103 in adding the same expense back to income more than once.

104 12. The amount taken as a credit for the taxable year
105 under s. 220.192.

106 13. The amount taken as a credit for the taxable year
107 under s. 220.193.

108 14. Any portion of a qualified investment, as defined in
109 s. 288.9913, which is claimed as a deduction by the taxpayer and
110 taken as a credit against income tax pursuant to s. 288.9916.

111 15. The costs to acquire a tax credit pursuant to s.
112 288.1254(5) that are deducted from or otherwise reduce federal

113 taxable income for the taxable year.

114 16. The amount taken as a credit for the taxable year
 115 under s. 220.1811.

116 Section 3. Section 220.1811, Florida Statutes, is created
 117 to read:

118 220.1811 Aerospace-sector jobs tax credit and tuition
 119 reimbursement tax credit.-

120 (1) DEFINITIONS.-As used in this section, the term:

121 (a) "Aerospace business" means a business located in this
 122 state which is engaged in aerospace, as defined in s. 331.303.

123 (b) "Qualified employee" means a resident of this state
 124 who:

125 1. Is first employed or reemployed by an aerospace
 126 business on or after January 1, 2012;

127 2. Received an undergraduate or graduate degree from a
 128 college or university that is accredited by a national
 129 accrediting body; received a technical degree or certification
 130 related to aerospace from a technical training institution; or
 131 completed an aerospace development workforce training program
 132 coordinated by Workforce Florida, Inc.;

133 3. Is not an owner, partner, or majority stockholder of an
 134 aerospace business; and

135 4. Is employed for at least 6 months.

136 (c) "Tuition reimbursed to a qualified employee" means a
 137 lump-sum payment by an aerospace business to a qualified
 138 employee, which may not exceed the average annual tuition, as
 139 reported by the Board of Governors of the State University
 140 System, for a Florida resident who is a full-time undergraduate

141 student enrolled in a public college or university. The term
 142 does not include the cost of books, fees, or room and board.

143 (2) AEROSPACE-SECTOR JOBS TAX CREDIT.—

144 (a) A credit against the tax imposed under this chapter
 145 may be claimed by an aerospace business for compensation paid to
 146 a qualified employee.

147 (b) The credit authorized by this subsection shall equal
 148 10 percent of the compensation paid for the first through fifth
 149 years of employment in this state by an aerospace business.

150 (c) The credit authorized by this subsection may not
 151 exceed \$12,500 annually for each qualified employee.

152 (d) This credit applies only with respect to wages subject
 153 to unemployment tax.

154 (e) If the credit is not fully used in any one year, the
 155 unused amount may be carried forward for a period not to exceed
 156 5 years. The carryover credit may be used in a subsequent year
 157 if the tax imposed by this chapter for such year exceeds the
 158 credit for such year after applying the other credits and unused
 159 credit carryovers in the order provided in s. 220.02(8).

160 (3) TUITION REIMBURSEMENT TAX CREDIT.—

161 (a) A credit against the tax imposed under this chapter
 162 may be claimed by an aerospace business for 50 percent of
 163 tuition reimbursed to a qualified employee in a tax year.

164 (b) The credit may be claimed only if the qualified
 165 employee was awarded an undergraduate or graduate degree, a
 166 technical certification, or a certification from a training
 167 program coordinated by Workforce Florida, Inc., within 1 year
 168 after commencing employment with the business requesting the

169 credit, and may be claimed within 4 years after employment of
 170 the qualified employee.

171 (c) If this credit is not fully used in any one year, the
 172 unused amount may be carried forward for a period not to exceed
 173 5 years. The carryover credit may be used in a subsequent year
 174 if the tax imposed under this chapter for such year exceeds the
 175 credit for such year after applying the other credits and unused
 176 credit carryovers in the order provided in s. 220.02(8).

177 (4) MAXIMUM CREDITS FOR AN AEROSPACE BUSINESS.—The maximum
 178 amount of credits under this section which may be claimed by any
 179 single aerospace business in a calendar year is \$200,000.

180 (5) ANNUAL LIMIT ON TAX CREDITS.—The total amount of
 181 credits that may be granted under this section is \$2 million in
 182 any calendar year. A credit that is claimed after the \$2 million
 183 limit is reached shall be disallowed.

184 (6) DUPLICATION OF TAX CREDITS.—A business may not claim
 185 an aerospace-sector jobs tax credit and a tuition reimbursement
 186 tax credit for the same qualified employee.

187 (7) APPLICATION FOR TAX CREDITS.—

188 (a) An aerospace business must apply to the department for
 189 authorization to claim an aerospace-sector jobs tax credit or a
 190 tuition reimbursement tax credit. The application must be filed
 191 under oath and include:

192 1. The name and address of the business and documentation
 193 that the business is an aerospace business.

194 2. For each employee for which a tax credit is sought:

195 a. The employee's name and documentation that the employee
 196 is a qualified employee.

197 b. The salary or hourly wages, including the hourly wages
 198 subject to unemployment tax paid to the qualified employee.

199 c. The location of the community college, college,
 200 university, technical institution, or training program
 201 coordinated by Workforce Florida, Inc., from which the qualified
 202 employee received his or her degree or certification.

203 d. A statement as to whether the applicant is seeking an
 204 aerospace-sector jobs tax credit or a tuition reimbursement tax
 205 credit.

206 (b) The applicant for a tax credit has the burden of
 207 demonstrating to the satisfaction of the department that it
 208 meets the requirements of this section.

209 (8) LIMITS ON THE CARRY OVER OF TAX CREDITS.—An aerospace
 210 business may not carry over more tax credits in an amended
 211 return than were claimed on the original return for the taxable
 212 year. This subsection does not limit increases in the amount of
 213 credit claimed on an amended return due to the use of any credit
 214 amount previously carried over pursuant to paragraph (2)(e) or
 215 paragraph (3)(c).

216 (9) PENALTIES.—

217 (a) Any person who fraudulently claims a credit under this
 218 section is liable for repayment of the credit, plus a mandatory
 219 penalty in the amount of 200 percent of the credit, plus
 220 interest at the rate provided in s. 220.807, and commits a
 221 felony of the third degree, punishable as provided in s.
 222 775.082, s. 775.083, or s. 775.084.

223 (b) Any person who makes an underpayment of tax as a
 224 result of a grossly overstated claim for this credit commits a

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225 felony of the third degree, punishable as provided in s.
 226 775.082, s. 775.083, or s. 775.084. As used in this paragraph,
 227 the term "grossly overstated claim" means a claim in an amount
 228 in excess of 100 percent of the amount of credit allowable under
 229 this section.

230 (10) RULEMAKING.—The department may adopt rules to
 231 prescribe any necessary forms required to claim a tax credit
 232 under this section and to provide guidelines and procedures
 233 required to administer this section.

234 (11) EXPIRATION.—This section, except paragraphs (2)(e)
 235 and (3)(c) and subsection (8), expires December 31, 2021. An
 236 aerospace business may not claim a new tax credit under this
 237 section after that date. However, an aerospace business may
 238 claim tax credits carried over pursuant to paragraph (2)(e) or
 239 paragraph (3)(c).

240 Section 4. This act shall take effect January 1, 2012, and
 241 applies to tax years beginning on or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 493 Tax on Sales, Use & Other Transactions

SPONSOR(S): Brodeur and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 376

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Tecler <i>AT</i>	Kruse <i>MK</i>
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Legal disputes between online booking services and local governments have risen regarding the application of the tourist development tax. The bill clarifies that service fees for facilitating the booking of reservations for customers at transient accommodations is not taxable. Further, the bill states that amounts specifically collected as tax are county or state funds and must be remitted as tax. The bill also provides that the changes made by the bill do not affect lawsuits existing on the date the act becomes effective regarding the taxes amended by the act.

The Revenue Estimating Conference (REC) estimates that the revenue impacts of the bill are negative indeterminate for General Revenue and state trust fund revenue. The REC also estimates that the bill will reduce recurring local government revenues by \$28.7 million in FY 2011-2012, \$31.3 million in FY 2012-13, \$34.9 million in FY 2013-14, and \$36.6 million in FY 2014-15.

The bill may be a mandate requiring a 2/3 vote of the membership of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

Legal disputes between online booking services and local governments have risen regarding the application of the tourist development tax. The bill clarifies that service fees for facilitating the booking of reservations for customers at transient accommodations is not taxable.

Taxation of Transient Rentals

Transient rentals are rentals or leases of accommodations for 6 months or less and include stays in hotels, apartment houses, roominghouses, tourist or trailer camps, mobile home parks or recreational vehicle parks.¹

Currently, transient rentals are potentially subject to the following taxes:

1. **Local Option Tourist Development Taxes:** Current law authorizes five separate tourist development taxes on transient rental transactions. Section 125.0104(3)(a), F.S., provides that the local option tourist development tax is levied on the "total consideration charged for such lease or rental."
 - a. The tourist development tax may be levied at the rate of 1 or 2 percent.² Currently, 60 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.³
 - b. An additional tourist development tax of 1 percent may be levied.⁴ Currently 43 counties levy this tax; only 56 counties are currently eligible to levy this tax.⁵
 - c. A professional sports franchise facility tax may be levied up to an additional 1 percent on transient rental transactions.⁶ Currently 35 counties levy this additional tax; all 67 counties are eligible to levy this tax.⁷
 - d. A high tourism impact county may levy an additional 1 percent on transient rental transactions.⁸ Only Broward, Monroe, Orange, Osceola and Walton counties have been designated as high tourism impact counties eligible to impose this tax, but only Orange, Osceola and Monroe counties impose the tax.⁹
 - e. An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.¹⁰ Out of 65 eligible counties, 20 levy this tax.¹¹
2. **Local Option Tourist Impact Tax:** The local option tourist impact tax under s. 125.0108, F.S., is levied at the rate of 1 percent of the total consideration charged. Only Monroe County is eligible and does levy this tax in areas designated as areas of critical state concern because they created a land authority pursuant to s. 380.0663(1), F.S.¹²
3. **Local Convention Development Tax:** The convention development tax under s. 212.0305, F.S., is imposed on the total consideration charged for the transient rental. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent

¹ These accommodations are defined in s. 212.02(10), F.S. See also Rule 12A-1.061(2)(f), F.A.C.

² Section 125.0104(3)(c), F.S.

³ Florida Legislative Committee on Intergovernmental Relations. See <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/2011LOTTrates.pdf> (last visited 03/02/2011)

⁴ Section 125.0104(3)(d), F.S.

⁵ See fn. 3, supra.

⁶ Section 125.0104(3)(l), F.S.

⁷ See fn. 3, supra.

⁸ Section 125.0104(3)(m), F.S.

⁹ See fn. 3, supra.

¹⁰ Section 125.0104(3)(n), F.S.

¹¹ See fn. 3, supra.

¹² Id.

(Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII of the State Constitution that had a tourist advertising district on January 1, 1984, may levy the tax at up to 3 percent (Volusia County).¹³ No county authorized to levy this tax can levy more than 2 percent of the tourist development tax, excluding the professional sports franchise facility tax.¹⁴

4. **Municipal Resort Tax:** Certain municipalities may levy the municipal resort tax at a rate of up to 4 percent on transient rental transactions.¹⁵ The tourist development tax may not be levied in any municipality imposing the municipal resort tax. The tax is collected by the municipality. Currently only three municipalities in Miami-Dade county are eligible to impose the tax.
5. **State Sales Tax:** The state sales tax on transient rentals under s. 212.03, F.S., is levied in the amount of 6 percent of the "total rental charged" for the living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.

In general, the local taxes are adopted by ordinance, some of which must be approved by a referendum election of the voters of the county or area where the tax is to be levied. The local taxes on transient rentals are required to be remitted to Department of Revenue by the person receiving the consideration, unless a county has adopted an ordinance providing for local collection and administration of the tax.¹⁶ Further, the use of the proceeds from each tax may only be used as set forth in the authorizing statute.

Certain rentals or leases are exempt from the taxes; these include rentals to active-duty military personnel, full-time students, bona fide written leases for continuous residence longer than 6 months, and accommodations in migrant labor camps.¹⁷

Every person desiring to engage in or conduct business in this state as a dealer or to lease, rent, or let or grant licenses to use accommodations that are subject to tax under s. 212.03, F.S., must file with DOR an application for a certificate of registration for each place of business prior to engaging in such business.¹⁸ A separate application is required for each county where property is located. Agents, representatives, or management companies that collect and receive rent as the accommodation owner's representative are required to register as a dealer and collect and remit the applicable tax due on such rentals to the proper taxing authority.¹⁹

In addition to the certificate of registration, each newly registered dealer also receives an initial resale certificate from DOR. The resale certificate is renewed annually for dealers with an active sales tax account, and expires on December 31 each year.²⁰ An annual resale certificate allows registered dealers to make tax-exempt purchases or rentals of property or services for resale, including re-rental of transient rental property and resale of tangible personal property. The annual resale certificate may not be used to make tax-exempt purchases or rentals of property or services that:

- Will be used rather than resold or rented.
- Will be used before selling or renting the goods.
- Will be used by the business or for personal purposes.²¹

¹³ Id.

¹⁴ Section 125.0104(3)(b), (3)(l)4., and (3)(n)2., F.S.

¹⁵ Chapter 67-930, L.O.F., amended by chs. 82-142, 83-363, 93-286, and 94-344, L.O.F.

¹⁶ See e.g., ss. 125.0104(10) and 212.0305(5), F.S. Also known as "self-administering."

¹⁷ Section 212.03(7), F.S. See also ss. 125.0104(3)(a), 125.0108(1)(b), 212.0305(3)(a), F.S.

¹⁸ Section 212.18(3)(a), F.S.

¹⁹ Rule 12A-1.061(7), F.A.C.

²⁰ Section 212.18(3)(c), F.S.

²¹ Annual Resale Certificate for Sales Tax (Guidelines), at <http://dor.myflorida.com/dor/taxes/resale.html> (last visited 03/02/2011).

Rental of Accommodations Online²²

Some companies have websites that specialize in offering reservations of transient rental accommodations. These are generally independent third parties who act either as an agent or a merchant and are often referred to as "internet intermediaries" or some similar term. Travel agents have been allowed computerized access to search hotel room inventories and to book discounted hotel rooms in the name of, and for the account of, other people (i.e., as intermediaries) since the 1970s.

When an internet intermediary facilitates accommodation reservations acting as an agent, the intermediary is acting as a middle-man between the customer and the accommodation owner to reserve a room. Generally, the customer reserves a room with a credit card, and does not pay the hotel bill until check-out, at which point taxes are charged. In these circumstances, at the time of reservation online, the customer is typically advised that taxes may or may not be included in the total cost listed on the website. The accommodation owner compensates the agent with a commission based on the room rate set by the hotel. With this method, the room rate is subject to tax without any reduction for the commission paid. Agents do not arrange in advance of the customer's transaction to purchase room inventory at the hotel.

Generally speaking, when an internet intermediary acts as a merchant, it enters into a contract with an accommodation owner to offer rooms to the public. The accommodation owner agrees to make rooms available for reservation at a negotiated rate.²³ The merchant agrees to pay the owner the negotiated room rate and to also forward money it collects from the customer to pay applicable taxes. The merchant advertises a room rate on the website with disclosures for separate charges for "taxes and service fees" or some similar designation. The internet intermediary is the merchant of record for reservation of the room, and it initiates a charge to the customer's credit card for the full room rate plus the disclosed line items. The consumer receives confirmation of the reservation from the merchant. When the accommodation owner sends the merchant an invoice for the room after the consumer's stay, the merchant pays the negotiated room rate and the tax due on that amount.

The issue of on-line reservations of accommodations by internet intermediaries has surfaced as a result of two main factors: 1) the increase in reservations of accommodations through websites; and 2) tax laws that were adopted before the existence of internet intermediaries. There has been some dispute and question as to the proper amount against which state and local transient rental taxes are levied.

The Markup/Facilitation Fee/Service Fee

Internet intermediaries argue that the tourist development tax is measured by the amount paid to the accommodation owner or operator for the right to use the transient accommodation (negotiated rate) and that the facilitation fee²⁴ is not subject to tax because it is not an amount paid to the owner (generally the difference between the retail rate paid by the customer and the negotiated rate paid by the internet intermediary). They argue that the taxable incident is not the isolated receipt of the rental payment, but the exercise of the privilege – the assemblage of activities consistent with ownership. Under this line of reasoning, money received to facilitate a booking, process a reservation application, or provide a similar service, is not subject to tax when a company lacks an ownership interest in the accommodation. This position extends to the tax treatment of customer charges variously labeled as "tax reimbursements," "tax recovery charges," or "taxes and fees."

Local governments interpret the law such that internet intermediaries acting as merchants are sales tax dealers and that the total amount of each transaction is taxable. The internet intermediary acts in place of the accommodation owner in renting, leasing, or letting the real property, tangible personal property, and services as part of the accommodation. Local governments contend that dividing the sale of an accommodation reservation into discrete transactions ignores the sale's singular nature. They are

²² Information for this section was obtained from Interim Project 2005-131, Senate Committee on Government Efficiency Appropriations (Nov. 2004); and Issue Brief 2009-320, Senate Committee on Finance and Tax (Oct. 2008).

²³ The negotiated rate is also referred to as a discounted or wholesale price or rate.

²⁴ Also known as the "markup" or a "service fee." A facilitation fee generally involves money received to facilitate a booking, process a reservation application, or provide a similar service.

concerned that allowing intermediaries to shoehorn customary accommodation services into the non-taxable category will erode the tax base.

When Taxes Should Be Remitted

Internet intermediaries argue that the tax is not due at the time money is paid by the consumer. Instead, it should be remitted by the hotel or facility, as owner of the accommodation, once the negotiated room charge is forwarded to the owner after the consumer's stay. Local governments argue that transient rental tax is due at the time of collection, not later when the accommodation owner is paid the negotiated rate.

Florida Department of Revenue

DOR has not taken an official position on whether tax is due on the amount collected and retained by internet intermediaries. The department has not taken a position on whether tax is due on the additional charges variously labeled as "tax reimbursements," "tax recovery charges," or "taxes and fees." Additionally, DOR has not take a position on whether tax should be remitted at the time the customer pays for the reservation.

Litigation in Florida²⁵

Litigation over these matters has ensued, both across the country and across the state of Florida. The following are examples of cases in Florida being actively litigated:

Orange County²⁶

A Florida state court recently denied a summary judgment motion by Orange County and found that the fees charged by online travel companies to facilitate reservations "are not taxable matters" under the Orange County Tourist Development Tax ordinance. See *Orange County v. Expedia, Inc.*, 48-2006-CA-2104-O, Slip Op. at 23 (Fl. 9th Jud. Cir. Ct. Jan. 20, 2011).

Monroe County²⁷

A federal court class action lawsuit brought by Monroe County alleging that certain online travel companies are subject to taxation under Tourist Development Tax ordinances was recently dismissed after the parties entered into a class-wide settlement agreement. The Tourist Development Tax claims brought by the City of Jacksonville (on behalf of Duval County) and Miami-Dade County have been dismissed because of the Monroe County class settlement. The parties have also agreed to settle and dismiss another federal court lawsuit brought by Brevard County.

Others

Lawsuits relating to Tourist Development Tax sought by Leon County, Palm Beach County, Broward County, and Osceola County remain pending.

Compensation for Information Relating to a Violation of the Tax Laws

Section 213.30, F.S., permits the Executive Director of the Department of Revenue to compensate persons who provide information to the Department that leads to the punishment of or collection of taxes from any person or to the identification and registration of a noncompliant taxpayer. The statute provides the conditions under which compensation may be paid. Employees of the Department or any other state or federal agency may not be compensated.

Changes Made By the Bill

Legal disputes between online booking services and local governments have risen regarding the application of the tourist development tax. The bill clarifies that service fees for facilitating the booking of reservations for customers at transient accommodations is not taxable.

²⁵ Lawsuits in other states "are based on the specific language of each jurisdiction's taxing scheme and on the variety of causes of action pled...." *Orange County v. Expedia, Inc. et al.*, 985 So.2d 622, 630 (5th DCA, 2008), rehearing denied, *Expedia, Inc. v. Orange County*, 999 So.2d 644 (Fla., 2008) (unpublished disposition).

²⁶ Order on file with the House Subcommittee on Economic Development & Tourism.

²⁷ Order and settlement agreement on file with the House Subcommittee on Economic Development & Tourism.

Taxation

As described above, transient rentals are potentially subject to the following taxes:

- Local Option Tourist Development Taxes (imposed under s. 125.0104, F.S.)
- Local Option Tourist Impact Tax (imposed under s. 125.0108, F.S.)
- State Sales Tax (imposed under s. 212.03, F.S.)
- Local Convention Development Tax (imposed under s. 212.0305, F.S.)
- Municipal Resort Tax (imposed pursuant to Chapter 67-930, L.O.F.)

Sections 1, 2, 3, 4 and 6 of the bill amend each of these provisions of law in the same manner as follows:

“Consideration,” “rental,” and “rents” are defined as the amount received by a person operating transient accommodations, or the owner of such accommodations, for the use of any living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any transient accommodation. A “person operating transient accommodations” is defined as the person who conducts the daily affairs of the physical facilities furnishing transient accommodations who is responsible for providing any of the services commonly associated with operating the facilities furnishing transient accommodations, including providing physical access to such facilities, regardless of whether such commonly associated services are provided by unrelated persons. The terms do not include payments received by unrelated persons from the lessee, tenant or customer for facilitating the booking of reservations for or on behalf of the lessees, tenants or customers at transient accommodations. “Unrelated person” is defined as persons who are not related to the person operating transient accommodations, or the owner of such accommodations, within the meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal Revenue Code of 1986, as amended.

The bill also provides that a person who operates transient accommodations, or the owner of such accommodations, must separately state the tax from the consideration charged on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons who facilitate the booking of reservations who are unrelated persons are not required to separately state amounts charged on the receipt, invoice, or other documentation. Any amounts specifically collected as tax are county or state funds and must be remitted as tax.

Compensation for Information Relating to a Violation of the Tax Laws

The bill amends s. 213.30, F.S., to permit compensation to a county government for information leading to the punishment of or collection of transient rental sales tax from any person or the identification and registration of any person liable for transient rental sales tax. The bill provides the conditions under which compensation may be paid.

The bill states that provisions of the bill are clarifying and remedial in nature and do not provide a basis for assessments or refunds of tax for periods before the effective date. The bill also states that changes made by the bill do not affect lawsuits existing on the date the act becomes effective regarding the taxes amended by the act.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

- Section 1. Amends s. 125.0104(3), F.S., to provide definitions and to specify how taxes are to be stated on receipts, invoices or other documentation.
- Section 2. Amends s. 128.0108(1), F.S., to provide definitions and to specify how taxes are to be stated on receipts, invoices or other documentation.
- Section 3. Amends ss. 212.03(1) and (2), F.S., to provide definitions and to specify how taxes are to be stated on receipts, invoices or other documentation.

- Section 4. Amends s. 212.0305(3), F.S., to provide definitions and to specify how taxes are to be stated on receipts, invoices or other documentation.
- Section 5. Amends section 213.30, F.S., to also permit compensation to a county government for information leading to the punishment of or collection of transient rental sales tax from any person or the identification and registration of any person liable for transient rental sales tax. Provides the conditions under which compensation may be paid.
- Section 6. Amends ss. 1 and 3 of ch. 67-930, L.O.F., to provide definitions and to specify how taxes are to be stated on receipts, invoices or other documentation.
- Section 7. States that the bill does not provide a basis for assessments or refunds for periods before the effective date. Provides that the changes made by the bill do not affect certain lawsuits existing on the date this act becomes effective.
- Section 8. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimates that the impacts of the bill are negative indeterminate for General Revenue and state trust fund revenue.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates that the bill will reduce recurring local government revenues by \$28.7 million in FY 2011-2012, \$31.3 million in FY 2012-13, \$34.9 million in FY 2013-14, and \$36.6 million in FY 2014-15. However, the taxes are not currently collected.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may prevent consumers from paying higher taxes. The bill clarifies that amounts received by unrelated persons from the lessee, tenant or customer for facilitating the booking of reservations for or on behalf of the lessees, tenants or customers at transient accommodations is not taxable, which means the unrelated person does not have to pass on any tax costs to a consumer.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Section 18(b), Article VII of the State Constitution specifies that, "[e]xcept upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or

repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.”

Because of the impacts on local tourist development taxes, this bill reduces the authority that counties have to raise revenue. No exemption applies, therefore the bill may be a mandate requiring a 2/3 vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to the tax on sales, use, and other transactions; amending s. 125.0104, F.S.; providing definitions relating to the tourist development tax; providing separate statement of tax requirements; providing an exception; providing construction; amending s. 125.0108, F.S.; providing definitions relating to the tourist impact tax; providing separate statement of tax requirements; providing an exception; providing construction; amending s. 212.03, F.S.; providing definitions relating to the transient rentals tax; revising requirements for charging, collecting, and remitting the tax; providing requirements for separate statement of the tax on rental documents; amending s. 212.0305, F.S.; providing definitions relating to the convention development tax; revising requirements for charging, collecting, and remitting the tax; providing requirements for separate statement of the tax on rental documents; amending s. 213.30, F.S.; authorizing the Department of Revenue to compensate county governments for providing certain information to the department; specifying a payment amount; amending ss. 1 and 3, ch. 67-930, Laws of Florida, as amended; providing definitions relating to a municipal resort tax; providing separate statement of tax requirements; providing an exception; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraphs (a) and (f) of subsection (3) of section 125.0104, Florida Statutes, are amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

(a)1. It is declared to be the intent of the Legislature that every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, condominium, or timeshare resort for a term of 6 months or less is exercising a privilege which is subject to taxation under this section, unless such person rents, leases, or lets for consideration any living quarters or accommodations which are exempt according to the provisions of chapter 212.

2.a. Tax is ~~shall~~ be due on the consideration paid for occupancy in the county pursuant to a regulated short-term product, as defined in s. 721.05, or occupancy in the county pursuant to a product that would be deemed a regulated short-term product if the agreement to purchase the short-term right were executed in this state. Such tax shall be collected on the last day of occupancy within the county unless such consideration is applied to the purchase of a timeshare estate. The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program, as defined in s. 721.05, by the owner of a timeshare interest or such owner's guest, which

57 | guest is not paying monetary consideration to the owner or to a
 58 | third party for the benefit of the owner, is not a privilege
 59 | subject to taxation under this section. A membership or
 60 | transaction fee paid by a timeshare owner that does not provide
 61 | the timeshare owner with the right to occupy any specific
 62 | timeshare unit but merely provides the timeshare owner with the
 63 | opportunity to exchange a timeshare interest through an exchange
 64 | program is a service charge and not subject to taxation under
 65 | this section.

66 | ~~3.b.~~ Consideration paid for the purchase of a timeshare
 67 | license in a timeshare plan, as defined in s. 721.05, is rent
 68 | subject to taxation under this section.

69 | 4. As used in this section, the terms "consideration,"
 70 | "rental," and "rents" mean the amount received by a person
 71 | operating transient accommodations or the owner of such
 72 | accommodations for the use of any living quarters or sleeping or
 73 | housekeeping accommodations in, from, or a part of, or in
 74 | connection with, any hotel, apartment house, roominghouse,
 75 | timeshare resort, tourist or trailer camp, mobile home park,
 76 | recreational vehicle park, or condominium. The term "person
 77 | operating transient accommodations" means a person conducting
 78 | the daily affairs of the physical facilities furnishing
 79 | transient accommodations who is responsible for providing any of
 80 | the services commonly associated with operating the facilities
 81 | furnishing transient accommodations, including providing
 82 | physical access to such facilities, regardless of whether such
 83 | commonly associated services are provided by unrelated persons.
 84 | The terms "consideration," "rental," and "rents" do not include

85 payments received by unrelated persons from the lessee, tenant,
 86 or customer for facilitating the booking of reservations for or
 87 on behalf of the lessees, tenants, or customers at hotels,
 88 apartment houses, roominghouses, timeshare resorts, tourist or
 89 trailer camps, mobile home parks, recreational vehicle parks, or
 90 condominiums in this state. The term "unrelated persons" means
 91 persons who are not related to the person operating transient
 92 accommodations or to the owner of such accommodations within the
 93 meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal
 94 Revenue Code of 1986, as amended.

95 (f) The tourist development tax shall be charged by the
 96 person receiving the consideration for the lease or rental, and
 97 it shall be collected from the lessee, tenant, or customer at
 98 the time of payment of the consideration for such lease or
 99 rental. A person operating transient accommodations or the owner
 100 of such accommodations shall separately state the tax from the
 101 consideration charged on the receipt, invoice, or other
 102 documentation issued with respect to charges for transient
 103 accommodations. Persons who facilitate the booking of
 104 reservations who are unrelated persons with respect to a person
 105 who operates transient accommodations with respect to which the
 106 reservation is booked are not required to separately state
 107 amounts charged on the receipt, invoice, or other documentation.
 108 Any amounts specifically collected as tax are county funds and
 109 shall be remitted as tax.

110 Section 2. Section 125.0108, Florida Statutes, is amended
 111 to read:

112 125.0108 Areas of critical state concern; tourist impact

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113 tax.-

114 (1) (a) Subject to the provisions of this section, any
 115 county creating a land authority pursuant to s. 380.0663(1) is
 116 authorized to levy by ordinance, in the area or areas within
 117 said county designated as an area of critical state concern
 118 pursuant to chapter 380, a tourist impact tax on the taxable
 119 privileges described in paragraph (2) (a) ~~(b)~~; however, if the
 120 area or areas of critical state concern are greater than 50
 121 percent of the land area of the county, the tax may be levied
 122 throughout the entire county. Such tax shall not be effective
 123 unless and until land development regulations and a local
 124 comprehensive plan that meet the requirements of chapter 380
 125 have become effective and such tax is approved by referendum as
 126 provided for in subsection (6) ~~(5)~~.

127 (b) As used in this section, the terms "consideration,"
 128 "rental," and "rents" mean the amount received by a person
 129 operating transient accommodations or the owner of such
 130 accommodations for the use of any living quarters or sleeping or
 131 housekeeping accommodations in, from, or a part of, or in
 132 connection with, any hotel, apartment house, roominghouse,
 133 timeshare resort, tourist or trailer camp, mobile home park,
 134 recreational vehicle park, or condominium. The term "person
 135 operating transient accommodations" means a person conducting
 136 the daily affairs of the physical facilities furnishing
 137 transient accommodations who is responsible for providing any of
 138 the services commonly associated with operating the facilities
 139 furnishing transient accommodations, including providing
 140 physical access to such facilities, regardless of whether such

141 commonly associated services are provided by unrelated persons.
 142 The terms "consideration," "rental," and "rents" do not include
 143 payments received by unrelated persons from the lessee, tenant,
 144 or customer for facilitating the booking of reservations for or
 145 on behalf of the lessees, tenants, or customers at hotels,
 146 apartment houses, roominghouses, timeshare resorts, tourist or
 147 trailer camps, mobile home parks, recreational vehicle parks, or
 148 condominiums in this state. The term "unrelated persons" means
 149 persons who are not related to the person operating transient
 150 accommodations or to the owner of such accommodations within the
 151 meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal
 152 Revenue Code of 1986, as amended.

153 (2) (a) ~~(b)~~ 1. It is declared to be the intent of the
 154 Legislature that every person who rents, leases, or lets for
 155 consideration any living quarters or accommodations in any
 156 hotel, apartment hotel, motel, resort motel, apartment,
 157 apartment motel, roominghouse, mobile home park, recreational
 158 vehicle park, condominium, or timeshare resort for a term of 6
 159 months or less, unless such establishment is exempt from the tax
 160 imposed by s. 212.03, is exercising a taxable privilege on the
 161 proceeds therefrom under this section.

162 (b) 1.2.a. Tax shall be due on the consideration paid for
 163 occupancy in the county pursuant to a regulated short-term
 164 product, as defined in s. 721.05, or occupancy in the county
 165 pursuant to a product that would be deemed a regulated short-
 166 term product if the agreement to purchase the short-term right
 167 were executed in this state. Such tax shall be collected on the
 168 last day of occupancy within the county unless such

169 consideration is applied to the purchase of a timeshare estate.
 170 The occupancy of an accommodation of a timeshare resort pursuant
 171 to a timeshare plan, a multisite timeshare plan, or an exchange
 172 transaction in an exchange program, as defined in s. 721.05, by
 173 the owner of a timeshare interest or such owner's guest, which
 174 guest is not paying monetary consideration to the owner or to a
 175 third party for the benefit of the owner, is not a privilege
 176 subject to taxation under this section. A membership or
 177 transaction fee paid by a timeshare owner that does not provide
 178 the timeshare owner with the right to occupy any specific
 179 timeshare unit but merely provides the timeshare owner with the
 180 opportunity to exchange a timeshare interest through an exchange
 181 program is a service charge and not subject to taxation under
 182 this section.

183 2.b. Consideration paid for the purchase of a timeshare
 184 license in a timeshare plan, as defined in s. 721.05, is rent
 185 subject to taxation under this section.

186 (c) The governing board of the county may, by passage of a
 187 resolution by four-fifths vote, repeal such tax.

188 (d) The tourist impact tax shall be levied at the rate of
 189 1 percent of each dollar and major fraction thereof of the total
 190 consideration charged for such taxable privilege. When receipt
 191 of consideration is by way of property other than money, the tax
 192 shall be levied and imposed on the fair market value of such
 193 nonmonetary consideration.

194 (e) The tourist impact tax shall be in addition to any
 195 other tax imposed pursuant to chapter 212 and in addition to all
 196 other taxes and fees and the consideration for the taxable

197 | privilege.

198 | (f) The tourist impact tax shall be charged by the person
 199 | receiving the consideration for the taxable privilege, and it
 200 | shall be collected from the lessee, tenant, or customer at the
 201 | time of payment of the consideration for such taxable privilege.
 202 | A person operating transient accommodations or the owner of such
 203 | accommodations shall separately state the tax from the rental
 204 | charged on the receipt, invoice, or other documentation issued
 205 | with respect to charges for transient accommodations. Persons
 206 | who facilitate the booking of reservations who are unrelated
 207 | person with respect to a person who operates transient
 208 | accommodations with respect to which the reservation is booked
 209 | are not required to separately state amounts charged on the
 210 | receipt, invoice, or other documentation. Any amounts
 211 | specifically collected as tax are county funds and shall be
 212 | remitted as tax.

213 | (g) A county that has levied the tourist impact tax
 214 | authorized by this section in an area or areas designated as an
 215 | area of critical state concern for at least 20 consecutive years
 216 | prior to removal of the designation may continue to levy the
 217 | tourist impact tax in accordance with this section for 20 years
 218 | following removal of the designation. After expiration of the
 219 | 20-year period, a county may continue to levy the tourist impact
 220 | tax authorized by this section if the county adopts an ordinance
 221 | reauthorizing levy of the tax and the continued levy of the tax
 222 | is approved by referendum as provided for in subsection (6) ~~(5)~~.

223 | ~~(3)~~ ~~(2)~~ (a) The person receiving the consideration for such
 224 | taxable privilege and the person doing business within such area

225 or areas of critical state concern or within the entire county,
 226 as applicable, shall receive, account for, and remit the tourist
 227 impact tax to the Department of Revenue at the time and in the
 228 manner provided for persons who collect and remit taxes under
 229 chapter 212. The same duties and privileges imposed by chapter
 230 212 upon dealers in tangible property, respecting the collection
 231 and remission of tax; the making of returns; the keeping of
 232 books, records, and accounts; and compliance with the rules of
 233 the Department of Revenue in the administration of that chapter
 234 shall apply to and be binding upon all persons who are subject
 235 to the provisions of this section. However, the Department of
 236 Revenue may authorize a quarterly return and payment when the
 237 tax remitted by the dealer for the preceding quarter did not
 238 exceed \$25.

239 (b) The Department of Revenue shall keep records showing
 240 the amount of taxes collected, which records shall also include
 241 records disclosing the amount of taxes collected for and from
 242 each county in which the tax imposed and authorized by this
 243 section is applicable. These records shall be open for
 244 inspection during the regular office hours of the Department of
 245 Revenue, subject to the provisions of s. 213.053.

246 (c) Collections received by the Department of Revenue from
 247 the tax, less costs of administration of this section, shall be
 248 paid and returned monthly to the county and the land authority
 249 in accordance with the provisions of subsection (4) ~~(3)~~.

250 (d) The Department of Revenue is authorized to employ
 251 persons and incur other expenses for which funds are
 252 appropriated by the Legislature.

253 (e) The Department of Revenue is empowered to promulgate
 254 such rules and prescribe and publish such forms as may be
 255 necessary to effectuate the purposes of this section. The
 256 department is authorized to establish audit procedures and to
 257 assess for delinquent taxes.

258 (f) The estimated tax provisions contained in s. 212.11 do
 259 not apply to the administration of any tax levied under this
 260 section.

261 (4)~~(3)~~ All tax revenues received pursuant to this section,
 262 less administrative costs, shall be distributed as follows:

263 (a) Fifty percent shall be transferred to the land
 264 authority to be used to purchase property in the area of
 265 critical state concern for which the revenue is generated. An
 266 amount not to exceed 5 percent may be used for administration
 267 and other costs incident to such purchases.

268 (b) Fifty percent shall be distributed to the governing
 269 body of the county where the revenue was generated. Such
 270 proceeds shall be used to offset the loss of ad valorem taxes
 271 due to acquisitions provided for by this act.

272 (5)~~(4)~~(a) Any person who is taxable hereunder who fails or
 273 refuses to charge and collect from the person paying for the
 274 taxable privilege the taxes herein provided, either by himself
 275 or herself or through agents or employees, is, in addition to
 276 being personally liable for the payment of the tax, guilty of a
 277 misdemeanor of the second degree, punishable as provided in s.
 278 775.082 or s. 775.083.

279 (b) No person shall advertise or hold out to the public in
 280 any manner, directly or indirectly, that he or she will absorb

281 | all or any part of the tax; that he or she will relieve the
 282 | person paying for the taxable privilege of the payment of all or
 283 | any part of the tax; or that the tax will not be added to the
 284 | consideration for the taxable privilege or that, when added, the
 285 | tax or any part thereof will be refunded or refused, either
 286 | directly or indirectly, by any method whatsoever. Any person who
 287 | willfully violates any provision of this paragraph is guilty of
 288 | a misdemeanor of the second degree, punishable as provided in s.
 289 | 775.082 or s. 775.083.

290 | (c) The tax authorized to be levied by this section shall
 291 | constitute a lien on the property of the business, lessee,
 292 | customer, or tenant in the same manner as, and shall be
 293 | collectible as are, liens authorized and imposed in ss. 713.67,
 294 | 713.68, and 713.69.

295 | (6)~~(5)~~ The tourist impact tax authorized by this section
 296 | shall take effect only upon express approval by a majority vote
 297 | of those qualified electors in the area or areas of critical
 298 | state concern in the county seeking to levy such tax, voting in
 299 | a referendum to be held by the governing board of such county in
 300 | conjunction with a general or special election, in accordance
 301 | with the provisions of law relating to elections currently in
 302 | force. However, if the area or areas of critical state concern
 303 | are greater than 50 percent of the land area of the county and
 304 | the tax is to be imposed throughout the entire county, the tax
 305 | shall take effect only upon express approval of a majority of
 306 | the qualified electors of the county voting in such a
 307 | referendum.

308 | (7)~~(6)~~ The effective date of the levy and imposition of

309 the tourist impact tax authorized under this section shall be
 310 the first day of the second month following approval of the
 311 ordinance by referendum or the first day of any subsequent month
 312 as may be specified in the ordinance. A certified copy of the
 313 ordinance shall include the time period and the effective date
 314 of the tax levy and shall be furnished by the county to the
 315 Department of Revenue within 10 days after passing an ordinance
 316 levying such tax and again within 10 days after approval by
 317 referendum of such tax. If applicable, the county levying the
 318 tax shall provide the Department of Revenue with a list of the
 319 businesses in the area of critical state concern where the
 320 tourist impact tax is levied by zip code or other means of
 321 identification. Notwithstanding the provisions of s. 213.053,
 322 the Department of Revenue shall assist the county in compiling
 323 such list of businesses. The tourist impact tax, if not repealed
 324 sooner pursuant to paragraph (1)(c), shall be repealed 10 years
 325 after the date the area of critical state concern designation is
 326 removed.

327 Section 3. Paragraph (b) of subsection (1) and subsection
 328 (2) of section 212.03, Florida Statutes, are amended to read:

329 212.03 Transient rentals tax; rate, procedure,
 330 enforcement, exemptions.—

331 (1)

332 (b)1. Tax shall be due on the consideration paid for
 333 occupancy in the county pursuant to a regulated short-term
 334 product, as defined in s. 721.05, or occupancy in the county
 335 pursuant to a product that would be deemed a regulated short-
 336 term product if the agreement to purchase the short-term right

337 | was executed in this state. Such tax shall be collected on the
 338 | last day of occupancy within the county unless such
 339 | consideration is applied to the purchase of a timeshare estate.
 340 | The occupancy of an accommodation of a timeshare resort pursuant
 341 | to a timeshare plan, a multisite timeshare plan, or an exchange
 342 | transaction in an exchange program, as defined in s. 721.05, by
 343 | the owner of a timeshare interest or such owner's guest, which
 344 | guest is not paying monetary consideration to the owner or to a
 345 | third party for the benefit of the owner, is not a privilege
 346 | subject to taxation under this section. A membership or
 347 | transaction fee paid by a timeshare owner that does not provide
 348 | the timeshare owner with the right to occupy any specific
 349 | timeshare unit but merely provides the timeshare owner with the
 350 | opportunity to exchange a timeshare interest through an exchange
 351 | program is a service charge and not subject to taxation under
 352 | this section.

353 | 2. Consideration paid for the purchase of a timeshare
 354 | license in a timeshare plan, as defined in s. 721.05, is rent
 355 | subject to taxation under this section.

356 | 3. As used in this section, the terms "rent," "rental,"
 357 | "rentals," and "rental payments" mean the amount received by a
 358 | person operating transient accommodations or the owner of such
 359 | accommodations for the use of any living quarters or sleeping or
 360 | housekeeping accommodations in, from, or a part of, or in
 361 | connection with, any hotel, apartment house, roominghouse,
 362 | mobile home park, recreational vehicle park, condominium,
 363 | timeshare resort, or tourist or trailer camp. The term "person
 364 | operating transient accommodations" means a person conducting

365 the daily affairs of the physical facilities furnishing
 366 transient accommodations who is responsible for providing any of
 367 the services commonly associated with operating the facilities
 368 furnishing transient accommodations, including providing
 369 physical access to such facilities, regardless of whether such
 370 commonly associated services are provided by unrelated persons.
 371 The terms "rent," "rental," "rentals," and "rental payments" do
 372 not include payments received by unrelated persons from the
 373 lessee, tenant, customer, or licensee for facilitating the
 374 booking of reservations for or on behalf of the lessees,
 375 tenants, customers, or licensees at hotels, apartment houses,
 376 roominghouses, mobile home parks, recreational vehicle parks,
 377 condominiums, timeshare resorts, or tourist or trailer camps in
 378 this state. The term "unrelated persons" means persons who are
 379 not related to the person operating transient accommodations or
 380 to the owner of such accommodations within the meaning of s.
 381 1504, s. 267(b), or s. 707(b) of the Internal Revenue Code of
 382 1986, as amended.

383 (2) The tax provided for in this section ~~herein~~ shall be
 384 in addition to the total amount of the rental, shall be charged
 385 by any the lessor or person operating transient accommodations
 386 or the owner of such accommodations subject to the tax imposed
 387 under this chapter ~~receiving the rent~~ in and by such said rental
 388 arrangement to the lessee or person paying the rental, and shall
 389 be due and payable at the time of the receipt of such rental
 390 payment by the ~~lessor or person~~ operating the transient
 391 accommodations or the owner of such accommodations, ~~as defined~~
 392 ~~in this chapter, who receives said rental or payment.~~ The owner,

393 ~~lesser, or~~ person operating the transient accommodations or the
 394 owner of such accommodations ~~receiving the rent~~ shall remit the
 395 ~~tax~~ to the department the tax on the amount of the rent received
 396 by the person operating the transient accommodations or the
 397 owner of such accommodations at the times and in the manner
 398 hereinafter provided for dealers to remit taxes under this
 399 chapter. The same duties imposed by this chapter upon dealers in
 400 tangible personal property respecting the collection and
 401 remission of the tax; the making of returns; the keeping of
 402 books, records, and accounts; and the compliance with the rules
 403 and regulations of the department in the administration of this
 404 chapter shall apply to and be binding upon all persons who
 405 manage or operate hotels, apartment houses, roominghouses,
 406 tourist and trailer camps, and the rental of condominium units,
 407 and to all persons who collect or receive such rents on behalf
 408 of such owner or lessor taxable under this chapter. A person
 409 operating transient accommodations or the owner of such
 410 accommodations shall separately state the tax from the rental
 411 charged on the receipt, invoice, or other documentation issued
 412 with respect to charges for transient accommodations. Persons
 413 facilitating the booking of reservations who are unrelated to
 414 the person operating the transient accommodations in which the
 415 reservation is booked are not required to separately state
 416 amounts charged on the receipt, invoice, or other documentation
 417 issued by the person facilitating the booking of the
 418 reservation. Any amounts specifically collected as a tax are
 419 state funds and must be remitted as tax.

420 Section 4. Paragraphs (a) and (b) of subsection (3) of

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421 section 212.0305, Florida Statutes, are amended to read:

422 212.0305 Convention development taxes; intent;
 423 administration; authorization; use of proceeds.—

424 (3) APPLICATION; ADMINISTRATION; PENALTIES.—

425 (a)1. The convention development tax on transient rentals
 426 imposed by the governing body of any county authorized to so
 427 levy shall apply to the amount of any payment made by any person
 428 to rent, lease, or use for a period of 6 months or less any
 429 living quarters or accommodations in a hotel, apartment hotel,
 430 motel, resort motel, apartment, apartment motel, roominghouse,
 431 tourist or trailer camp, mobile home park, recreational vehicle
 432 park, condominium, or timeshare resort. When receipt of
 433 consideration is by way of property other than money, the tax
 434 shall be levied and imposed on the fair market value of such
 435 nonmonetary consideration. Any payment made by a person to rent,
 436 lease, or use any living quarters or accommodations which are
 437 exempt from the tax imposed under s. 212.03 shall likewise be
 438 exempt from any tax imposed under this section.

439 ~~2.a.~~ Tax shall be due on the consideration paid for
 440 occupancy in the county pursuant to a regulated short-term
 441 product, as defined in s. 721.05, or occupancy in the county
 442 pursuant to a product that would be deemed a regulated short-
 443 term product if the agreement to purchase the short-term right
 444 was executed in this state. Such tax shall be collected on the
 445 last day of occupancy within the county unless such
 446 consideration is applied to the purchase of a timeshare estate.
 447 The occupancy of an accommodation of a timeshare resort pursuant
 448 to a timeshare plan, a multisite timeshare plan, or an exchange

449 transaction in an exchange program, as defined in s. 721.05, by
 450 the owner of a timeshare interest or such owner's guest, which
 451 guest is not paying monetary consideration to the owner or to a
 452 third party for the benefit of the owner, is not a privilege
 453 subject to taxation under this section. A membership or
 454 transaction fee paid by a timeshare owner that does not provide
 455 the timeshare owner with the right to occupy any specific
 456 timeshare unit but merely provides the timeshare owner with the
 457 opportunity to exchange a timeshare interest through an exchange
 458 program is a service charge and not subject to taxation under
 459 this section.

460 ~~3.b.~~ Consideration paid for the purchase of a timeshare
 461 license in a timeshare plan, as defined in s. 721.05, is rent
 462 subject to taxation under this section.

463 4. As used in this section, the terms "consideration,"
 464 "rental," and "rents" mean the amount received by a person
 465 operating transient accommodations or the owner of such
 466 accommodations for the use of any living quarters or sleeping or
 467 housekeeping accommodations in, from, or a part of, or in
 468 connection with, any hotel, apartment house, roominghouse,
 469 timeshare resort, tourist or trailer camp, mobile home park,
 470 recreational vehicle park, or condominium. The term "person
 471 operating transient accommodations" means a person conducting
 472 the daily affairs of the physical facilities furnishing
 473 transient accommodations who is responsible for providing any of
 474 the services commonly associated with operating the facilities
 475 furnishing transient accommodations, including providing
 476 physical access to such facilities, regardless of whether such

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477 | commonly associated services are provided by unrelated persons.
 478 | The terms "consideration," "rental," and "rents" do not include
 479 | payments received by unrelated persons from the lessee, tenant,
 480 | or customer for facilitating the booking of reservations for or
 481 | on behalf of the lessees, tenants, or customers at hotels,
 482 | apartment houses, roominghouses, timeshare resorts, tourist or
 483 | trailer camps, mobile home parks, recreational vehicle parks, or
 484 | condominiums in this state. The term "unrelated persons" means
 485 | persons who are not related to the person operating transient
 486 | accommodations or to the owner of such accommodations within the
 487 | meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal
 488 | Revenue Code of 1986, as amended.

489 | (b) The tax shall be charged by the person receiving the
 490 | consideration for the lease or rental, and the tax shall be
 491 | collected from the lessee, tenant, or customer at the time of
 492 | payment of the consideration for such lease or rental. A person
 493 | operating transient accommodations or the owner of such
 494 | accommodations shall separately state the tax from the rental
 495 | charged on the receipt, invoice, or other documentation issued
 496 | with respect to charges for transient accommodations. Persons
 497 | facilitating the booking of reservations who are unrelated to
 498 | the person operating the transient accommodations in which the
 499 | reservation is booked are not required to separately state
 500 | amounts charged on the receipt, invoice, or other documentation
 501 | issued by the person facilitating the booking of the
 502 | reservation. Any amounts specifically collected as a tax are
 503 | county funds and must be remitted as tax.

504 | Section 5. Subsection (1) of section 213.30, Florida

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505 Statutes, is amended to read:

506 213.30 Compensation for information relating to a
507 violation of the tax laws.—

508 (1) The executive director of the department, pursuant to
509 rules adopted by the department, is authorized to compensate:

510 (a) A county government providing information to the
511 department leading to:

512 1. The punishment of, or collection of taxes, penalties,
513 or interest from, any person with respect to the tax imposed by
514 s. 212.03. The amount of any payment made under this
515 subparagraph may not exceed 10 percent of any tax, penalties, or
516 interest collected as a result of such information.

517 2. The identification and registration of a taxpayer who
518 is not in compliance with the registration requirements of s.
519 212.03. The amount of the payment made to any person who
520 provides information to the department which results in the
521 registration of a noncompliant taxpayer shall be \$100. The
522 reward authorized in this subparagraph shall be paid only if the
523 noncompliant taxpayer:

524 a. Is engaged in a bona fide taxable activity.

525 b. Is found by the department to have an unpaid tax
526 liability.

527 (b) Persons providing information to the department
528 leading to:

529 1. ~~(a)~~ The punishment of, or collection of taxes,
530 penalties, or interest from, any person with respect to the
531 taxes enumerated in s. 213.05. The amount of any payment made
532 under this ~~subparagraph~~ paragraph may not exceed 10 percent of

533 any tax, penalties, or interest collected as a result of such
 534 information.

535 2.~~(b)~~ The identification and registration of a taxpayer
 536 who is not in compliance with the registration requirements of
 537 any tax statute that is listed in s. 213.05. The amount of the
 538 payment made to any person who provides information to the
 539 department which results in the registration of a noncompliant
 540 taxpayer shall be \$100. The reward authorized in this
 541 subparagraph ~~paragraph~~ shall be paid only if the noncompliant
 542 taxpayer:

- 543 a.1. Conducts business from a permanent, fixed location.~~†~~
- 544 b.2. Is engaged in a bona fide taxable activity.~~† and~~
- 545 c.3. Is found by the department to have an unpaid tax
 546 liability.

547 Section 6. Sections 1 and 3 of chapter 67-930, Laws of
 548 Florida, as amended, are amended to read:

549 Section 1. All cities and towns, in counties of the state
 550 having a population of not less than three hundred thirty
 551 thousand (330,000) and not more than three hundred forty
 552 thousand (340,000) and in counties having a population of more
 553 than nine hundred thousand (900,000), according to the latest
 554 official decennial census, whose charter specifically provides
 555 now or whose charter is so amended prior to January 1, 1968, for
 556 the levy of the exact tax as herein set forth, are hereby given
 557 the right, power and authority by ordinance or impose, levy and
 558 collect a tax within their corporate limits, to be known as a
 559 municipal resort tax, upon the rent of every occupancy of a room
 560 or rooms in any hotel, motel, apartment house, rooming house,

561 | tourist or trailer camp, as the same are defined in part I,
 562 | chapter 212, Florida Statutes, and upon the retail sale price of
 563 | all items of food or beverages sold at retail, and of alcoholic
 564 | beverages sold at retail for consumption on the premises, at any
 565 | place of business required by law to be licensed by the state
 566 | hotel and restaurant commission or by the state beverage
 567 | department; provided, however, this tax shall not apply to those
 568 | sales the amount of which is less than fifty cents (50¢) nor to
 569 | sales of food or beverages delivered to a person's home under a
 570 | contract providing for deliveries on a regular schedule when the
 571 | price of each meal is less than \$10 ~~ten dollars~~. As used in this
 572 | section, the term "rent" means the amount received by a person
 573 | operating transient accommodations or the owner of such
 574 | accommodations for the use of any living quarters or sleeping or
 575 | housekeeping accommodations in, from, or a part of, or in
 576 | connection with, any hotel, apartment hotel, motel, resort
 577 | motel, apartment, roominghouse, timeshare resort, tourist or
 578 | trailer camp, mobile home park, recreational vehicle park, or
 579 | condominium. The term "person operating transient
 580 | accommodations" means a person conducting the daily affairs of
 581 | the physical facilities furnishing transient accommodations who
 582 | is responsible for providing any of the services commonly
 583 | associated with operating the facilities furnishing transient
 584 | accommodations, including providing physical access to such
 585 | facilities, regardless of whether such commonly associated
 586 | services are provided by unrelated persons. The term "rent" does
 587 | not include payments received by unrelated persons from the
 588 | lessee, tenant, or customer for facilitating the booking of

589 reservations for or on behalf of the lessees, tenants, or
 590 customers at hotels, apartment hotels, motels, resort motels,
 591 apartments, roominghouses, timeshare resorts, tourist or trailer
 592 camps, mobile home parks, recreational vehicle parks, or
 593 condominiums in this state. The term "unrelated persons" means
 594 persons who are not related to the person operating transient
 595 accommodations or to the owner of such accommodations, within
 596 the meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal
 597 Revenue Code of 1986, as amended.

598 Section 3. The tax imposed by this act shall be collected
 599 from the person paying said rent of said retail sales price and
 600 shall be paid by such person for the use of the city or town to
 601 the person operating transient accommodations or to the owner of
 602 such accommodations ~~collecting and receiving the rent or the~~
 603 retail sales price at the time of the payment thereof. It shall
 604 be the duty of every person operating transient accommodations
 605 or the owner of such accommodations ~~renting a room or rooms,~~ as
 606 herein provided, and of every person selling at retail food or
 607 beverages, or alcoholic beverages for consumption on the
 608 premises, as herein provided, in acting as the tax collection
 609 medium or agency of the city or town, to collect from the person
 610 paying the rent or the retail sales price, for the use of the
 611 city or town, the tax imposed and levied pursuant to this act,
 612 and to report and pay over to the city or town all such taxes
 613 imposed, levied and collected, in accordance with the accounting
 614 and other provisions of the enacted ordinance. All cities and
 615 towns collecting a resort tax pursuant to the provisions of this
 616 act shall have the same duties and privileges as the Department

617 of Revenue under part I of chapter 212, Florida Statutes, and
 618 may use any power granted to the Department of Revenue under
 619 part I of chapter 212, Florida Statutes, including enforcement
 620 and collection procedures and penalties imposed by part I of
 621 chapter 212, Florida Statutes, which shall be binding upon all
 622 persons and entities that are subject to the provisions of this
 623 act with regard to the municipal resort tax. A person operating
 624 transient accommodations or the owner of such accommodations
 625 shall separately state the tax from the rental charged on the
 626 receipt, invoice, or other documentation issued with respect to
 627 charges for transient accommodations. Persons who facilitate the
 628 booking of reservations who are unrelated persons with respect
 629 to a person who operates the transient accommodations with
 630 respect to which the reservation is booked are not required to
 631 separately state amounts charged on the receipt, invoice, or
 632 other documentation issued by the person facilitating the
 633 booking of the reservation. Any amounts specifically collected
 634 as a tax are city or town funds and shall be remitted as tax.

635 Section 7. This act is clarifying and remedial in nature
 636 and does not provide a basis for assessments or refunds of tax
 637 for periods before July 1, 2011. This act does not affect any
 638 lawsuit existing on July 1, 2011, relating to the taxes imposed
 639 by the provisions of law amended by this act.

640 Section 8. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 669 Enterprise Zones
SPONSOR(S): Workman and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1084

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Kruse <i>AK</i>	Kruse <i>AK</i>
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 59 enterprise zones.

The bill provides authority to the City of Palm Bay to apply to the Governor's Office of Tourism, Trade, and Economic Development for designation of an enterprise zone of up to 5 square miles, which may have the effect of stimulating private sector economic activity.

The bill has an insignificant fiscal impact on state and local revenue.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

ISSUE BACKGROUND

Enterprise Zones

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 59 enterprise zones.

Designation Process

Sections 290.001-290.016, F.S., authorize the creation of enterprise zones and establish criteria and goals for the program. Prior to submitting an application for an enterprise zone, a local government body must determine that an area:

- Has chronic extreme and unacceptable levels of poverty, unemployment, physical deterioration, and economic disinvestment;
- Needs rehabilitation or redevelopment for the public health, safety, and welfare of the residents in the county or municipality; and
- Can be revitalized through the inducement of the private sector.

An area nominated by a county or municipality, or a county and one or more municipalities together, for designation as an enterprise zone must meet the following criteria:

- The selected area does not exceed 20 square miles. The selected area must have a continuous boundary, or consist of not more than three noncontiguous parcels.
- The selected area does not exceed the following mileage limitation:
 - For communities having a total population of 150,000 persons or more, or for a rural enterprise zone, the selected area shall not exceed 20 square miles.
 - For communities having a total population of 50,000 persons or more but less than 150,000 persons, the selected area shall not exceed 10 square miles.
 - For communities having a total population of 20,000 persons or more but less than 50,000 persons, the selected area shall not exceed 5 square miles.
 - For communities having a total population of 7,500 persons or more but less than 20,000 persons, the selected area shall not exceed 3 square miles.
 - For communities having a total population of less than 7,500 persons, the selected area shall not exceed 3 square miles.¹

The Governor's Office of Tourism, Trade, and Economic Development (OTTED) is responsible for approving applications for enterprise zones, and also approves changes in enterprise zone boundaries when authorized by the Florida Legislature. As part of the application process for an enterprise zone, the county or municipality in which the designation will be located also is responsible for creating an Enterprise Zone Development Agency and an enterprise zone development plan.

As outlined in s. 290.0056, F.S., an Enterprise Zone Development Agency is required to have a board of commissioners of at least eight, and no more than 13, members. The agency has the following powers and responsibilities:

- Assisting in the development, implementation and annual review of the zone and updating the strategic plan or measurable goals;
- Identifying ways to remove regulatory burdens;
- Promoting the incentives to residents and businesses;

¹ Section 290.0055(4)(a) and (b), F.S.

- Recommending boundary changes;
- Working with nonprofit development organizations; and
- Ensuring the enterprise zone coordinator receives annual training and works with Enterprise Florida, Inc.

Pursuant to s. 290.0057, F.S., an enterprise zone development plan (or strategic plan) must accompany an application. At a minimum this plan must:

- Describe the community's goal in revitalizing the area;
- Describe how the community's social and human resources—transportation, housing, community development, public safety, and education and environmental concerns—will be addressed in a coordinated fashion;
- Identify key community goals and barriers;
- Outline how the community is a full partner in the process of developing and implementing this plan;
- Describe the commitment from the local governing body in enacting and maintaining local fiscal and regulatory incentives;
- Identify the amount of local and private resources available and the private/public partnerships;
- Indicate how local, state, and federal resources will all be utilized;
- Identify funding requested under any state or federal program to support the proposed development; and
- Identify baselines, methods, and benchmarks for measuring success of the plan.

Available Incentives

Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities. Examples of local incentives include: utility tax abatement, reduction of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.

Available state sales tax incentives for enterprise zones include:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain building materials, up to \$5,000 or 97 percent of the tax paid.
- Business Equipment Used in Enterprise Zones: Provides a refund for sales taxes paid on the purchase of certain equipment, up to \$5,000 or 97 percent of the tax paid.
- Rural Enterprise Zone Jobs Credit against Sales Tax: Provides a sales and use tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.
- Urban Enterprise Zone Jobs Credit against Sales Tax: Provides a sales and use tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.
- Business Property Used in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain business property, up to \$5,000 or 97 percent of the tax paid per parcel of property, which is used exclusively in an enterprise zone for at least 3 years.
- Community Contribution Tax Credit: Provides 50 percent sales tax refund for donations made to local community development projects.
- Electrical Energy Used in an Enterprise Zone: Provides 50 percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy.

Available state corporate income tax incentives for enterprise zones include:

- Rural Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.
- Urban Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.

- **Enterprise Zone Property Tax Credit:** Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
- **Community Contribution Tax Credit:** Provides a 50-percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects.

OPPAGA Report on Enterprise Zones

The Office of Program Policy Analysis and Government Accountability released a report in January 2011 finding that most enterprise zone activity occurs in a few number of counties. The report also found that program participation remains relatively low in most enterprise zones, which limits the progress toward achieving the legislative goals of revitalizing distressed areas and increasing employment of area residents. The report made several recommendations related to the viability of the program, suggesting that the Legislature could: 1. Encourage more participation by lowering incentive eligibility thresholds; 2. Focus on job creation by eliminating all incentives except jobs tax credits; 3. Suspend the program for a year; 4. Repeal the program entirely; or 5. Allow it to sunset under current law in 2015.²

Changes made by the bill

The bill provides authority to the City of Palm Bay to apply to OTTED for designation of an enterprise zone of up to 5 square miles. The City reports it has a population of over 100,000.³ If OTTED approves the application, OTTED determines the initial effective date of the enterprise zone.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Creates s. 290.00726, F.S., to provide the City of Palm Bay with authority to apply for an enterprise zone.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimated that the bill will have an insignificant impact on state revenue.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated that the bill will have an insignificant impact on local government revenue.

² Report no. 11-01-Few Businesses Take Advantage of Enterprise Zone Benefits; the Legislature Could Consider Several Options to Modify the Program, January 2011. Office of Program Policy Analysis and Government Accountability. Report on file with the Subcommittee.

³ City of Palm Bay website, <http://www.palmbayflorida.org/about/history.html> (last visited 3/19/2011).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact to the businesses and individuals that locate or already are located within the new enterprise zone, due to the incentives provided. Also, job-seekers could benefit from opportunities afforded them by businesses within the new enterprise zone.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate, however an exemption likely applies because the Revenue Estimating Conference estimated the fiscal impact on local government to be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to enterprise zones; creating s.
 3 290.00726, F.S.; authorizing the City of Palm Bay to apply
 4 to the Office of Tourism, Trade, and Economic Development
 5 for designation of an enterprise zone; providing an
 6 application deadline; providing requirements for the area
 7 of the enterprise zone; requiring the office to establish
 8 the effective date of the enterprise zone; providing an
 9 effective date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Section 290.00726, Florida Statutes, is created
 14 to read:

15 290.00726 Enterprise zone designation for the City of Palm
 16 Bay.—The City of Palm Bay may apply to the Office of Tourism,
 17 Trade, and Economic Development for designation of one
 18 enterprise zone for an area within the northeast portion of the
 19 city, which zone shall encompass an area up to 5 square miles.
 20 The application must be submitted by December 31, 2011, and must
 21 comply with the requirements of s. 290.0055. Notwithstanding s.
 22 290.0065 limiting the total number of enterprise zones
 23 designated and the number of enterprise zones within a
 24 population category, the Office of Tourism, Trade, and Economic
 25 Development may designate one enterprise zone under this
 26 section. The Office of Tourism, Trade, and Economic Development
 27 shall establish the initial effective date of the enterprise
 28 zone designated under this section.

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29

Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 671 Research and Development Tax Credits

SPONSOR(S): Workman and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 942

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Tecler <i>AT</i>	Kruse <i>MK</i>
2) Rulemaking & Regulation Subcommittee			
3) Finance & Tax Committee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

Thirty-two states and the federal government offer eligible businesses a research and development tax credit, which is intended to stimulate scientific or technological advances, leading to high-wage, high-skilled jobs. The bill creates a research and development tax credit against Florida corporate income taxes that is modeled after the federal research tax credit and incorporates some of its definitions, which may have the effect of stimulating private sector economic activity. The tax credit is equal to 10 percent of the difference between a company's qualified research and development expenditures in the current taxable year and its average research and development expenditures over the previous 4 tax years. The bill provides that the tax credit may not exceed 50 percent of a business' corporate tax liability in a tax year, and a business may carry forward, for up to 5 years, any unused tax credit. Unused tax credits may be transferred or sold to other business entities.

The bill directs the Department of Revenue to adopt rules to implement and administer the new research and development tax credit.

The bill has a negative recurring fiscal impact of \$15 million on state revenue.

The bill has an effective date of July 1, 2011, although tax credits cannot be used to offset corporate income taxes until January 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

Federal R&D Tax Credit

The "U.S. Research and Experimentation Tax Credit" was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost the competitiveness of U.S. businesses and encourage investment and savings by American taxpayers during a period of economic recession.¹ The federal tax credit expired on December 31, 2009. However, the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 reinstated the tax credit through tax year 2011.²

Over the years, the tax credit formula has been modified several times and the types of eligible expenses broadened. Under current law, "qualified research expenses" include:

- Wages paid to in-house research staff, supplies used in research activities (not including land, improvements to land or certain depreciable property) and
- Up to 65 percent of funds paid to contracted personnel for qualified research.³

"Qualified research" includes a company's expenditures that are technological in nature and which are intended to be useful in the development of a new or improved business process, product, software, formula, invention or other business component that will be used by the company or which the company intends to sell, license or lease.⁴

The federal tax credit is an incremental tax credit because a company is only rewarded if it increases its research and development spending over a predetermined base period. The amount of the federal tax credit that can be redeemed is determined by three different methods, depending in part on how long the company has been in business.

- Under the basic formula, the tax credit is equal to 20 percent of the current tax year's qualified research and development expenses over the base amount, which is calculated using a ratio of qualified research and development expenses and gross receipts during the period of 1984 through 1988.⁵
- Newer companies use simpler formulas that compare current year research and development spending with past years. Business entities that do not pay federal corporate income tax, such as "S" corporations and partnerships, are allowed to "pass-thru" their federal research credits to shareholders or partners, based on their shares in such business entities.⁶

State R&D Tax Credits

Thirty-two states have enacted a research and development tax credit.⁷ The majority of the states appear to use the federal definitions for credit eligibility and follow the federal formula for establishing a base time period. The statutory credit percentages range from Minnesota's 2.5 percent of the difference between current research and development expenses and the average from a past, fixed period, to Hawaii's non-incremental 20 percent tax credit on all qualified research and development

¹ "The U.S. Research and Experimentation Tax Credit in the 1990s" by Francisco Moris. National Science Foundation Report #NSF05-316, July 2005, <http://www.nsf.gov/statistics/infbrief/nsf05316/>, and "The Prospects for Economic Recovery," Congressional Budget Office, February 1982, <http://www.cbo.gov/ftpdocs/51xx/doc5135/doc03b-Part8.pdf>. (sites last visited 03/16/2011).

² P.L.111 - 312, December 17, 2010.

³ 26 U.S.C. s. 41(b).

⁴ 26 U.S.C. s. 41(d).

⁵ 26 U.S.C. s. 41(c).

⁶ 26 U.S.C. s. 41(g).

⁷ "Beggars thy Neighbor? The In-State, Out-of-State, and Aggregate Effects of R&D Tax Credits." Daniel J. Wilson of the Federal Reserve Bank of San Francisco, <http://www.frbsf.org/publications/economics/papers/2005/wp05-08bk.pdf>. (last visited 03/16/2011).

expenditures each year. All but three states use the federal tax credit's incremental approach to computing their research and development credits.

States with an R&D Tax Credit and the Maximum Statutory Credit Amount			
Arizona (11%)	Indiana (5%)	Missouri (6.5%)	Pennsylvania (10%)
California (15%)	Iowa (6.5%)	Montana (5%)	Rhode Island (16.9%)
Connecticut (6%)	Kansas (6.5%)	Nebraska (3%)	South Carolina (5%)
Delaware (10%)	Louisiana (8%)	New Jersey (10%)	Texas (5%)
Georgia (10%)	Maine (5%)	North Carolina (5%)	Utah (6%)
Hawaii (20%)	Maryland (10%)	North Dakota (4%)	Vermont (10%)
Idaho (5%)	Massachusetts (10%)	Ohio (7%)	West Virginia (10%)
Illinois (6.5%)	Minnesota (2.5%)	Oregon (5%)	Wisconsin (5%)

Source: Federal Reserve Bank of San Francisco, August 2007

Some states allow the tax credit to be taken only against their state income tax, while others allow it to be taken against a variety of state tax liabilities. Also, some states offer the highest tax credit rate to research and development activities done in conjunction with university partners, while others make no distinction.

Viewpoints on Research and Development Tax Credits⁸

Supporters of research and development tax credits say they are necessary to keep the United States competitive with other nations, to create high-wage jobs, and to fuel technological innovation in business and industry. Some economists have written research papers questioning the positive impact of research and development tax credits and whether they are cost-effective. The General Accounting Office has published reports in 1989 and in 1996 about the federal research tax credit that evaluate the tax credit's return on investment compared with foregone tax revenues.⁹

Statistics

According to research provided by Enterprise Florida, Inc., in 2005 Florida's per capita industry-performed research and development was roughly 31 percent of the national average. At 23 cents per capita, Florida's private-sector research and development expenditures is lower than several of its competitor states including New York (at 49 cents per capita), Virginia (58 cents per capita), North Carolina (59 cents per capita), California (\$1.40 per capita), and Massachusetts (\$2.07 per capita).

⁸ A sampling of sites with reports and other information in support of research and development tax credits include:

- "Boosting Technological Innovation through the Research and Experimentation Tax Credit." Robert D. Atkinson, Progressive Policy Institute. May 1999. http://www.ppionline.org/ppi_ci.cfm?knlgArealD=140&subsecID=293&contentID=1411.html;
- "The Research and Experimentation Tax Credit." Chris Edwards, The Tax Foundation. November 1993. <http://www.taxfoundation.org/publications/show/591.html>; and
- National Association of Manufacturers, <http://www.nam.org>.

A sampling of sites with reports that question the value of R&D tax credits as zero-sum, at best, include:

- "Does Government R&D Policy Mainly Benefit Scientists and Engineers?" Austan Goolsbee, National Bureau of Economic Research. April 1998. <http://www.nber.org/papers/w6532>;
- "Beggar thy Neighbor? The In-State, Out-of-State, and Aggregate Effects of R&D Tax Credits." Daniel J. Wilson, Federal Reserve Bank of San Francisco. <http://www.frbsf.org/publications/economics/papers/2005/wp05-08bk.pdf>; and
- "How Important is Business R&D for Economic Growth and Should the Government Subsidize it? Rachel Griffith, Institute for Fiscal Studies. <http://www.ifs.org.uk/bns/bn12.pdf>. (all sites were last visited on 03/16/2011).

⁹ GAO/GGD-89-114, <http://archive.gao.gov/d26t7/139607.pdf> and GAO/GGD-96-43, <http://www.gao.gov/archive/1996/gg96043.pdf>.

Similarly, private-sector research and development investment in Florida comprises a lower percentage of total research and development investment, at 64 percent, than the national average of 71 percent and that of several competitor states.

Changes Made By the Bill

The bill creates s. 220.194, F.S., which authorizes a research and development tax credit against state corporate income taxes. The tax credit is 10 percent of the difference between the current tax year's research and development expenditures and the average of research and development expenditures over the previous 4 tax years. However, if the business has existed fewer than 4 years, then the credit amount is reduced by 25 percent for each year the business did not exist within the 4-year base period.

Research & Development Tax Credit

Definitions

"Business Enterprise" means any corporation as defined in s. 220.03(1)(e) that is also a target industry business as defined in s. 288.106(2)(t).

"Target Industry Business" means a corporate headquarters business or any business that is engaged in one of the target industries identified by the Governor's Office of Tourism, Trade, and Economic Development, in consultation with Enterprise Florida, Inc.

"Qualified Research Expenses" are defined as research expenses qualifying for the federal credit under section 41 of the Internal Revenue Code for in-house or contract research expenses within Florida. Not eligible is research and development conducted out of state, research excluded by the federal code, and research and development conducted by a business enterprise that is not within its principal business activity.

Tax credit

The state tax credit taken in any tax year may not exceed 50 percent of the company's remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled have been applied.

Any unused credits may either be carried forward by the business that originally earned them for up to 5 years following the year in which the qualified research expenses were incurred, or they may be assigned or sold to another business enterprise for no less than 75 percent of their value. In the latter instance:

- The business that earned research and development tax credits may assign or sell them if it has not claimed the credits within one year of the Department of Revenue having approved them.
- The business entity that has been assigned the credits or has purchased them must use the credits in the tax year in which they were purchased or assigned.

The maximum amount of research and development credits that may be approved by the Department of Revenue during any calendar year is \$15 million. Applications may be filed with the Department on or after March 20th for qualified research expenses incurred within the preceding calendar year, and credits shall be granted in the order in which completed applications are received.

Rules

The Department is permitted to adopt rules related to its administration of this program, including, but not limited to, rules prescribing forms, application procedures and dates, and notification or other procedures for the sale or assignment of a credit. The Department may also establish guidelines for making an affirmative showing of credit and any evidence needed to substantiate a claim for credit under this section.

The bill also amends s. 220.02, F.S., which establishes the order in which a corporate taxpayer may claim the research and development tax credit, compared to all other potential corporate income tax credits. The research and development tax credit is to be applied last.

The bill has an effective date of July 1, 2011, for tax years beginning on or after January 1, 2012.

B. SECTION DIRECTORY:

Section 1: Amends s. 220.02, F.S., relating to the order in which credits against the corporate income tax or the franchise tax are applied.

Section 2: Creates s. 220.194, F.S., relating to a research and development tax credit.

Section 3: Provides an effective date of July 1, 2011, for tax years beginning on or after January 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference determined the bill will have negative fiscal impact of \$5 million in cash for FY 2011-2012 and negative \$15 million in cash for FYs 2012-2013, 2013-2014, and 2014-2015. Further, the conference adopted a negative annualized impact of \$15 million for FYs 2011-2012, 2012-2013, 2013-2014, and 2014-2015.

2. Expenditures:

The Department of Revenue estimates the bill will have an insignificant operational impact on the Department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax credits provided by this bill may induce the expansion of the research and development efforts of eligible Florida companies and may attract out-of-state corporations to relocate to Florida

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue is permitted to adopt rules related to its administration of this program, including, but not limited to, rules prescribing forms, application procedures and dates, and notification or other procedures for the sale or assignment of a credit. The Department may also establish guidelines for making an affirmative showing of credit and any evidence needed to substantiate a claim for credit under this section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is inconsistency in the use of the terms "credit year," "calendar year," and "taxable year."

The bill does not set filing deadlines or state the specific information to be provided in applying for the credit. While the bill does grant the Department of Revenue authority to adopt rules related to the administration of this program, the sponsor may wish to file an amendment adding those administrative provisions to comply with the current Administrative Procedures Act.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to research and development tax credits;
3 amending s. 220.02, F.S.; revising legislative intent to
4 include the research and development tax credit in the
5 ordered list according to which credits against corporate
6 income tax or franchise tax are applied; creating s.
7 220.194, F.S.; providing definitions; providing a research
8 and development tax credit of a specified amount for
9 application by a business enterprise against the corporate
10 income tax or franchise tax under certain circumstances;
11 providing a limitation on the amount of research and
12 development tax credit that may be applied by a business
13 enterprise against tax liability in a taxable year;
14 authorizing carryforward of the tax credit for a specified
15 period; authorizing the sale or assignment of the credit
16 to another business enterprise under certain
17 circumstances; limiting the total amount of research and
18 development tax credit available annually to all business
19 enterprises; providing for the filing of applications for
20 granting and approval of the tax credit by the Department
21 of Revenue; providing for priority in granting the tax
22 credit; authorizing the department to adopt rules;
23 providing applicability; providing an effective date.

24
25 WHEREAS, research and development have become the
26 underlying source of wealth in the 21st century by generating
27 ideas and technologies that encourage productivity and economic
28 growth, and

29 WHEREAS, corporations generate the main body of growth-
 30 stimulating innovations, and

31 WHEREAS, research and development tax credits provide
 32 incentives for corporate research and development beyond
 33 expected levels, and

34 WHEREAS, research shows that the federal research and
 35 development tax credit is an effective tool for stimulating
 36 additional research and development, which in turn leads to
 37 faster economic growth, and

38 WHEREAS, state research and development tax credit programs
 39 are nearly as important to corporate research and development as
 40 the federal research and development tax credit program, and

41 WHEREAS, the typical state research and development tax
 42 credit program increases general, corporate-funded research and
 43 development within a state, often enhancing the state's
 44 competitiveness by enabling a state to draw research and
 45 development activity away from other states, and

46 WHEREAS, this state needs a state research and development
 47 tax credit program to ensure economic competitiveness, and

48 WHEREAS, more than half of the states of this nation have a
 49 research and development tax credit program, and

50 WHEREAS, Florida lags behind the rest of the nation in
 51 important corporate research and development activities because
 52 the state does not have a research and development tax credit,
 53 and

54 WHEREAS, the Legislature must create a research and
 55 development tax credit in order to encourage corporate research
 56 and development activity within this state, level the playing

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57 | field with the state's regional and national economic
 58 | competitors, support the state's vibrant innovation economy, and
 59 | attract high-wage, professional research jobs to this state,
 60 | NOW, THEREFORE,

61 |

62 | Be It Enacted by the Legislature of the State of Florida:

63 |

64 | Section 1. Subsection (8) of section 220.02, Florida
 65 | Statutes, is amended to read:

66 | 220.02 Legislative intent.—

67 | (8) It is the intent of the Legislature that credits
 68 | against either the corporate income tax or the franchise tax be
 69 | applied in the following order: those enumerated in s. 631.828,
 70 | those enumerated in s. 220.191, those enumerated in s. 220.181,
 71 | those enumerated in s. 220.183, those enumerated in s. 220.182,
 72 | those enumerated in s. 220.1895, those enumerated in s. 221.02,
 73 | those enumerated in s. 220.184, those enumerated in s. 220.186,
 74 | those enumerated in s. 220.1845, those enumerated in s. 220.19,
 75 | those enumerated in s. 220.185, those enumerated in s. 220.1875,
 76 | those enumerated in s. 220.192, those enumerated in s. 220.193,
 77 | those enumerated in s. 288.9916, those enumerated in s.
 78 | 220.1899, ~~and~~ those enumerated in s. 220.1896, and those
 79 | enumerated in s. 220.194.

80 | Section 2. Section 220.194, Florida Statutes, is created
 81 | to read:

82 | 220.194 Research and development tax credit.—

83 | (1) DEFINITIONS.—As used in this section, the term:

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84 (a) "Base amount" means the average of the business
85 enterprise's qualified research expenses in this state allowed
86 under 26 U.S.C. s. 41 for the 4 taxable years preceding the
87 taxable year for which the credit is being determined. The
88 qualified research expenses taken into account in computing the
89 base amount shall be determined on a basis consistent with the
90 determination of qualified research expenses for the credit
91 year.

92 (b) "Base period" means the 4 taxable years preceding the
93 taxable year for which the credit is being determined.

94 (c) "Business enterprise" means any corporation as defined
95 in s. 220.03(1)(e) that is also a target industry business as
96 defined in s. 288.106(2)(t).

97 (d) "Qualified research expenses" means research expenses
98 qualifying for the credit under 26 U.S.C. s. 41 for in-house
99 research expenses incurred in this state or contract research
100 expenses incurred in this state. The term does not include
101 research conducted outside this state or research that is
102 excluded under 26 U.S.C. s. 41.

103 (2) TAX CREDIT.—Subject to the limitations contained in
104 paragraph (e), a business enterprise is eligible for a credit
105 against the tax imposed by this chapter if the business
106 enterprise has qualified research expenses in this state in the
107 calendar year exceeding the base amount and, for the same
108 calendar year, claims and is allowed a research credit for such
109 qualified research expenses under 26 U.S.C. s. 41.

110 (a) The tax credit shall be 10 percent of the excess
111 qualified research expenses over the base amount. However, the

112 maximum tax credit for a business enterprise that has not been
 113 in existence for the entire base period is reduced by 25 percent
 114 for each taxable year for which the business enterprise, or a
 115 predecessor corporation that was a business enterprise, did not
 116 exist during the base period.

117 (b) The credit taken in any single tax year may not exceed
 118 50 percent of the business enterprise's remaining net income tax
 119 liability under this chapter after all other credits have been
 120 applied under s. 220.02(8).

121 (c) Any unused credit authorized under this section may be
 122 carried forward and claimed by the taxpayer for up to 5 years
 123 after the close of the taxable year in which the qualified
 124 research expenses are incurred.

125 (d) Any unused credit authorized under this section may be
 126 assigned or sold to another business enterprise if a claim for
 127 the allowance has not been filed within 1 calendar year after
 128 the date on which the department approved the credit. The
 129 business enterprise selling the tax credit and the purchaser or
 130 assignee must file an application, waivers of confidentiality,
 131 and affidavits to transfer the credit on a form provided by the
 132 department and obtain the prior approval of the department for
 133 such transfer. The department may not unreasonably withhold such
 134 approval. The purchaser or assignee must use the tax credit in
 135 the taxable year in which the purchase or assignment of the
 136 credit is made. The transfer or purchase of any amount of the
 137 tax credit may not be exchanged for less than 75 percent of the
 138 credit's value.

139 (e) The combined total amount of tax credits that may be
 140 granted and approved to all business enterprises under this
 141 section during any calendar year is \$15 million. Applications
 142 may be filed with the department on or after March 20 for
 143 qualified research expenses incurred within the preceding
 144 calendar year, and credits shall be granted in the order in
 145 which completed applications are received.

146 (3) RULES.—The department may adopt rules to administer
 147 this section, including, but not limited to, rules prescribing
 148 forms, application procedures and dates, and notification or
 149 other procedures for the sale or assignment of a credit, and may
 150 establish guidelines for making an affirmative showing of
 151 qualification for a credit and any evidence needed to
 152 substantiate a claim for credit under this section.

153 Section 3. This act shall take effect July 1, 2011, and is
 154 effective for tax years beginning on or after January 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 725 Enterprise Zones
SPONSOR(S): Perman and others
TIED BILLS: IDEN./SIM. BILLS: SB 872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Kruse MK	Kruse MK
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 59 enterprise zones.

The bill provides authority to a governing body of a jurisdiction which nominated an application for an enterprise zone that includes a portion of the state designated as a RACEC to apply to OTTED to expand the boundary of the enterprise zone by up to 3 square miles. The intent of the bill is for the expansion to be applied to the enterprise zone in Belle Glade. The bill also provides authority to Martin County to apply to OTTED for designation of an enterprise zone of up to 10 square miles. These proposed enterprise zones may have the effect of stimulating private sector economic activity.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

ISSUE BACKGROUND

The bill provides authority to a governing body of a jurisdiction which nominated an application for an enterprise zone that includes a portion of the state designated as a RACEC to apply to OTTED to expand the boundary of the enterprise zone by up to 3 square miles. The intent of the bill is for the expansion to be applied to the enterprise zone in Belle Glade. The bill also provides authority to Martin County to apply to OTTED for designation of an enterprise zone of up to 10 square miles.

Enterprise Zones

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 59 enterprise zones.

Designation Process

Sections 290.001-290.016, F.S., authorize the creation of enterprise zones and establish criteria and goals for the program. Prior to submitting an application for an enterprise zone, a local government body must determine that an area:

- Has chronic extreme and unacceptable levels of poverty, unemployment, physical deterioration, and economic disinvestment;
- Needs rehabilitation or redevelopment for the public health, safety, and welfare of the residents in the county or municipality; and
- Can be revitalized through the inducement of the private sector.

The Governor's Office of Tourism, Trade, and Economic Development (OTTED) is responsible for approving applications for enterprise zones, and also approves changes in enterprise zone boundaries when authorized by the Florida Legislature. As part of the application process for an enterprise zone, the county or municipality in which the designation will be located also is responsible for creating an Enterprise Zone Development Agency and an enterprise zone development plan.

As outlined in s. 290.0056, F.S., an Enterprise Zone Development Agency is required to have a board of commissioners of at least eight, and no more than 13, members. The agency has the following powers and responsibilities:

- Assisting in the development, implementation and annual review of the zone and updating the strategic plan or measurable goals;
- Identifying ways to remove regulatory burdens;
- Promoting the incentives to residents and businesses;
- Recommending boundary changes;
- Working with nonprofit development organizations; and
- Ensuring the enterprise zone coordinator receives annual training and works with Enterprise Florida, Inc.

Pursuant to s. 290.0057, F.S., an enterprise zone development plan (or strategic plan) must accompany an application. At a minimum this plan must:

- Describe the community's goal in revitalizing the area;
- Describe how the community's social and human resources—transportation, housing, community development, public safety, and education and environmental concerns—will be addressed in a coordinated fashion;
- Identify key community goals and barriers;

- Outline how the community is a full partner in the process of developing and implementing this plan;
- Describe the commitment from the local governing body in enacting and maintaining local fiscal and regulatory incentives;
- Identify the amount of local and private resources available and the private/public partnerships;
- Indicate how local, state, and federal resources will all be utilized;
- Identify funding requested under any state or federal program to support the proposed development; and
- Identify baselines, methods, and benchmarks for measuring success of the plan.

Available Incentives

Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities. Examples of local incentives include: utility tax abatement, reduction of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.

Available state sales tax incentives for enterprise zones include:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain building materials, up to \$5,000 or 97 percent of the tax paid.
- Business Equipment Used in Enterprise Zones: Provides a refund for sales taxes paid on the purchase of certain equipment, up to \$5,000 or 97 percent of the tax paid.
- Rural Enterprise Zone Jobs Credit against Sales Tax: Provides a sales and use tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.
- Urban Enterprise Zone Jobs Credit against Sales Tax: Provides a sales and use tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.
- Business Property Used in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain business property, up to \$5,000 or 97 percent of the tax paid per parcel of property, which is used exclusively in an enterprise zone for at least 3 years.
- Community Contribution Tax Credit: Provides 50 percent sales tax refund for donations made to local community development projects.
- Electrical Energy Used in an Enterprise Zone: Provides 50 percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy.

Available state corporate income tax incentives for enterprise zones include:

- Rural Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.
- Urban Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.
- Enterprise Zone Property Tax Credit: Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
- Community Contribution Tax Credit: Provides a 50-percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects.

OPPAGA Report on Enterprise Zones

The Office of Program Policy Analysis and Government Accountability released a report in January 2011 finding that most enterprise zone activity occurs in a few number of counties. The report also found that program participation remains relatively low in most enterprise zones, which limits the progress toward achieving the legislative goals of revitalizing distressed areas and increasing employment of area residents. The report made several recommendations related to the viability of the program, suggesting that the Legislature could: 1. Encourage more participation by lowering incentive eligibility thresholds; 2. Focus on job creation by eliminating all incentives except jobs tax credits; 3.

Suspend the program for a year; 4. Repeal the program entirely; or 5. Allow it to sunset under current law in 2015.¹

REDI and RACECS

The Rural Economic Develop Initiative (REDI) was created by the Florida Legislature to encourage and align critical state agency participation and investment around important rural issues and opportunities.² In order to strengthen the regional wage and tax base in rural regions of the state, the Initiative facilitates the location and expansion of major economic development projects in rural communities. The initiative is operated by OTTED and involves the participation of all state and regional agencies to assist in meeting the needs of the rural areas.

Within REDI, the Governor may designate up to three Rural Areas of Critical Economic Concern ("RACEC")³. Most rural counties have been categorized into one of three RACECs: the North Central, the Northwest, and the South Central. RACECs are defined by OTTED based on measures of economic interdependence among the rural counties in each of the three geographic regions. A RACEC designation establishes each region as a priority assignment for REDI agencies and allows the Governor, through REDI, to waive criteria for certain economic development incentives including, but not limited to: the Qualified Target Industry Tax Refund Program, the Quick Response Training Program, the Rural Job Tax Credit program and certain transportation projects.⁴ RACEC counties in each region also partner in creating catalyst sites that will attract key businesses.

Changes made by the bill

The bill provides authority to a governing body of a jurisdiction which nominated an application for an enterprise zone that includes a portion of the state designated as a RACEC to apply to OTTED to expand the boundary of the enterprise zone by up to 3 square miles. The intent of the bill is for the expansion to be applied to the enterprise zone in Belle Glade. However, the bill language may allow other jurisdictions to apply for an expansion of their enterprise zones since the language could apply to those jurisdictions as well.

The bill also provides authority to Martin County to apply to OTTED for designation of an enterprise zone of up to 10 square miles. The bill requires that Martin County exclude residential condominiums from benefiting from state enterprise zone incentives unless prohibited by law. If OTTED approves the application, OTTED determines the initial effective date of the enterprise zone.

The bill provides an effective date of January 1, 2012.

B. SECTION DIRECTORY:

- Section 1. Amends s. 290.0055, F.S., to provide authority to a governing body to apply to expand an enterprise zone.
- Section 2. Creates s. 290.00726, F.S., to provide Marin County with authority to apply for an enterprise zone.
- Section 3. Provides an effective date of January 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹ Report no. 11-01-Few Businesses Take Advantage of Enterprise Zone Benefits; the Legislature Could Consider Several Options to Modify the Program, January 2011. Office of Program Policy Analysis and Government Accountability. Report on file with the Subcommittee.

² Section 288.0656, F.S.

³ Section 288.0656(7)(a-c), F.S.

⁴ Section 288.0656(7)(a), F.S.

1. Revenues:

The Revenue Estimating Conference (REC) has not yet estimated the bill's fiscal impact. However, based on a similar enterprise zone bill filed for the 2010 legislative session, the REC scored that bill with a total negative impact of \$300,000 on state revenue.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not yet estimated the bill's fiscal impact. However, based on a similar enterprise zone bill filed for the 2010 legislative session, the REC scored that bill as having no impact on local revenue.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact to the businesses and individuals that locate or already are located within the new enterprise zones, due to the incentives provided. Also, job-seekers could benefit from opportunities afforded them by businesses within the new enterprise zones.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Although not yet scored by the REC, it appears the mandates provision is not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to enterprise zones; amending s. 290.0055,
 3 F.S.; authorizing certain governing bodies to apply to the
 4 Office of Tourism, Trade, and Economic Development to
 5 amend the boundary of an enterprise zone that includes a
 6 rural area of critical economic concern; providing a
 7 limitation; authorizing the office to approve the
 8 amendment application subject to certain requirements;
 9 requiring that the office establish the effective date of
 10 certain enterprise zones; creating s. 290.00726, F.S.;
 11 authorizing Martin County to apply to the Office of
 12 Tourism, Trade, and Economic Development for designation
 13 of an enterprise zone; providing application requirements;
 14 authorizing the office to designate an enterprise zone in
 15 Martin County; providing responsibilities of the office;
 16 providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Paragraph (d) is added to subsection (6) of
 21 section 290.0055, Florida Statutes, to read:

22 290.0055 Local nominating procedure.—

23 (6)

24 (d)1. The governing body of a jurisdiction which nominated
 25 the application for an enterprise zone that includes a portion
 26 of the state designated as a rural area of critical economic
 27 concern pursuant to s. 288.0656(7) may apply to the Office of
 28 Tourism, Trade, and Economic Development to expand the boundary

29 of the enterprise zone by not more than 3 square miles. Such
 30 application must be submitted by December 31, 2012.

31 2. Notwithstanding the area limitations specified in
 32 subsection (4), the Office of Tourism, Trade, and Economic
 33 Development may approve the request for a boundary amendment if
 34 the area continues to satisfy the remaining requirements of this
 35 section.

36 3. The Office of Tourism, Trade, and Economic Development
 37 shall establish the initial effective date of an enterprise zone
 38 designated under this paragraph.

39 Section 2. Section 290.00726, Florida Statutes, is created
 40 to read:

41 290.00726 Enterprise zone designation for Martin County.-
 42 Martin County may apply to the Office of Tourism, Trade, and
 43 Economic Development for designation of one enterprise zone for
 44 an area within Martin County, which zone shall encompass an area
 45 up to 10 square miles consisting of land within the primary
 46 urban services boundary and focusing on Indiantown, but
 47 excluding property owned by Florida Power and Light to the west,
 48 two areas to the north designated as estate residential, and the
 49 county-owned Timer Powers Recreational Area. Within the
 50 designated enterprise zone, Martin County shall exempt
 51 residential condominiums from benefiting from state enterprise
 52 zone incentives, unless prohibited by law. The application must
 53 have been submitted by December 31, 2011, and must comply with
 54 the requirements of s. 290.0055. Notwithstanding s. 290.0065
 55 limiting the total number of enterprise zones designated and the
 56 number of enterprise zones within a population category, the

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57 | Office of Tourism, Trade, and Economic Development may designate
58 | one enterprise zone under this section. The Office of Tourism,
59 | Trade, and Economic Development shall establish the initial
60 | effective date of the enterprise zone designated pursuant to
61 | this section.

62 | Section 3. This act shall take effect January 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 873 Corporate Tax Credits for Spaceflight Projects

SPONSOR(S): Crisafulli and others

TIED BILLS: IDEN./SIM. BILLS: SB 1224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Tecler AT	Kruse RK
2) Rulemaking & Regulation Subcommittee			
3) Finance & Tax Committee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

Florida is expected to lose nearly 9,000 jobs directly associated with the retirement of the Space Shuttle program and the cancellation of its successor Constellation. State agencies, regional workforce boards and local economic development organizations are developing strategies to soften the impact of the downsizing of NASA's role in Florida by using incentives currently offered by the state to recruit businesses and encourage aerospace investment.

The bill may enhance this effort by providing a corporate income tax credit of up to \$1 million to spaceflight businesses. Further, the bill provides a transferable net operating loss tax credit of up to \$2.5 million that may provide a significant benefit to new spaceflight businesses. In order to claim a credit, a qualified spaceflight business must create at least 35 new jobs and invest at least \$15 million in a spaceflight project.

The tax credits are approved and issued on a first-come, first-served basis by the Office of Tourism, Trade, and Economic Development. No more than \$35 million in total for both tax credits can be issued in a single year. Tax credits may not be claimed prior to October 1, 2015.

The Revenue Estimating Conference adopted a negative annualized impact of \$25 million on state revenue. The conference's estimate includes a \$10 million negative annualized impact of for the non-transferable corporate income tax credit and a \$25 million negative annualized impact for the transferable net operating loss credit.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

With the retirement of the Space Shuttle program later this year, and the cancellation of its successor Constellation, Florida is expected to lose nearly 9,000 jobs directly associated with the program. The Office of Tourism, Trade and Economic Development, the Agency for Workforce Innovation, regional workforce boards and local economic development organizations are developing strategies to soften the impact on local economies, ranging from the recruitment of new companies to offering retraining in related fields. Space Florida, the state's aerospace policy and economic development entity, is coordinating the effort to make Florida the hub of the commercial spaceflight industry.

Incentives and Tax Exemptions Currently Available

Currently, several financial incentives and tax exemptions are available for qualified aerospace businesses including, but not limited to: Qualified Targeted Industry Tax Refund Program, Qualified Defense Contractor and Spaceflight Business Refund Program, and tax exemptions for spaceport and manufacturing machinery and equipment purchases.

Qualified Targeted Industry Tax Refund Program

In general, a qualified business must operate in a targeted industry and must meet certain job and wage requirements. Aerospace activity, including the manufacturing of space vehicles, satellite communication, and launch operations are targeted by this program. Businesses that locate or expand in Florida are eligible for tax refunds of \$3,000 per new job created. The tax refund increases to \$6,000 per job for businesses that locate in an enterprise zone or rural county. In addition, a business is eligible for a \$1,000 per job bonus if it pays over 150 percent of the average wage in the area, and a \$2,000 per job bonus if it exceeds 200 percent of the average wage. Qualified businesses may claim refunds on corporate income, sales, ad valorem, intangible personal property, insurance premium, and certain other taxes.

Qualified Defense Contractor and Spaceflight Business Refund Program (QDSC)

Pre-approved applicants in defense, homeland security, or space business industries creating or retaining jobs in Florida may receive tax refunds of \$3,000 per net new full-time equivalent job created or retained and \$6,000 in an Enterprise Zone or rural county for every net new full-time equivalent job created or retained. An additional \$1,000 per job is available for businesses paying 150 percent of the average annual wage, and an additional \$2,000 per job is available for businesses paying 200 percent of the average annual wage. A qualified defense contract or spaceflight business may claim refunds from, but not limited to: sales and use taxes, corporate income taxes, and insurance premium taxes.

Tax Exemptions for Machinery and Equipment Purchases

Qualified machinery and equipment used in aerospace manufacturing or spaceport activities are exempt from the sale and use tax imposed under ch. 212, F.S.¹ In addition, machinery and equipment purchases by spaceport and manufacturing businesses in excess of amounts spent in 2008 are refundable under s. 212.08(5)(b), F.S. The refund is capped at \$50,000 per business in a single year.

Changes Made By the Bill

The bill establishes a non-transferable corporate income tax credit intended to attract spaceflight businesses² to the state and encourage existing companies to expand or diversify into the aerospace sector. Further, the bill allows a spaceflight business to convert its net operating loss to a transferable

¹ Section 212.08(5)(b), F.S. and s. 212.08(5)(j), F.S.

² Spaceflight business is defined as a business:

- Registered with the Secretary of State to do business in Florida; and
- Currently engaged in a spaceflight project.

tax credit. Through this modification, spaceflight businesses can gain cash liquidity by selling this tax credit. This option could be especially beneficial to new or start-up space businesses that generally start operations in the red. The bill also provides an application process to earn and certify tax credits, clarifies audit procedures, and requires an annual report to the Governor and the Legislature. Section 220.194, F.S., is created to implement the program.

Tax Credits

The bill provides that a space business approved and certified by the Office of Tourism, Trade and Economic Development (“OTTED”) may claim or transfer tax credits on or after October 1, 2014. A business may claim only one credit in a state fiscal year. Once used, a credit cannot be claimed a second time. Unless transferred, credits may be granted only against corporate income tax liability as a result of a spaceflight project located in Florida. In addition, a spaceflight business or transferee claiming tax incentives provided in this bill may not file a consolidated tax return. The two types of credit provided in this bill are listed below.

Non-transferable Corporate Tax Credit

The bill provides a credit for up to 50 percent of the spaceflight business’s annual corporate income tax liability. The maximum annual credit that may be granted to a spaceflight business is \$1 million and the total tax credits approved in any state fiscal year may not exceed \$10 million.

Transferable Net Operating Loss Credit

The bill also provides a spaceflight business with the option to convert its net operating loss to a transferable tax credit. The maximum annual transferable credit that may be approved for a spaceflight business in a single year is \$2.5 million. The bill states that the amount that may be transferred by a spaceflight business and claimed by another business entity is equal to 100 percent of the total net operating loss accumulated by the spaceflight business in each of its first 3 full years of operation in the state. In addition, the total transferable tax credits approved in any state fiscal year may not exceed \$25 million. In order to transfer the credit, a spaceflight business must:

- Be approved by OTTED to transfer the credit,
- Have incurred a qualifying net operating loss associated with at least one spaceflight project³ in any of the last three tax years,
- Not be 50 percent or more owned by a corporation with positive income in any of the last three taxable years, and
- Not be part of a consolidated group of affiliated corporations with positive income in any of the last three taxable years.

The Department of Revenue must provide the transferee a certificate that reflects the tax credit amounts transferred. The transferee may apply the credit against taxes in ch. 220, F.S.

Application and Certification

In general, the application and certification process occurs in two separate steps. A spaceflight business must first submit an application to OTTED seeking the approval to earn credits. The application must include the following:

- A complete description of the applicant’s business activity in the state;⁴
- The total amount and type of credits sought; and
- An affidavit certifying that all information contained in the application is true and correct.

The bill provides that OTTED will determine the eligibility of the applicant and ensure that the total tax credits approved each fiscal year for all applicants does not exceed the limitations. OTTED may consult with Space Florida regarding the qualifications of the applicant. Approval for tax credits are on

³ Spaceflight project means any of the following activities performed in Florida:

- Designing, manufacturing, testing, or assembling a space vehicle or components thereof;
- Providing a launch service, payload processing service, or reentry service; or
- Providing the payload for a launch vehicle or reentry space vehicle, administrative support, and tourism activities related to these activities.

⁴ The description should demonstrate to OTTED that such applicant will meet the standards for certification.

a first-come, first-served basis and a spaceflight business may only submit one application per state fiscal year. If a spaceflight business is denied approval because the total tax credits authorized for that year are exhausted, then the business may reapply the following year and receive priority standing.

In order to claim or transfer tax credits earned, a spaceflight business must also submit to OTTED an application for certification. In the application for certification, the spaceflight business must demonstrate that it has:

- Met the eligibility standard for spaceflight business,
- Engaged in a qualifying spaceflight project in the last 3 taxable years,
- Created 35 new jobs⁵ directly associated with qualified spaceflight projects in the last 3 taxable years, and
- Invested a total of at least \$15 million on a spaceflight project in the state during the last three taxable years.

The application for certification must also include a non-refundable payment of \$250 and audit reports of the last three taxable years which identifies the business' spaceflight activities. OTTED has a maximum of 90 days to approve or deny certification. Further, OTTED must provide a letter of certification to the successful applicant, and inform an unsuccessful applicant of the reasons for denial.

Audit Authority and Reporting Requirements

The bill provides direction with respect to the Department of Revenue ("DOR") and the following: the auditing of certified spaceflight businesses; the procedures for revocation and recapture of tax credits; the requirements for filing amended tax returns; and the penalties for filing inaccurate or fraudulent tax returns.

The bill provides that OTTED, in cooperation with Space Florida and DOR, must submit an annual report accounting the activities of the spaceflight business incentives program to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The first report is due November 30, 2014.

Other Changes Made By the Bill

The bill authorizes OTTED to administer the tax credit program proposed as s. 220.194, F.S. The bill also authorizes DOR to provide information relating to tax credits claimed under s. 220.194, F.S., to OTTED and Space Florida.

The bill amends s. 220.02(8), F.S., to add s. 220.194, F.S., as the last credit in the order in which credits are to be claimed against the corporate income tax.

The bill creates s. 220.13(1)(a)16., F.S., requiring that the amount of credit claimed under 220.194, F.S., be added back in computing corporate income tax. The bill also amends s. 220.13(1)(b)1a., F.S., providing that net operating losses claimed as a credit or transferred may not be subtracted by the seller in computing adjusted federal income for Florida corporate income tax purposes.

For the purposes of computing corporate income tax liability, the bill creates s. 220.16(5), F.S., to require the seller of a net operating loss credit to treat payments received from the sale as non-business income.

⁵ "New job" means the full-time employment of an employee in a manner that is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation. To meet the requirement for certification specified in subsection (5)(b) of the bill, a new job must:

- Pay new employees at least 115 percent of the statewide or countywide average annual private-sector wage for the three taxable years immediately preceding filing an application for certification;
- Require a new employee to perform duties on a regular full-time basis in this state for an average of at least 36 hours per week each month for the 3 taxable years immediately preceding filing an application for certification; and
- Not be held by a person who has previously been included as a new employee on an application for any credit authorized by this section.

The bill will take effect upon becoming law. However, tax credits created by the bill may not be claimed prior to October 1, 2015.

B. SECTION DIRECTORY:

- Section 1 Amends s. 14.2015, F.S., adding the administration of the spaceflight business tax credit program to the responsibilities of OTTED.
- Section 2 Amends s. 213.053, F.S., allowing the Department of Revenue to share confidential tax data about certified spaceflight businesses with OTTED or Space Florida.
- Section 3 Amends s. 220.02, F.S., adding the spaceflight business tax credits last in the list of credits that may be taken against the Florida corporate income tax.
- Section 4 Amends s. 220.13, F.S., relating to the adjusted federal income for Florida corporate tax purposes.
- Section 5 Amends s. 220.16, F.S., providing that payments received from the sale of a net operating loss credit are treated as non-business income.
- Section 6 Creates s. 220.194, F.S., providing definitions, spaceflight business tax credits, an application and certification process, audit authority, and an annual report.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference adopted a negative annualized impact of \$25 million on state revenue. The Conference's estimate includes a \$10 million negative annualized impact of for the non-transferable corporate income tax credit and a \$25 million negative annualized impact for the transferable net operating loss credit.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will potentially reduce the corporate tax liability for certain spaceflight businesses which may encourage private aerospace investment. In addition, the ability to convert a net operating loss into a transferable tax credit could provide additional liquidity to a number of new start-up businesses operating at a short-term loss.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

OTTED may adopt rules to administer the program including, but not limited to the application and certification process. DOR is directed to adopt rules related to tax forms, audit procedures, reporting requirements, and the transfer of tax credits.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 4, line 217 incorrectly states that a net operating loss is transferred through s. 220.194(3)(b), F.S. Section 220.194(3)(b), F.S., defines "certified." A net operating loss is transferred through s. 220.194(6), F.S.

Section 6, line 373 states that tax credits may be claimed on or after October 1, 2014. However, the effective date of the bill provides that tax credits may not be claimed prior to October 1, 2015.

The bill sponsor may wish to amend the bill to address these issues.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

29 requiring a business to submit an application to the
 30 office for approval to earn credits; specifying the
 31 required contents of the application; requiring the office
 32 to approve or deny an application within 60 days after
 33 receipt; specifying the approval process; requiring a
 34 spaceflight business to submit an application for
 35 certification to the office; specifying the required
 36 contents of an application for certification; specifying
 37 the approval process; requiring the office to submit a
 38 copy of an approved certification to the department;
 39 providing procedures for transferring a tax credit to a
 40 taxpayer; authorizing the department to perform audits and
 41 investigations necessary to verify the accuracy of returns
 42 relating to the tax credit; specifying circumstances under
 43 which the office may revoke or modify a certification that
 44 grants eligibility for tax credits; requiring a certified
 45 spaceflight business to file an amended return and pay any
 46 required tax within 60 days after receiving notice that
 47 previously approved tax credits have been revoked or
 48 modified; authorizing the department to assess additional
 49 taxes, interest, or penalties; authorizing the office and
 50 the department to adopt rules; requiring the office to
 51 submit an annual report to the Governor and Legislature
 52 regarding the Florida Space Business Incentives Act;
 53 providing for application; providing an effective date.

54
 55 Be It Enacted by the Legislature of the State of Florida:
 56

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57 Section 1. Paragraph (f) of subsection (2) of section
58 14.2015, Florida Statutes, is amended to read:

59 14.2015 Office of Tourism, Trade, and Economic
60 Development; creation; powers and duties.—

61 (2) The purpose of the Office of Tourism, Trade, and
62 Economic Development is to assist the Governor in working with
63 the Legislature, state agencies, business leaders, and economic
64 development professionals to formulate and implement coherent
65 and consistent policies and strategies designed to provide
66 economic opportunities for all Floridians. To accomplish such
67 purposes, the Office of Tourism, Trade, and Economic Development
68 shall:

69 (f)~~1~~. Administer the Florida Enterprise Zone Act under ss.
70 290.001-290.016, the community contribution tax credit program
71 under ss. 220.183 and 624.5105, the tax refund program for
72 qualified target industry businesses under s. 288.106, the tax-
73 refund program for qualified defense contractors and space
74 flight business contractors under s. 288.1045, contracts for
75 transportation projects under s. 288.063, the sports franchise
76 facility programs under ss. 288.1162 and 288.11621, the
77 professional golf hall of fame facility program under s.
78 288.1168, the expedited permitting process under s. 403.973, the
79 Rural Community Development Revolving Loan Fund under s.
80 288.065, the Regional Rural Development Grants Program under s.
81 288.018, the Certified Capital Company Act under s. 288.99, the
82 Florida State Rural Development Council, the Rural Economic
83 Development Initiative, the corporate income tax credits for
84 spaceflight projects under s. 220.194, and other programs that

85 are specifically assigned to the office by law, by the
 86 appropriations process, or by the Governor.

87 1. Notwithstanding any other provisions of law, the office
 88 may expend interest earned from the investment of program funds
 89 deposited in the Grants and Donations Trust Fund to contract for
 90 the administration of the programs, or portions of the programs,
 91 enumerated in this paragraph or assigned to the office by law,
 92 by the appropriations process, or by the Governor. Such
 93 expenditures ~~are shall be~~ subject to review under chapter 216.

94 2. The office may enter into contracts in connection with
 95 the fulfillment of its duties concerning the Florida First
 96 Business Bond Pool under chapter 159, tax incentives under
 97 chapters 212 and 220, tax incentives under the Certified Capital
 98 Company Act in chapter 288, foreign offices under chapter 288,
 99 the Enterprise Zone program under chapter 290, the Seaport
 100 Employment Training program under chapter 311, the Florida
 101 Professional Sports Team License Plates under chapter 320,
 102 Spaceport Florida under chapter 331, Expedited Permitting under
 103 chapter 403, and in carrying out other functions that are
 104 specifically assigned to the office by law, by the
 105 appropriations process, or by the Governor.

106 Section 2. Paragraph (cc) is added to subsection (8) of
 107 section 213.053, Florida Statutes, to read:

108 213.053 Confidentiality and information sharing.—

109 (8) Notwithstanding any other provision of this section,
 110 the department may provide:

111 (cc) Information relating to tax credits taken under s.
 112 220.194 to the Office of Tourism, Trade, and Economic

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113 | Development or to Space Florida.

114 |

115 | Disclosure of information under this subsection shall be
 116 | pursuant to a written agreement between the executive director
 117 | and the agency. Such agencies, governmental or nongovernmental,
 118 | shall be bound by the same requirements of confidentiality as
 119 | the Department of Revenue. Breach of confidentiality is a
 120 | misdemeanor of the first degree, punishable as provided by s.
 121 | 775.082 or s. 775.083.

122 | Section 3. Subsection (8) of section 220.02, Florida
 123 | Statutes, is amended to read:

124 | 220.02 Legislative intent.—

125 | (8) It is the intent of the Legislature that credits
 126 | against ~~either~~ the corporate income tax or the franchise tax be
 127 | applied in the following order: those enumerated in s. 631.828,
 128 | those enumerated in s. 220.191, those enumerated in s. 220.181,
 129 | those enumerated in s. 220.183, those enumerated in s. 220.182,
 130 | those enumerated in s. 220.1895, those enumerated in s. 221.02,
 131 | those enumerated in s. 220.184, those enumerated in s. 220.186,
 132 | those enumerated in s. 220.1845, those enumerated in s. 220.19,
 133 | those enumerated in s. 220.185, those enumerated in s. 220.1875,
 134 | those enumerated in s. 220.192, those enumerated in s. 220.193,
 135 | those enumerated in s. 288.9916, those enumerated in s.
 136 | 220.1899, ~~and~~ those enumerated in s. 220.1896, and those
 137 | enumerated in s. 220.194.

138 | Section 4. Paragraphs (a) and (b) of subsection (1) of
 139 | section 220.13, Florida Statutes, are amended to read:

140 | 220.13 "Adjusted federal income" defined.—

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141 (1) The term "adjusted federal income" means an amount
 142 equal to the taxpayer's taxable income as defined in subsection
 143 (2), or such taxable income of more than one taxpayer as
 144 provided in s. 220.131, for the taxable year, adjusted as
 145 follows:

146 (a) Additions.—~~The following~~ ~~There~~ shall be added to such
 147 taxable income:

148 1. The amount of any tax upon or measured by income,
 149 excluding taxes based on gross receipts or revenues, paid or
 150 accrued as a liability to the District of Columbia or any state
 151 of the United States which is deductible from gross income in
 152 the computation of taxable income for the taxable year.

153 2. The amount of interest which is excluded from taxable
 154 income under s. 103(a) of the Internal Revenue Code or any other
 155 federal law, less the associated expenses disallowed in the
 156 computation of taxable income under s. 265 of the Internal
 157 Revenue Code or any other law, excluding 60 percent of any
 158 amounts included in alternative minimum taxable income, as
 159 defined in s. 55(b)(2) of the Internal Revenue Code, if the
 160 taxpayer pays tax under s. 220.11(3).

161 3. In the case of a regulated investment company or real
 162 estate investment trust, an amount equal to the excess of the
 163 net long-term capital gain for the taxable year over the amount
 164 of the capital gain dividends attributable to the taxable year.

165 4. That portion of the wages or salaries paid or incurred
 166 for the taxable year which is equal to ~~the amount of~~ the credit
 167 allowable for the taxable year under s. 220.181. This
 168 subparagraph expires ~~shall expire~~ on the date specified in s.

169 290.016 for the expiration of the Florida Enterprise Zone Act.

170 5. That portion of the ad valorem school taxes paid or
 171 incurred for the taxable year which is equal to ~~the amount of~~
 172 the credit allowable for the taxable year under s. 220.182. This
 173 subparagraph expires ~~shall expire~~ on the date specified in s.
 174 290.016 for the expiration of the Florida Enterprise Zone Act.

175 6. The amount of emergency excise tax paid or accrued as a
 176 liability to this state under chapter 221 which tax is
 177 deductible from gross income in the computation of taxable
 178 income for the taxable year.

179 7. That portion of assessments to fund a guaranty
 180 association incurred for the taxable year which is equal to ~~the~~
 181 ~~amount of~~ the credit allowable for the taxable year.

182 8. In the case of a nonprofit corporation that ~~which~~ holds
 183 a pari-mutuel permit and ~~which~~ is exempt from federal income tax
 184 as a farmers' cooperative, an amount equal to the excess of the
 185 gross income attributable to the pari-mutuel operations over the
 186 attributable expenses for the taxable year.

187 9. The amount taken as a credit for the taxable year under
 188 s. 220.1895.

189 10. Up to nine percent of the eligible basis of any
 190 designated project which is equal to the credit allowable for
 191 the taxable year under s. 220.185.

192 11. The amount taken as a credit for the taxable year
 193 under s. 220.1875. The addition in this subparagraph is intended
 194 to ensure that the same amount is not allowed for the tax
 195 purposes of this state as both a deduction from income and a
 196 credit against the tax. This addition is not intended to result

197 in adding the same expense back to income more than once.

198 12. The amount taken as a credit for the taxable year
199 under s. 220.192.

200 13. The amount taken as a credit for the taxable year
201 under s. 220.193.

202 14. Any portion of a qualified investment, as defined in
203 s. 288.9913, which is claimed as a deduction by the taxpayer and
204 taken as a credit against income tax pursuant to s. 288.9916.

205 15. The costs to acquire a tax credit pursuant to s.
206 288.1254(5) which ~~that~~ are deducted from or otherwise reduce
207 federal taxable income for the taxable year.

208 16. The amount taken as a credit for the taxable year
209 pursuant to s. 220.194.

210 (b) *Subtractions.*—

211 1. The following ~~There~~ shall be subtracted from such
212 taxable income:

213 a. The net operating loss deduction allowable for federal
214 income tax purposes under s. 172 of the Internal Revenue Code
215 for the taxable year, except that any net operating loss that is
216 taken as a credit to corporate income taxes owed or that is
217 transferred pursuant to s. 220.194(3)(b) may not be deducted by
218 the seller;

219 b. The net capital loss allowable for federal income tax
220 purposes under s. 1212 of the Internal Revenue Code for the
221 taxable year;†

222 c. The excess charitable contribution deduction allowable
223 for federal income tax purposes under s. 170(d)(2) of the
224 Internal Revenue Code for the taxable year;† and

225 d. The excess contributions deductions allowable for
 226 federal income tax purposes under s. 404 of the Internal Revenue
 227 Code for the taxable year.

228

229 However, a net operating loss and a capital loss may not ~~shall~~
 230 ~~never~~ be carried back as a deduction to a prior taxable year,
 231 but all deductions attributable to such losses shall be deemed
 232 net operating loss carryovers and capital loss carryovers,
 233 respectively, and treated in the same manner, to the same
 234 extent, and for the same time periods as are prescribed for ~~such~~
 235 carryovers in ss. 172 and 1212, respectively, of the Internal
 236 Revenue Code.

237 2. The following ~~There~~ shall be subtracted from such
 238 taxable income ~~any amount~~ to the extent included therein ~~the~~
 239 ~~following~~:

240 a. Dividends treated as received from sources without the
 241 United States, as determined under s. 862 of the Internal
 242 Revenue Code.

243 b. All amounts included in taxable income under s. 78 or
 244 s. 951 of the Internal Revenue Code.

245

246 However, as to any amount subtracted under this subparagraph,
 247 there shall be added to such taxable income all expenses
 248 deducted on the taxpayer's return for the taxable year which are
 249 attributable, directly or indirectly, to such subtracted amount.
 250 Further, no amount may ~~shall~~ be subtracted with respect to
 251 dividends paid or deemed paid by a Domestic International Sales
 252 Corporation.

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253 3. In computing "adjusted federal income" for taxable
254 years beginning after December 31, 1976, ~~there shall be allowed~~
255 ~~as a deduction~~ the amount of wages and salaries paid or incurred
256 within this state for the taxable year for which no deduction is
257 allowed pursuant to s. 280C(a) of the Internal Revenue Code,
258 ~~(relating to credit for employment of certain new employees,~~
259 shall be allowed as a deduction).

260 4. ~~There shall be subtracted from such taxable income~~ Any
261 amount of nonbusiness income included therein shall be
262 subtracted from such taxable income.

263 5. ~~There shall be subtracted~~ Any amount of taxes of
264 foreign countries allowable as credits for taxable years
265 beginning on or after September 1, 1985, under s. 901 of the
266 Internal Revenue Code to any corporation that ~~which~~ derived less
267 than 20 percent of its gross income or loss for its taxable year
268 ended in 1984 shall be subtracted from sources within the United
269 States, as described in s. 861(a)(2)(A) of the Internal Revenue
270 Code, not including credits allowed under ss. 902 and 960 of the
271 Internal Revenue Code, withholding taxes on dividends within the
272 meaning of sub-subparagraph 2.a., and withholding taxes on
273 royalties, interest, technical service fees, and capital gains.

274 6. Notwithstanding any other provision of this code,
275 except with respect to amounts subtracted pursuant to
276 subparagraphs 1. and 3., any increment of any apportionment
277 factor which is directly related to an increment of gross
278 receipts or income which is deducted, subtracted, or otherwise
279 excluded in determining adjusted federal income shall be
280 excluded from both the numerator and denominator of such

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281 | apportionment factor. Further, all valuations made for
 282 | apportionment factor purposes shall be made on a basis
 283 | consistent with the taxpayer's method of accounting for federal
 284 | income tax purposes.

285 | Section 5. Subsection (5) is added to section 220.16,
 286 | Florida Statutes, to read:

287 | 220.16 Allocation of nonbusiness income.—Nonbusiness
 288 | income shall be allocated as follows:

289 | (5) The amount of payments received in exchange for
 290 | transferring a net operating loss authorized by s. 220.194 is
 291 | allocable to the state.

292 | Section 6. Section 220.194, Florida Statutes, is created
 293 | to read:

294 | 220.194 Corporate income tax credits for spaceflight
 295 | projects.—

296 | (1) SHORT TITLE.—This section may be cited as the "Florida
 297 | Space Business Incentives Act."

298 | (2) PURPOSE.—The purpose of this section is to create
 299 | incentives to attract launch, payload, research and development,
 300 | and other space business to this state.

301 | (3) DEFINITIONS.—As used in this section, the term:

302 | (a) "Administrative support" means that 51 percent or more
 303 | of an activity supports a certified spaceflight business.

304 | (b) "Certified" means that a spaceflight business has been
 305 | certified by the office as meeting all of the requirements
 306 | necessary to obtain at least one of the approved tax credits
 307 | available under this section, including approval to transfer a
 308 | credit.

309 (c) "Department" means the Department of Revenue.

310 (d) "New employee" means a state resident who begins or
 311 maintains full-time employment in this state with a spaceflight
 312 business on or after October 1, 2011. The term does not include
 313 a person who is a partner, majority stockholder, or owner of the
 314 business or a person who is employed in a temporary construction
 315 job or primarily involved with the construction of real
 316 property.

317 (e) "New job" means the full-time employment of an
 318 employee in a manner that is consistent with terms used by the
 319 Agency for Workforce Innovation and the United States Department
 320 of Labor for purposes of unemployment compensation tax
 321 administration and employment estimation. In order to meet the
 322 requirement for certification specified in paragraph (5) (b), a
 323 new job must:

324 1. Pay new employees at least 115 percent of the statewide
 325 or countywide average annual private-sector wage for the 3
 326 taxable years immediately preceding filing an application for
 327 certification;

328 2. Require a new employee to perform duties on a regular
 329 full-time basis in this state for an average of at least 36
 330 hours per week each month for the 3 taxable years immediately
 331 preceding filing an application for certification; and

332 3. Not be held by a person who has previously been
 333 included as a new employee on an application for any credit
 334 authorized under this section.

335 (f) "Office" means the Office of Tourism, Trade, and
 336 Economic Development.

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337 (g) "Payload" means an object built or assembled in this
 338 state to be placed into earth's upper atmospheres or space.

339 (h) "Reentry" means to return or attempt to return an
 340 object from earth's upper atmospheres or space.

341 (i) "Reentry service" means an activity conducted in this
 342 state related to preparing a reentry vehicle and any payload for
 343 reentry and the reentry.

344 (j) "Space vehicle" means any spacecraft, satellite, space
 345 station, upper-stage, launch vehicle, reentry vehicle, and
 346 related ground-support systems and equipment.

347 (k) "Spaceflight business" means a business that:

348 1. Is registered with the Secretary of State to do
 349 business in this state; and

350 2. Is currently engaged in a spaceflight project. A
 351 spaceflight business may participate in more than one
 352 spaceflight project at a time and may conduct work on a
 353 commercial, governmental, or United States defense-related
 354 spaceflight project.

355 (l) "Spaceflight project" means any of the following
 356 activities performed in this state:

357 1. Designing, manufacturing, testing, or assembling a
 358 space vehicle or components thereof;

359 2. Providing a launch service, payload processing service,
 360 or reentry service; or

361 3. Providing the payload for a launch vehicle or reentry
 362 space vehicle, administrative support, and tourism activities
 363 related to these activities.

364 (m) "Taxpayer" has the same meaning as provided in s.

365 | 220.03.

366 | (n) "Total tax credits" means, for any state fiscal year,
 367 | the sum of the tax credits approved for taxpayers whose taxable
 368 | year begins on or after January 1 of the calendar year preceding
 369 | the start of the applicable state fiscal year.

370 | (4) TAX CREDITS.—

371 | (a) If approved and certified pursuant to subsection (5),
 372 | the following tax credits may be taken on a final return for a
 373 | taxable year beginning on or after October 1, 2014:

374 | 1. A certified spaceflight business may take a
 375 | nontransferable corporate income tax credit tax credit for up to
 376 | 50 percent of the business's tax liability under this chapter
 377 | for the taxable year in which the credit is taken. The maximum
 378 | nontransferable tax credit amount that may be approved per
 379 | taxpayer for a taxable year is \$1 million, and the total tax
 380 | credits that may be approved for any state fiscal year pursuant
 381 | to this subparagraph may not exceed \$10 million.

382 | 2. A certified spaceflight business may transfer, in whole
 383 | or in part, its Florida net operating loss that would otherwise
 384 | be available to be taken on a return filed under this chapter.
 385 | The maximum transferable tax credit amount that may be approved
 386 | per taxpayer for a taxable year is \$2.5 million; the total tax
 387 | credits that may be approved for any state fiscal year pursuant
 388 | to this subparagraph may not exceed \$25 million. However, any
 389 | outstanding credit that is carried forward by a transferee may
 390 | not be used to calculate the annual limit.

391 | a. In order to transfer the credit, the business must:

392 | (I) Have been approved to transfer the tax credit for the

393 taxable year in which it is transferred;
 394 (II) Have incurred a qualifying net operating loss on
 395 activity in this state directly associated with one or more
 396 space flight projects in any of its 3 previous taxable years;
 397 (III) Not be 50 percent or more owned or controlled,
 398 directly or indirectly, by another corporation that has
 399 demonstrated positive net income in any of the 3 previous
 400 taxable years of ongoing operations; and
 401 (IV) Not be part of a consolidated group of affiliated
 402 corporations, as filed for federal income tax purposes, which in
 403 the aggregate demonstrated positive net income in any of the 3
 404 previous taxable years.
 405 b. The amount that may be claimed and transferred by a
 406 business is equal to:
 407 (I) One hundred percent of the net operating loss that
 408 could otherwise be claimed on a return filed under this chapter
 409 during its first full year of operations in this state.
 410 (II) One hundred percent of the net operating loss that
 411 could otherwise be claimed on a return filed under this chapter
 412 during its second full year of operations in this state.
 413 (III) One hundred percent of the net operating loss that
 414 could otherwise be claimed on a return filed under this chapter
 415 during its third full year of operations in this state.
 416 (b) Each business may be approved for only one credit per
 417 state fiscal year and may not claim any credit more than once.
 418 (c) Unless transferred pursuant to this section, credits
 419 may be granted only against the corporate income tax liability
 420 generated by or arising out of a spaceflight project in this

421 state, as documented in the certified spaceflight business's
 422 annual audit prepared by a certified public accountant licensed
 423 to do business in this state and as verified by the office.

424 (d) A certified spaceflight business may not file a
 425 consolidated return in order to claim the tax incentives
 426 described in this subsection.

427 (e) The certified spaceflight business or transferee must
 428 demonstrate to the satisfaction of the office and the department
 429 that it is eligible to take the credits approved under this
 430 section.

431 (5) APPLICATION AND CERTIFICATION.—

432 (a) In order to claim a tax credit under this section, a
 433 spaceflight business must first submit an application to the
 434 office for approval to earn credits. The application must be
 435 filed by the date established by the office. In addition to any
 436 information that the office may require, the applicant must
 437 provide a complete description of the activity in this state
 438 which demonstrates to the office the applicant's likelihood to
 439 be certified to take or transfer a credit. The applicant must
 440 also provide a description of the total amount and type of
 441 credits for which approval is sought. The office may consult
 442 with Space Florida regarding the qualifications of an applicant.
 443 The applicant shall provide an affidavit certifying that all
 444 information contained in the application is true and correct.

445 1. Approval of the credits shall be provided on a first-
 446 come, first-served basis, based on the date the completed
 447 applications are received by the office. A taxpayer may not
 448 submit more than one completed application per state fiscal

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449 year. The office may not accept an incomplete placeholder
 450 application, and the submission of such an application will not
 451 secure a place in the first-come, first-served application line.

452 2. The office has 60 days after the receipt of a completed
 453 application within which to issue a notice of intent to deny or
 454 approve an application for credits. If a business does not
 455 receive approval for a tax credit due to the exhaustion of the
 456 annual total tax credit authorizations, the business may reapply
 457 the following year and shall have priority over other applicants
 458 notwithstanding the first-come, first-served policy. The office
 459 shall determine the eligibility of an applicant and approve the
 460 credits that the applicant may later be certified to take. The
 461 office must ensure that the corporate income tax credits
 462 approved each fiscal year for all applicants does not exceed the
 463 limits provided in this section.

464 (b) In order to take, and thereafter, if applicable, to
 465 transfer an approved credit, a spaceflight business must submit
 466 an application for certification to the office along with a
 467 nonrefundable \$250 fee.

468 1. The application must include:

469 a. The name and physical in-state address of the taxpayer.

470 b. Documentation demonstrating to the satisfaction of the
 471 office that:

472 (I) The taxpayer is a spaceflight business.

473 (II) The business has engaged in a qualifying spaceflight
 474 project before taking a credit under this section.

475 c. In addition to any requirement specific to a credit,
 476 documentation that the business has:

477 (I) Created 35 new jobs in this state directly associated
 478 with spaceflight projects during its immediately preceding 3
 479 taxable years. The business shall be deemed to have created new
 480 jobs if the number of jobs on the application for certification
 481 is greater than the total number of full-time jobs located in
 482 this state as stated on an application for approval to earn
 483 credits;

484 (II) Invested a total of at least \$15 million in this
 485 state on a spaceflight project during its immediately preceding
 486 3 taxable years; and

487 d. The total amount and types of credits sought.

488 e. An acknowledgment that a transfer of a tax credit is to
 489 be accomplished pursuant to subsection (5).

490 f. A copy of an audit or audits of the preceding 3 taxable
 491 years, prepared by a certified public accountant licensed to
 492 practice in this state, which identifies that portion of the
 493 business's activities in this state related to spaceflight
 494 projects in this state.

495 g. An acknowledgement that the business must file an
 496 annual report on the spaceflight project's progress with the
 497 office.

498 h. Any other information necessary to demonstrate that the
 499 applicant meets the job creation, investment, and other
 500 requirements of this section.

501 2. Within 60 days after receipt of the application for
 502 certification, the office shall evaluate the application and
 503 recommend the business for certification or denial. The
 504 executive director of the office must approve or deny the

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505 application within 30 days after receiving the recommendation.
 506 If approved, the office must provide a letter of certification
 507 to the applicant consistent with any restrictions imposed. If
 508 the office denies any part of the requested credit, the office
 509 must inform the applicant of the grounds for the denial. A copy
 510 of the certification shall be submitted to the department within
 511 10 days after the executive director's approval.

512 (6) TRANSFERABILITY OF CREDIT.-

513 (a) A certified spaceflight business allowed to transfer an
 514 approved credit, in whole or in part, to a taxpayer by written
 515 agreement may do so without transferring any ownership interest
 516 in the property generating the credit or any interest in the
 517 entity owning such property. The transferee may apply the
 518 credits against the tax with the same effect as if the
 519 transferee had incurred the eligible costs.

520 (b) In order to perfect the transfer, the transferor shall
 521 provide the department with a written transfer statement that
 522 has been approved by the office notifying the department of the
 523 transferor's intent to transfer the tax credits to the
 524 transferee; the date that the transfer is effective; the
 525 transferee's name, address, and federal taxpayer identification
 526 number; the tax period; and the amount of tax credits to be
 527 transferred. Upon receipt of the approved transfer statement,
 528 the department shall provide the transferee and the office with
 529 a certificate reflecting the tax credit amounts transferred. A
 530 copy of the certificate must be attached to each tax return for
 531 which the transferee seeks to apply the credits.

532 (7) AUDIT AUTHORITY; RECAPTURE OF CREDITS.-

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533 (a) In addition to its existing audit and investigative
534 authority, the department may perform any additional financial
535 and technical audits and investigations, including examining the
536 accounts, books, and financial records of the tax credit
537 applicant, which are necessary for verifying the accuracy of the
538 return and to ensure compliance with this section. If requested
539 by the department, the office and Space Florida must provide
540 technical assistance for any technical audits or examinations
541 performed under this subsection.

542 (b) Grounds for forfeiture of previously claimed tax
543 credits approved under this section exist if the department
544 determines, as a result of an audit or examination, or from
545 information received from the office, that a certified
546 spaceflight business, or in the case of transferred tax credits,
547 a taxpayer received tax credits for which the certified
548 spaceflight business or taxpayer was not entitled. The
549 spaceflight business or transferee must file an amended return
550 reflecting the disallowed credits and paying any tax due as a
551 result of the amendment.

552 (c) If an amendment to, recomputation of, or
553 redetermination of a certified spaceflight business's Florida
554 corporate income tax return changes an item entered into the
555 computation of a claimed credit, the taxpayer must notify the
556 department by filing an amended return. The amount of any credit
557 award not supported by the amended return shall be deemed a
558 deficiency that must be remitted with the amended return and is
559 subject to s. 220.23. The spaceflight business is also liable
560 for a penalty equal to the credit claimed or transferred,

561 reduced in proportion to the amount of the net operating loss
 562 certified for transfer over the amount of the disallowed
 563 certified net operating loss. The certified business and its
 564 successors must maintain all records necessary to support the
 565 reported net operating loss.

566 (d) The office may revoke or modify a certification
 567 granting eligibility for tax credits if it finds that the
 568 certified spaceflight business made a false statement or
 569 representation in any application, record, report, plan, or
 570 other document filed in an attempt to receive tax credits under
 571 this section. The office shall immediately notify the department
 572 of any revoked or modified orders affecting previously granted
 573 tax credits. The certified spaceflight business must also notify
 574 the department of any change in its claimed tax credit.

575 (e) The certified spaceflight business must file with the
 576 department an amended return or other report required by the
 577 department by rule and pay any required tax and interest within
 578 60 days after the certified business receives notification from
 579 the office that previously approved tax credits have been
 580 revoked or modified. If the revocation or modification order is
 581 contested, the spaceflight business must file the amended return
 582 or other report within 60 days after a final order is issued.

583 (f) The department may assess an additional tax, penalty,
 584 or interest pursuant to s. 95.091.

585 (8) RULES.—

586 (a) The office, in consultation with Space Florida, shall
 587 adopt rules to administer this section, including rules relating
 588 to application forms for credit approval and certification, and

589 | the application and certification procedures, guidelines, and
 590 | requirements necessary to administer this section.

591 | (b) The department may adopt rules to administer this
 592 | section, including rules relating to:

593 | 1. The forms required to claim a tax credit under this
 594 | section, the requirements and basis for establishing an
 595 | entitlement to a credit, and the examination and audit
 596 | procedures required to administer this section.

597 | 2. The implementation and administration of provisions
 598 | allowing the transfer of a net operating loss as a tax credit,
 599 | including rules that prescribe forms, reporting requirements,
 600 | and specific procedures, guidelines, and requirements necessary
 601 | to perform the transfer.

602 | 3. The minimum portion of the credit which is available
 603 | for transfer.

604 | (9) ANNUAL REPORT.—Beginning in 2014, the office, in
 605 | cooperation with Space Florida and the department, shall submit
 606 | an annual report summarizing activities relating to the Florida
 607 | Space Business Incentives Act established under this section to
 608 | the Governor, the President of the Senate, and the Speaker of
 609 | the House of Representatives by each November 30.

610 | Section 7. This act shall take effect upon becoming a law,
 611 | except that the tax credits authorized by this act may not be
 612 | applied to returns filed for any tax period before October 1,
 613 | 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1069 Capital Investment Tax Credits

SPONSOR(S): Dorworth and others

TIED BILLS: IDEN./SIM. BILLS: SB 1470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Kruse <i>JK</i>	Kruse <i>MLC</i>
2) Rules & Calendar Committee			
3) Finance & Tax Committee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The Capital Investment Tax Credit is an incentive used to attract and grow capital-intensive industries in Florida. It is an annual credit, provided for up to twenty years, against corporate income or premium tax liabilities generated by or arising out of a qualifying project.

The bill provides an additional means for a business to take advantage of the Capital Investment Tax Credit, which may have the effect of stimulating private sector economic activity. The bill provides that if a qualifying business' corporate income or premium tax liability credit granted through this incentive is not fully used in fiscal year 2011 and all years thereafter because the qualifying business has insufficient tax liability, the qualifying business is entitled to a sales tax credit against its sales tax liability in an amount equal to the difference between the annual tax credit granted by this incentive and the amount of credit that is actually usable against the corporate income tax liability or premium tax. The bill requires the business to make additional capital investments, over and above the capital investments the business made to qualify for the corporate income tax credit, in the years following the business taking the sales tax credit.

Although the Revenue Estimating Conference has not yet estimated the fiscal impact, it is likely that the bill will have an impact on state and local revenue since it allows a business to take a sales tax credit that it would not otherwise have been able to if the business had insufficient corporate income tax liability under current law.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

Capital Investment Tax Credit

The Capital Investment Tax Credit is an incentive used to attract and grow capital-intensive industries in Florida. It is an annual credit, provided for up to twenty years, against corporate income or premium tax liabilities generated by or arising out of the qualifying project.

Eligible projects

- A new or expanded facility in a designated high-impact portion of the following sectors: clean energy, biomedical technology, financial services, information technology, silicon technology, transportation equipment manufacturing, or be a corporate headquarters facility;
- A new or expanded facility which is engaged in a target industry designated pursuant to the procedure specified in s. 288.106(2)(t), F.S., and which is induced by this credit to create or retain at least 1,000 jobs, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area, and make a cumulative capital investment of at least \$100 million; or
- A new or expanded headquarters facility which locates in an enterprise zone and brownfield area and is induced by this credit to create at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage, and which new or expanded headquarters facility makes a cumulative capital investment in this state of at least \$250 million.

Tax Credit

The sum of all tax credits provided may not exceed 100 percent of the eligible capital costs of the project. Projects must also create a minimum of 100 jobs and invest at least \$25 million in eligible capital costs. Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations. The level of investment and the project's Florida corporate income tax liability for the 20 years following commencement of operations determines the amount of the annual credit.¹

The annual tax credit may not exceed the following percentages of the annual corporate income tax liability or the premium tax liability generated by or arising out of a qualifying project:

- One hundred percent for a qualifying project which results in a cumulative capital investment of at least \$100 million.
- Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million.
- Fifty percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.

Changes made by the bill

Sales Tax Credit and Business Qualifications

The bill provides an additional means for a business to take advantage of the capital investment tax credit. The bill provides that if a qualifying business' corporate income or premium tax liability credit granted through this incentive is not fully used in fiscal year 2011 and all years thereafter because the qualifying business has insufficient tax liability, the qualifying business is entitled to a sales tax credit against its sales tax liability in an amount equal to the difference between the annual tax credit granted by this incentive and the amount of credit that is actually usable against the corporate income tax liability or premium tax. The bill states that only businesses headquartered in the state that qualify for the capital investment tax credit and were previously in the capital investment tax program from 2006-

¹ Section 220.191, F.S. See also Enterprise Florida, Inc., <http://eflorida.com/ContentSubpage.aspx?id=472> (visited 3/17/11)

2008 qualify for the sales tax credit. This time period qualification necessarily limits the number of businesses that will qualify for the sales tax credit, but the time period described by the bill does take place prior the severe recession the state has encountered over the last several years.

Amount of Sales Tax Credit

The bill provides that the sales tax credit may not exceed \$5 million in any one year and is subject to the following:

- A qualifying business that applies its sales tax credit against its sales and use tax liability must make capital investments in Florida, in addition to its cumulative capital investment, in an amount equal to or greater than the applied credit within 5 years after the date that the qualifying business first applied the sales tax credit to its sales and use tax return.
- The qualifying business must annually provide to the office, the President of the Senate, and the Speaker of the House of Representatives a report listing the capital investments made in each tax year in which the business claims a sales and use tax credit pursuant to this paragraph and must provide a final summary report of all capital investments made pursuant to the requirements of this paragraph.

Penalties

If the qualifying business fails to make the capital investments or if the business fails to report its capital investments, the qualifying business must repay to the Department of Revenue the difference between the sales tax credits received and the amount of capital investments accounted for plus interest as provided for delinquent taxes under chapter 212.

Rulemaking

The bill authorizes the Governor's Office of Tourism, Trade, and Economic Development and the Department of Revenue to adopt rules to administer the new sales tax incentive.

Fiscal Impact

Although the Revenue Estimating Conference has not yet estimated the fiscal impact, it is likely that the bill will have an impact on state and local revenue since it allows a business to take a sales tax credit that it would not otherwise have been able to do if the business had insufficient corporate income tax liability under current law.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Amends s. 220.191, F.S., to provide a sales tax credit to qualifying businesses.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Although the Revenue Estimating Conference has not yet estimated the fiscal impact, it is likely that the bill will have an impact on state revenue since it allows a business to take a sales tax credit that it would not otherwise have been able to if the business had insufficient corporate income tax liability under current law.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Although the Revenue Estimating Conference has not yet estimated the fiscal impact, it is likely that the bill will have an impact on local revenue since it allows a business to take a sales tax credit that it would not otherwise have been able to if the business had insufficient corporate income tax liability under current law.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have the effect of stimulating private sector economic activity if a business is able to use the cash it receives from the additional sales tax credit to retain or hire employees or make additional capital investments.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Until the Revenue Estimating Conference (REC) provides an estimate of the bill's fiscal impact, it is unknown whether the mandates provision will apply to the bill. However, it is likely that the bill will have an impact on state and local revenue since it allows a business to take a sales tax credit that it would not otherwise have been able to if the business had insufficient corporate income tax liability under current law. Unless the REC estimates the fiscal impact to be insignificant, the mandates provision is likely to apply.

2. Other:

The bill limits the availability of the sales tax credit to businesses headquartered in Florida and only to those businesses that were in the capital investment tax credit program between the years 2006-2008. Article I, Section 8 of the U.S. Constitution (the Commerce clause) prohibits state laws that benefit in-state businesses and discriminate against out-of-state business interests.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Governor's Office of Tourism, Trade, and Economic Development and the Department of Revenue to adopt rules to administer the additional sales tax incentive within the capital investment tax credit program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue (DOR) provided several comments regarding drafting issues. The bill's 2011 beginning date does not specify if the date applies to corporations whose tax years begin or end within the year 2011, or whose corporate income tax returns are due. Also, the computation of the conversion of the credit into a sales tax credit needs to be clarified because it may not actually provide a sales tax credit as written. DOR also recommended several technical changes to the bill. The bill sponsor may wish to address these issues.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to capital investment tax credits;
 3 amending s. 220.191, F.S.; providing an exception to the
 4 prohibition against carrying capital investment tax
 5 credits forward or backward for a certain capital
 6 investment tax credit; providing a capital investment tax
 7 credit to a qualifying business relating to the amount of
 8 investment tax credit that is unusable against the
 9 corporate income tax or premium tax to apply against
 10 liability for the sales and use tax; requiring that a
 11 qualifying business applying the tax credit against the
 12 sales and use tax make an additional capital investment of
 13 a specified amount within a certain period; requiring
 14 annual reports to the Legislature and the Office of
 15 Tourism, Trade, and Economic Development related to
 16 investments made by a qualifying business applying credits
 17 against the sales and use tax; requiring a qualifying
 18 business that fails to make the required capital
 19 investments to repay the amount of the sales and use tax
 20 credit claimed with interest; authorizing the Office of
 21 Tourism, Trade, and Economic Development and the
 22 Department of Revenue to adopt rules; providing an
 23 effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Section 220.191, Florida Statutes, is amended
 28 to read:

29 | 220.191 Capital investment tax credit.—

30 | (1) DEFINITIONS.—As used in ~~For purposes of~~ this section:

31 | (a) "Commencement of operations" means the beginning of
 32 | active operations by a qualifying business of the principal
 33 | function for which a qualifying project was constructed.

34 | (b) "Cumulative capital investment" means the total
 35 | capital investment in land, buildings, and equipment made in
 36 | connection with a qualifying project during the period from the
 37 | beginning of construction of the project to the commencement of
 38 | operations.

39 | (c) "Eligible capital costs" means all expenses incurred
 40 | by a qualifying business in connection with the acquisition,
 41 | construction, installation, and equipping of a qualifying
 42 | project during the period from the beginning of construction of
 43 | the project to the commencement of operations, including, but
 44 | not limited to:

45 | 1. The costs of acquiring, constructing, installing,
 46 | equipping, and financing a qualifying project, including all
 47 | obligations incurred for labor and obligations to contractors,
 48 | subcontractors, builders, and materialmen.

49 | 2. The costs of acquiring land or rights to land and any
 50 | cost incidental thereto, including recording fees.

51 | 3. The costs of architectural and engineering services,
 52 | including test borings, surveys, estimates, plans and
 53 | specifications, preliminary investigations, environmental
 54 | mitigation, and supervision of construction, as well as the
 55 | performance of all duties required by or consequent to the
 56 | acquisition, construction, installation, and equipping of a

57| qualifying project.

58| 4. The costs associated with the installation of fixtures
 59| and equipment; surveys, including archaeological and
 60| environmental surveys; site tests and inspections; subsurface
 61| site work and excavation; removal of structures, roadways, and
 62| other surface obstructions; filling, grading, paving, and
 63| provisions for drainage, storm water retention, and installation
 64| of utilities, including water, sewer, sewage treatment, gas,
 65| electricity, communications, and similar facilities; and offsite
 66| construction of utility extensions to the boundaries of the
 67| property.

68|
 69| The term does ~~Eligible capital costs shall~~ not include the cost
 70| of any property previously owned or leased by the qualifying
 71| business.

72| (d) "Income generated by or arising out of the qualifying
 73| project" means the qualifying project's annual taxable income as
 74| determined by generally accepted accounting principles and under
 75| s. 220.13.

76| (e) "Jobs" means full-time equivalent positions, as that
 77| term is consistent with terms used by the Agency for Workforce
 78| Innovation and the United States Department of Labor for
 79| purposes of unemployment tax administration and employment
 80| estimation, resulting directly from a project in this state. The
 81| term does not include temporary construction jobs involved in
 82| the construction of the project facility.

83| (f) "Office" means the Office of Tourism, Trade, and
 84| Economic Development.

85 (g) "Qualifying business" means a business which
 86 establishes a qualifying project in this state and which is
 87 certified by the office to receive tax credits pursuant to this
 88 section.

89 (h) "Qualifying project" means:

90 1. A new or expanding facility in this state which creates
 91 at least 100 new jobs in this state and is in one of the high-
 92 impact sectors identified by Enterprise Florida, Inc., and
 93 certified by the office pursuant to s. 288.108(6), including,
 94 but not limited to, aviation, aerospace, automotive, and silicon
 95 technology industries;

96 2. A new or expanded facility in this state which is
 97 engaged in a target industry designated pursuant to the
 98 procedure specified in s. 288.106(2)(t) and which is induced by
 99 this credit to create or retain at least 1,000 jobs in this
 100 state, provided that at least 100 of those jobs are new, pay an
 101 annual average wage of at least 130 percent of the average
 102 private sector wage in the area as defined in s. 288.106(2), and
 103 make a cumulative capital investment of at least \$100 million
 104 after July 1, 2005. Jobs may be considered retained only if
 105 there is significant evidence that the loss of jobs is imminent.
 106 Notwithstanding subsection (2), annual credits against the tax
 107 imposed by this chapter may ~~shall~~ not exceed 50 percent of the
 108 increased annual corporate income tax liability or the premium
 109 tax liability generated by or arising out of a project
 110 qualifying under this subparagraph. A facility that qualifies
 111 under this subparagraph for an annual credit against the tax
 112 imposed by this chapter may take the tax credit for a period not

113 | to exceed 5 years; or

114 | 3. A new or expanded headquarters facility in this state
 115 | which locates in an enterprise zone and brownfield area and is
 116 | induced by this credit to create at least 1,500 jobs which on
 117 | average pay at least 200 percent of the statewide average annual
 118 | private sector wage, as published by the Agency for Workforce
 119 | Innovation or its successor, and which new or expanded
 120 | headquarters facility makes a cumulative capital investment in
 121 | this state of at least \$250 million.

122 | (2) (a) An annual credit against the tax imposed by this
 123 | chapter shall be granted to any qualifying business in an amount
 124 | equal to 5 percent of the eligible capital costs generated by a
 125 | qualifying project, for a period not to exceed 20 years
 126 | beginning with the commencement of operations of the project.
 127 | Unless assigned as described in this subsection, the tax credit
 128 | shall be granted against only the corporate income tax liability
 129 | or the premium tax liability generated by or arising out of the
 130 | qualifying project, and the sum of all tax credits provided
 131 | pursuant to this section may ~~shall~~ not exceed 100 percent of the
 132 | eligible capital costs of the project. Except as provided in
 133 | paragraph (d), a ~~In no event may any~~ credit granted under this
 134 | section may not be carried forward or backward by any qualifying
 135 | business with respect to a subsequent or prior year. The annual
 136 | tax credit granted under this section may ~~shall~~ not exceed the
 137 | following percentages of the annual corporate income tax
 138 | liability or the premium tax liability generated by or arising
 139 | out of a qualifying project:

140 | 1. One hundred percent for a qualifying project which

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141 results in a cumulative capital investment of at least \$100
142 million.

143 2. Seventy-five percent for a qualifying project which
144 results in a cumulative capital investment of at least \$50
145 million but less than \$100 million.

146 3. Fifty percent for a qualifying project which results in
147 a cumulative capital investment of at least \$25 million but less
148 than \$50 million.

149 (b) A qualifying project that ~~which~~ results in a
150 cumulative capital investment of less than \$25 million is not
151 eligible for the capital investment tax credit. An insurance
152 company claiming a credit against premium tax liability under
153 this program is ~~shall~~ not be required to pay any additional
154 retaliatory tax levied pursuant to s. 624.5091 as a result of
155 claiming such credit. Because credits under this section are
156 available to an insurance company, s. 624.5091 does not limit
157 such credit in any manner.

158 (c) A qualifying business that establishes a qualifying
159 project that includes locating a new solar panel manufacturing
160 facility in this state that generates a minimum of 400 jobs
161 within 6 months after commencement of operations with an average
162 salary of at least \$50,000 may assign or transfer the annual
163 credit, or any portion thereof, granted under this section to
164 any other business. However, the amount of the tax credit that
165 may be transferred in any year is ~~shall be~~ the lesser of the
166 qualifying business's state corporate income tax liability for
167 that year, as limited by the percentages applicable under
168 paragraph (a) and as calculated before ~~prior to~~ taking any

169 credit pursuant to this section, or the credit amount granted
170 for that year. A business receiving the transferred or assigned
171 credits may use the credits only in the year received, and the
172 credits may not be carried forward or backward. To perfect the
173 transfer, the transferor must ~~shall~~ provide the department with
174 a written transfer statement notifying the department of the
175 transferor's intent to transfer the tax credits to the
176 transferee; the date the transfer is effective; the transferee's
177 name, address, and federal taxpayer identification number; the
178 tax period; and the amount of tax credits to be transferred. The
179 department shall, upon receipt of a transfer statement
180 conforming to the requirements of this paragraph, provide the
181 transferee with a certificate reflecting the tax credit amounts
182 transferred. A copy of the certificate must be attached to each
183 tax return for which the transferee seeks to apply such tax
184 credits.

185 (d) Beginning in the year 2011, if the credit granted
186 under this subsection is not fully used in fiscal year 2011 and
187 all years thereafter because of insufficient tax liability on
188 the part of the qualifying business, the qualifying business is
189 entitled to a sales tax credit against its sales tax liability
190 in an amount equal to the difference between the annual tax
191 credit granted under this subsection, as computed pursuant to
192 paragraph (a), and the amount of credit that is actually usable
193 against the corporate income tax liability or premium tax. The
194 sales tax credit shall be granted against the state sales and
195 use taxes collected, reported, and remitted under chapter 212
196 during the 12-month period beginning on the date the qualifying

197 business files its corporate income tax return for the year in
198 which the credit granted under this subsection is not fully
199 usable. The sales tax credit granted under this paragraph may
200 not exceed \$5 million in any one year and is subject to the
201 following:

202 1. A qualifying business that applies its sales tax credit
203 against its sales and use tax liability must make capital
204 investments in Florida, in addition to its cumulative capital
205 investment, in an amount equal to or greater than the applied
206 credit within 5 years after the date that the qualifying
207 business first applied the sales tax credit to its sales and use
208 tax return.

209 2. The qualifying business must annually provide to the
210 office, the President of the Senate, and the Speaker of the
211 House of Representatives a report listing the capital
212 investments made in each tax year in which the business claims a
213 sales and use tax credit pursuant to this paragraph and must
214 provide a final summary report of all capital investments made
215 pursuant to the requirements of this paragraph.

216 3. If the qualifying business fails to make the capital
217 investments pursuant to subparagraph 1. or if the business fails
218 to report its capital investments pursuant to subparagraph 2.,
219 the qualifying business shall repay to the Department of Revenue
220 the difference between the sales tax credits received and the
221 amount of capital investments accounted for plus interest as
222 provided for delinquent taxes under chapter 212.

223 4. This paragraph applies only to businesses headquartered
224 in Florida qualifying for this credit pursuant to subparagraph

225 | (2) (a) 1. and only to businesses that received signed letters of
 226 | approval and entry into the Capital Investment Tax Credit
 227 | Program from the years 2006-2008.

228 |
 229 | The office and the Department of Revenue may adopt rules to
 230 | administer this paragraph.

231 | (3) (a) Notwithstanding subsection (2), an annual credit
 232 | against the tax imposed by this chapter shall be granted to a
 233 | qualifying business which establishes a qualifying project
 234 | pursuant to subparagraph (1) (h) 3., in an amount equal to the
 235 | lesser of \$15 million or 5 percent of the eligible capital costs
 236 | made in connection with a qualifying project, for a period not
 237 | to exceed 20 years beginning with the commencement of operations
 238 | of the project. The tax credit shall be granted against the
 239 | corporate income tax liability of the qualifying business and as
 240 | further provided in paragraph (c). The total tax credit provided
 241 | pursuant to this subsection shall be equal to no more than 100
 242 | percent of the eligible capital costs of the qualifying project.

243 | (b) If the credit granted under this subsection is not
 244 | fully used in any one year because of insufficient tax liability
 245 | on the part of the qualifying business, the unused amount may be
 246 | carried forward for a period not to exceed 20 years after the
 247 | commencement of operations of the project. The carryover credit
 248 | may be used in a subsequent year when the tax imposed by this
 249 | chapter for that year exceeds the credit for which the
 250 | qualifying business is eligible in that year under this
 251 | subsection after applying the other credits and unused
 252 | carryovers in the order provided by s. 220.02(8).

253 (c) The credit granted under this subsection may be used
 254 in whole or in part by the qualifying business or any
 255 corporation that is either a member of that qualifying
 256 business's affiliated group of corporations, is a related entity
 257 taxable as a cooperative under subchapter T of the Internal
 258 Revenue Code, or, if the qualifying business is an entity
 259 taxable as a cooperative under subchapter T of the Internal
 260 Revenue Code, is related to the qualifying business. Any entity
 261 related to the qualifying business may continue to file as a
 262 member of a Florida-nexus consolidated group pursuant to a prior
 263 election made under s. 220.131(1), Florida Statutes (1985), even
 264 if the parent of the group changes due to a direct or indirect
 265 acquisition of the former common parent of the group. Any credit
 266 can be used by any of the affiliated companies or related
 267 entities referenced in this paragraph to the same extent as it
 268 could have been used by the qualifying business. However, any
 269 such use shall not operate to increase the amount of the credit
 270 or extend the period within which the credit must be used.

271 (4) Before ~~Prior to~~ receiving tax credits pursuant to this
 272 section, a qualifying business must achieve and maintain the
 273 minimum employment goals beginning with the commencement of
 274 operations at a qualifying project and continuing each year
 275 thereafter during which tax credits are available pursuant to
 276 this section.

277 (5) Applications shall be reviewed and certified pursuant
 278 to s. 288.061. The office, upon a recommendation by Enterprise
 279 Florida, Inc., shall first certify a business as eligible to
 280 receive tax credits pursuant to this section prior to the

281 commencement of operations of a qualifying project, and such
 282 certification shall be transmitted to the Department of Revenue.
 283 Upon receipt of the certification, the Department of Revenue
 284 shall enter into a written agreement with the qualifying
 285 business specifying, at a minimum, the method by which income
 286 generated by or arising out of the qualifying project will be
 287 determined.

288 (6) The office, in consultation with Enterprise Florida,
 289 Inc., is authorized to develop the necessary guidelines and
 290 application materials for the certification process described in
 291 subsection (5).

292 (7) ~~It shall be the responsibility of~~ The qualifying
 293 business has the responsibility to affirmatively demonstrate to
 294 the satisfaction of the Department of Revenue that such business
 295 meets the job creation and capital investment requirements of
 296 this section.

297 (8) The Department of Revenue may specify by rule the
 298 methods by which a project's pro forma annual taxable income is
 299 determined.

300 Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1301 Economic Development
SPONSOR(S): Nelson and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1862

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Kruse <i>MK</i>	Kruse <i>MK</i>
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill creates a new business loan guarantee program to provide an incentive to Florida-based mezzanine funds to make investments in businesses that otherwise may represent a level of risk the fund is unwilling to take, which may have the effect of encouraging private sector economic activity. The source of funding for the loan guarantees comes solely from the repayments made to the state from the Economic Gardening Loan Pilot Program that otherwise would have been returned to General Revenue.

The bill also repeals an inactive microenterprise program section of law.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

ISSUE BACKGROUND

The bill creates a new business loan guarantee program to provide an incentive to Florida-based mezzanine funds to make investments in businesses that otherwise may represent a level of risk the fund is unwilling to take.

Loan Guarantee Programs, State and Federal

Some states and the Federal government currently offer various types of loan guarantee programs. The state of Georgia administers the Entrepreneur and Small Business Development (ESBD) Loan Guarantee Program. The ESBD Loan Guarantee Program provides partial guarantees to banks for loans to small businesses that cannot otherwise obtain all of their financing needs. The ESBD Loan Guarantee Program's objective is to fund viable ESBD loans that leverage private investment while creating new or expanding existing businesses that will create employment opportunities for mostly rural Georgia. Loan guarantees to lenders are up to 50% of the original principal amount of the lender's loan, or up to \$112,500, whichever is less, with the sub-recipient business providing no less than 10% cash equity in the project. The loan guarantee does not cover outstanding or capitalized interest charges. Lenders provide a 1% loan guarantee fee of the guarantee amount to the OneGeorgia Authority at the loan closing. In addition, OneGeorgia requires an on-going annual fee of 0.5% of the outstanding loan balance.

An eligible lender must use the ESBD Loan Guarantee Program to partially guarantee a new loan made to an eligible sub-recipient business who then must use the lender's funds for sound business purposes which may include, but not be limited to the following:

- acquisition of land (by purchase or lease);
- improvement of a site (e.g., grading, streets, parking lots, landscaping);
- acquisition of one or more existing buildings;
- conversion, expansion or renovation of one or more existing buildings;
- construction of one or more new buildings; acquisition (by purchase or lease); or
- installation of fixed assets and working capital.

A working capital loan must be adequately secured by accounts receivable or inventory of the sub-recipient business properly margined according to the lender's normal collateral guidelines. Working capital can also be secured by tangible assets owned by the principals of the business. An ESBD guaranteed loan cannot exceed 90% of the value of the underlying collateral. Proper collateral documents must be executed and recorded as necessary including security agreements, deeds to secure debt, and UCC financing statements.

Borrowers may be entrepreneurs, start-ups and small business owners. The borrower must be a "for-profit" business enterprise properly organized in Georgia and located in an eligible county or a conditionally eligible county with population less than 150,000. The business owner or majority principal must live in an eligible county. The business must meet ESB eligibility requirements and lender's underwriting criteria for consideration.

Federal

The Federal Small Business Administration (SBA) administers several loan guarantee programs and one in particular, the 7(a) loan, for working capital expenses. 7(a) loans are only available on a guaranty basis. This means they are provided by lenders who choose to structure their own loans by SBA's requirements and who apply and receive a guaranty from SBA on a portion of this loan. Under the guaranty concept, commercial lenders make and administer the loans.

The business applies to a lender for their financing. The lender decides if they will make the loan internally or if the application has some weaknesses which, in their opinion, will require an SBA guaranty if the loan is to be made. The guaranty which SBA provides is only available to the lender. It

assures the lender that in the event the borrower does not repay their obligation and a payment default occurs, the Government will reimburse the lender for its loss, up to the percentage of SBA's guaranty. Under this program, the borrower remains obligated for the full amount due. In order to obtain positive consideration for an SBA supported loan, the applicant must be both eligible and creditworthy.

In order to get a 7(a) loan, the applicant must first be eligible. Repayment ability from the cash flow of the business is a primary consideration in the SBA loan decision process but good character, management capability, collateral, and owner's equity contribution are also important considerations. All owners of 20 percent or more are required to personally guarantee SBA loans.

All applicants must be eligible to be considered for a 7(a) loan. The eligibility requirements are designed to be as broad as possible in order that this lending program can accommodate the most diverse variety of small business financing needs. All businesses that are considered for financing under SBA's 7(a) loan program must meet SBA size standards, be for-profit, not already have the internal resources (business or personal) to provide the financing, and be able to demonstrate repayment. Eligibility factors for all 7(a) loans include size, type of business, use of proceeds, and the availability of funds from other sources.¹

Microenterprises

In 1997, the Legislature authorized the Governor's Office of Tourism, Trade, and Economic Development to contract with a nonprofit or governmental organization to foster microenterprise development in Florida. The program provided a number of competitive grants to community-based nonprofit organizations located throughout the state, which in turn provided technical assistance and loans to low and moderate income individuals to help them achieve self-sufficiency through self-employment. However, the program experienced a high number of failures and the Legislature has not subsequently funded the program.

Mezzanine Funds

A typical mezzanine investment consists of a debt or debt-like instrument, paired with an equity "sweetener." The equity component of the investment gives the mezzanine lender upside potential, while the debt component, which generates steady interest payments and ranks senior to the company's common stock, provides a measure of downside risk protection. The most common formulation is a note which may provide for both current-pay cash interest and pay-in-kind, or PIK, interest, paired with warrants to acquire stock of the borrower. Mezzanine investments can be made using other types of securities as well, such as with preferred stock in place of a debt instrument.²

Mezzanine capital is often a more expensive financing source for a company than secured debt or senior debt. The higher cost of capital associated with mezzanine financings is the result of its location as an unsecured, subordinated (or junior) obligation in a company's capital structure (i.e., in the event of default, the mezzanine financing is less likely to be repaid in full after all senior obligations have been satisfied). Additionally, mezzanine financings, which are usually private placements, are often used by smaller companies and may involve greater overall leverage levels than issuers in the high-yield market; as such, they involve additional risk. In compensation for the increased risk, mezzanine debt holders require a higher return for their investment than secured or other more senior lenders.

Economic Gardening

In the 2009 Special Session, the Legislature created the Economic Gardening Business Loan Pilot Program within the Office of Tourism, Trade, and Economic Development (OTTED). The loan program is focused on businesses desiring to expand jobs in the state. Those include businesses that:

1. are for-profit, privately held, investment grade;
2. employ between ten and 50 employees;

¹ Small Business Administration, "Basic 7(a) Loan Program" located at <http://www.sba.gov/services/financialassistance/sbaloantopics/7a/> last viewed 12/30/08.

² Definition of Mezzanine Fund-InvestorDictionary.com, found at <http://www.investordictionary.com/definition/mezzanine-fund> (last visited March 18, 2011).

3. have been in existence in the state for at least two years;
4. generate between \$1 million and \$25 million in annual revenue;
5. qualify for the Qualified Target Industry (QTI) tax refund program; and
6. have increased, during 3 of the previous 5 years, both the number of full-time employees in the state and its gross revenues.

The loans must be used to finance working capital purchases, employee training, or salaries associated with newly created jobs. Job retention does not qualify under the loan program. The maximum loan amount is \$250,000 with no minimum loan amount prescribed. The bill establishes a two percent interest rate and requires that the loan be collateralized with all available corporate assets. In the first year of the loan, only interest is due. The loan is paid off over the remaining term of the loan. If the job creation criterion is not met in the first two years of the loan, the interest rate on the loan is raised to the prime rate plus four percent which will provide an incentive to the business to refinance the loan in the private sector and pay off the loan.

The \$8.5 million loan program is currently administered by the non-profit Black Business Investment Fund of Central Florida under contract with OTTED. The loan administrator reports that 37 loans have been made across the state for a total of \$7.3 million. No new loans may be made after June 30, 2011. Loan approval decisions are made based upon confirmation of a business' application materials and a determination of which applicants are in the best position to utilize a loan to continue making a successful long-term business commitment to the state. The lending entity receives an origination fee of one percent of the loan amount at closing and a nominal monthly servicing fee. The entity returns principal and interest payments as well as any funds collected from a defaulted borrower to OTTED and also makes a report of loan activity and results to OTTED quarterly. The report describes, among other things, the number and wages of jobs created and the type and location of business activity funded. Any funds not disbursed by OTTED are returned to General Revenue. The lending entity estimates the expected return to General Revenue from loan payments as follows:

YEAR	EXPECTED LOAN REPAYMENTS	PERCENTAGE OF LOAN FUND
2010	\$79,070	1%
2011	\$1,186,050	15%
2012	\$1,581,400	20%
2013	\$1,976,750	25%
2014	\$1,976,750	25%
2015	\$1,106,980	14%
TOTAL ESTIMATED LOAN FUNDS RETURNED TO STATE:	\$7,907,000	100%

Changes made by the bill

The bill creates a new business loan guarantee program to provide an incentive to Florida-based mezzanine funds to make investments in businesses that otherwise may represent a level of risk the fund is unwilling to take. The source of funding for the loan guarantees comes solely from the repayments made to the state from the Economic Gardening Loan Pilot Program.

Loan Guarantee Administration and Parameters

The bill provides that the program is administered by the Governor's Office of Tourism, Trade, and Economic Development (OTTED). OTTED is provided authority to use funds deposited from the Economic Gardening Loan Pilot Program for the loan guarantees. A loan guarantee may be made to a Florida-based mezzanine fund to offset the funds portion of risk that prevents the fund from making an investment, either debt or equity. A loan guarantee may be made for terms up to 36 months and in amounts of up to 70 percent of a loan, not to exceed \$500,000. After establishing application review guidelines, OTTED may charge a fee of 0.5 percent of a proposed loan guarantee to review a mezzanine funds application. OTTED is required to review and approve or deny the application within 30 days after receipt.

A business must meet the following criteria:

1. Is a privately held, second-stage business;
2. Has revenues of at least \$5 million but not more than \$75 million;
3. Has earnings of at least \$1 million before interest, taxes, depreciation, and amortization;
4. Has a total debt-to-earnings ratio, before interest, taxes, depreciation, and amortization, of less than 3.0;
5. Has proven and committed management teams;
6. Has a competitive advantage in market segment or defensible niche position; and
7. Has a sound historical financial performance.

OTTED may partner with a financial institution to make additional loan guarantees if the financial institution agrees to place a meaningful amount of its own capital at risk in the loan guarantee made by OTTED. The bill requires OTTED to make an annual report on the loan guarantee programs progress based on performance measures to the Governor and the Legislature.

The bill provides that the Business Loan Guarantee Program is repealed July 1, 2017. The bill also repeals the law that created the microenterprise program, which has been inactive since 1998.

The bill does not have a fiscal impact because it uses loan repayment funds from the Economic Gardening Loan Pilot Program that otherwise would have been returned to General Revenue to fund loan guarantees .

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

- Section 1. Creates s. 288.9619, F.S., to establish the Business Loan Guarantee Program.
- Section 2. Amends s. 288.1081(5)(e), F.S., to provide authority for the loan repayments from the Economic Gardening Loan Pilot Program to be used for the Business Loan Guarantee Program.
- Section 3. Repeals s. 288.9618, F.S., which created the microenterprise program.
- Section 4. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage private sector economic activity if, through a loan guarantee, a Florida-based mezzanine funds is able to make additional investments in businesses that in turn expand and create jobs.

D. FISCAL COMMENTS:

The bill does not have a fiscal impact because it uses loan repayment funds from the Economic Gardening Loan Pilot Program. HB 775 promotes a competing use of the funds by making the Economic Gardening Loan Pilot Program permanent and having the loan repayments available for additional economic gardening loans.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to economic development; creating s.
 3 288.9619, F.S.; creating the Business Loan Guarantee
 4 Program; defining terms; requiring the Office of Tourism,
 5 Trade, and Economic Development to create a business loan
 6 guarantee fund to provide loans to certain businesses;
 7 providing for use of certain funds for the program;
 8 providing maximum terms and amounts of loan guarantees;
 9 providing procedures for the approval of loan guarantee
 10 applications; requiring application fees; providing
 11 procedures for the payment of loan guarantees to cover
 12 investment losses; prohibiting disbursement of moneys for
 13 investment losses under certain circumstances; providing
 14 for use of loan repayments, interest earnings, and
 15 application fees; authorizing partnerships with financial
 16 institutions under certain circumstances; requiring the
 17 office to establish guidelines and performance measures
 18 for the program and criteria for the evaluation of funding
 19 applications; requiring the office to submit annual
 20 reports to the Governor and Legislature; providing for
 21 future repeal of the program; amending 288.1081, F.S.;
 22 revising provisions for the deposit of loan repayments
 23 from the Economic Gardening Business Loan Pilot Program;
 24 providing for use of the funds; repealing s. 288.9618,
 25 F.S., relating to programs for the development of
 26 microenterprises; providing an effective date.

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 28 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 288.9619, Florida Statutes, is created to read:

288.9619 Business Loan Guarantee Program.—

(1) As used in this section, the term:

(a) "Business" means any business incorporated under the laws of the state.

(b) "Office" means the Office of Tourism, Trade, and Economic Development.

(2) There is created within the office the Business Loan Guarantee Program. The office shall create a business loan guarantee fund in the state. The office may use funds deposited in the Economic Development Trust Fund from the Economic Gardening Business Loan Pilot Program under s. 288.1081(5)(e) for capitalizing the business loan guarantee fund. Where feasible, the office shall cooperate with other organizations active in the study and support of business loan assistance.

(3)(a) The business loan guarantee fund may provide loan guarantees to offset a Florida-based mezzanine fund's portion of risk that prevents the mezzanine fund from making an investment, either debt or equity, in a business that:

1. Is a privately held, second-stage business;
2. Has revenues of at least \$5 million but not more than \$75 million;
3. Has earnings of at least \$1 million before interest, taxes, depreciation, and amortization;
4. Has a total debt-to-earnings ratio, before interest, taxes, depreciation, and amortization, of less than 3.0;

57 5. Has proven and committed management teams;
 58 6. Has a competitive advantage in market segment or
 59 defensible niche position; and
 60 7. Has a sound historical financial performance.
 61 (b) Loan guarantees may be made:
 62 1. For terms of up to 36 months; and
 63 2. In amounts of up to 70 percent of a loan, not to exceed
 64 \$500,000.
 65 (4) The office shall review and must approve or deny a
 66 Florida-based mezzanine fund's loan guarantee application within
 67 30 days after receipt. The office shall impose upon each
 68 Florida-based mezzanine fund seeking a loan guarantee an
 69 application fee of 0.5 percent of the proposed loan guarantee.
 70 The office shall use the application fees to pay the
 71 administrative expenses of the program. If a Florida-based
 72 mezzanine fund experiences a loss on an investment for which a
 73 loan guarantee is provided under this section, the Florida-based
 74 mezzanine fund must submit to the office audited financial
 75 statements that demonstrate the investment's actual tax loss
 76 experienced by the Florida-based mezzanine fund. The business
 77 loan guarantee fund may not disburse moneys for any losses
 78 experienced from a loan guarantee which exceed the moneys on
 79 deposit in the business loan guarantee fund. Any loan
 80 repayments, interest earnings, or unused application fees must
 81 be used by the office to capitalize the business loan guarantee
 82 fund for use as additional loan guarantees.
 83 (5) The office may partner with a financial institution if
 84 the financial institution agrees to place a meaningful amount of

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85 its own capital resources at risk in a loan guarantee that is
86 part of a loan guarantee made by the office.

87 (6) The office shall establish guidelines for
88 administering the program and shall establish criteria for the
89 competitive evaluation of applications for funding. The office
90 shall establish performance measures for the program before
91 providing grant moneys to any entity and shall report such
92 measures and program outcomes annually to the Governor, the
93 President of the Senate, and the Speaker of the House of
94 Representatives. Performance measures shall include, but are not
95 limited to, data on loan repayments and the status of the
96 business receiving the loan during the loan term and for 2 years
97 after repayment of the loan.

98 (7) This section is repealed July 1, 2017, unless reviewed
99 and reenacted by the Legislature before that date.

100 Section 2. Paragraph (e) of subsection (5) of section
101 288.1081, Florida Statutes, is amended to read:

102 288.1081 Economic Gardening Business Loan Pilot Program.—

103 (5)

104 (e) A loan administrator, after collecting the servicing
105 fee in accordance with paragraph (d), shall remit the borrower's
106 collected interest, principal payments, and charges for late
107 payments to the office on a quarterly basis. If the borrower
108 defaults on the loan, the loan administrator shall initiate
109 collection efforts to seek repayment of the loan. The loan
110 administrator, upon collecting payments for a defaulted loan,
111 shall remit the payments to the office but, to the extent
112 authorized in the grant agreement, may deduct the costs of the

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113 administrator's collection efforts. The office shall deposit all
114 funds received under this paragraph into the Economic
115 Development Trust Fund for purposes of in the Business Loan
116 Guarantee Program under s. 288.9619 ~~General Revenue Fund.~~

117 Section 3. Section 288.9618, Florida Statutes, is
118 repealed.

119 Section 4. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1309 Economic Recovery from the Deepwater Horizon Disaster

SPONSOR(S): Coley and others

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Tecler <i>AT</i>	Kruse <i>TK</i>
2) Rulemaking & Regulation Subcommittee			
3) Transportation & Economic Development Appropriations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

On April 20, 2010, the Transocean drilling rig known as Deepwater Horizon exploded in the Gulf of Mexico with the loss of 11 missing and presumed dead crewmembers. Over the next three months, an estimated 4.9 million barrels of crude oil were discharged into the Gulf of Mexico. The oil spill negatively impacted the coastal counties and communities in Florida's panhandle, damaging pristine beaches and suppressing economic activity. The bill takes several steps toward mitigating the economic impacts of the oil spill and boosting recovery efforts in northwest Florida.

The bill extends the Rural Area of Critical Economic Concern program to Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa and Walton counties for three years. Further, the bill provides that the designated counties will be eligible for waiver of criteria for any economic development incentive allowed under the program. These changes may have the effect of stimulating private sector economic activity within those counties.

For fiscal years 2011-2012, 2012-2013, and 2013-2014, the bill appropriates \$10 million per fiscal year from general revenue to the Governor's Office of Tourism, Trade and Economic Development for the purpose of contracting with Florida's Great Northwest, Inc., to develop and implement a regional economic development program, which could encourage economic diversification and bring high-paying jobs to the region.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

Deepwater Horizon Explosion

At approximately 10:00 PM on April 20, 2010, the Transocean drilling rig known as Deepwater Horizon exploded in the Gulf of Mexico with the loss of 11 missing and presumed dead crewmembers.¹ At the time of the explosion, the Deepwater Horizon rig was anchored approximately 45 miles southeast of the Louisiana coast. Drilling operations were being conducted at a sea depth of 5,000 feet and had progressed more than 18,000 feet below the sea floor where commercial oil deposits were discovered.

On April 22, 2010, the Deepwater Horizon rig capsized and sank. Two days later, underwater cameras detected crude oil and natural gas leaking from the surface riser pipes attached to the well-head safety device known as the blowout preventer. The blowout preventer malfunctioned and failed to shut off flow out of the well-head. Over the next three months, an estimated 4.9 million barrels of crude oil was discharged into the Gulf of Mexico.²

As a result of the spreading oil spill in the Gulf of Mexico, a state of emergency was declared by the governor on April 30, 2010, and included Escambia, Santa Rosa, Okaloosa, Walton, Bay and Gulf counties.³ The initial executive order was amended on May 3, 2010, to include Franklin, Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, and Sarasota counties.⁴ Subsequently Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.⁵

BP PLC was the operator of Deepwater Horizon and has recognized its role as the principal responsible party for the disaster. BP has pledged to fully cover the cost of response, recovery, and damages. As of March 11, 2011, BP has paid or invested more than \$1.6 billion in Florida.⁶ However, the total clean up and recovery costs have yet to be determined.

BP Payments and Investments in Florida Through March 10, 2011	
Florida Government Payments	\$72,300,000
Total Payments to Individuals and Businesses	\$1,487,200,000
• Gulf Coast Claims Facility ^a	\$81,600,000
• BP Claims Process ^b	\$1,405,600,000
Vessels of Opportunity Payments ^c	\$73,100,000
Tourism Payments	\$32,000,000
NRDA Payments	\$8,000,000
Research Payments	\$10,000,000
Behavioral Health Payments	\$3,000,000
Contributions	\$300,000
Total	\$1,685,900,000
(a) through 8/22/2010 (b) through 3/9/2011 (c) through 2/24/2011	

¹ Rig Disaster: Timeline, *Wall Street Journal*, <http://online.wsj.com/article/SB10001424052748704302304575213883555525958.html>, (last visited 03/14/2011).

² Assessment of Flow Rate Estimates for the Deepwater Horizon / Macondo Well Oil Spill, National Incident Command and the United States Department of the Interior, <http://on.doi.gov/hZU3Xf>, (last visited 03/14/2011).

³ Fla. Exec. Order No. 10-99, April 30, 2010.

⁴ Fla. Exec. Order No. 10-100, May 3, 2010.

⁵ Fla. Exec. Order No. 10-106, May 20, 2010.

⁶ BP Payments and Investments in Florida, March 10, 2011, <http://www.floridagulfresponse.com/go/doc/3059/897475/BP-Payments-and-Investments-in-Florida>, (last visited 03/14/2011).

Civil Penalties and Federal Law

On December 15, 2010, the federal government filed suit against BP and 8 other companies asking that the companies be held liable without limitation under the Oil Pollution Act ("OPA") for all removal costs and damages caused by the spill, including damages to natural resources.⁷ The lawsuit also seeks civil penalties under the Clean Water Act ("CWA").

Under the OPA, liability for damages from an offshore facility spill is capped at \$75 million per incident, except in limited circumstances. Responsible parties are liable for clean-up costs and certain damages resulting from the spill. Damages as defined by OPA include several categories of economic damages as well as damages associated with injuries to natural resources.

Civil penalties recovered under CWA must be deposited into the Oil Spill Liability Trust Fund. The Fund was created to ensure that there are available funds for clean-up, response, and restoration efforts for future oil spills. As a contingency, the Fund may be used to pay compensation for removal costs and damages if a responsible party fails to do so and to pay compensation in excess of the responsible parties' liability.⁸

In the long-term recovery report issued last September, the Secretary of the Navy recommended that Congress direct a significant portion of any civil penalties collected to the areas impacted by the Deepwater Horizon oil spill.⁹ A certain portion of the directed funds would be placed in a recovery fund while the remaining amount would go directly to the impacted states. Under the proposal, a council would be created to distribute the recovery funds. However, Congress has not indicated how funds collected through civil penalties will be appropriated.

Economic Development in Northwest Florida

Prior to the Deepwater Horizon oil spill, economic diversification was a priority in the Northwest Florida region. While tourism and defense have a strong presence in the area, further diversification into other industry sectors could potentially bring additional high-wage jobs to the region. Currently, the average annual wage of all industries in the seven coastal counties impacted by the oil spill is lower than the statewide average annual wage of \$40,973.¹⁰ The impacted counties also tend to have lower graduation rates, a low percentage of individuals with college degrees, and spotty access to broadband and other high-tech services.¹¹ Northwest Florida is also home to many rural counties. The state offers several initiatives to assist rural and small counties, including the Rural Economic Development Initiative and Rural Areas of Critical Economic Concern.

Rural Incentive Programs

Currently, Walton, Gulf, and Franklin counties are designated as rural counties and are eligible to participate in the state's Rural Economic Development Initiative ("REDI").¹² REDI was created by the Florida Legislature to encourage and align critical state agency participation and investment around important rural issues and opportunities.¹³ In order to strengthen the regional wage and tax base in rural regions of the state, the Initiative facilitates the location and expansion of major economic development projects in rural communities. The initiative is operated by the Office of Tourism, Trade, and Economic Development ("OTTED") and involves the participation of all state and regional agencies to assist in meeting the needs of the rural areas.

Within REDI, the Governor may designate up to three Rural Areas of Critical Economic Concern ("RACEC").¹⁴ Most rural counties have been categorized into one of three RACECs: the North Central,

⁷ Attorney General Eric Holder Announces Civil Lawsuit Against Nine Defendants for Deepwater Horizon Oil Spill, United States Department of Justice, December 15, 2010, <http://www.justice.gov/opa/pr/2010/December/10-ag-1442.html>, (last visited 03/15/2011).

⁸ America's Gulf Coast: A Long Term Recovery Plan After the Deepwater Horizon Oil Spill, September 2010, <http://www.restorethegulf.gov/sites/default/files/documents/pdf/gulf-recovery-sep-2010.pdf>, (last visited 03/15/2011).

⁹ America's Gulf Coast: A Long Term Recovery Plan After the Deepwater Horizon Oil Spill.

¹⁰ Florida County Profiles, The Office of Economic and Demographic Research, <http://edr.state.fl.us/Content/area-profiles/county/index.cfm>, (last visited 03/15/2011).

¹¹ Florida County Profiles, The Office of Economic and Demographic Research.

¹² Thirty-two Florida counties are presently categorized as "rural" pursuant s. 288.0656, F.S.

¹³ Section 288.0656, F.S.

¹⁴ Section 288.0656(7)(a-c), F.S.

the Northwest, and the South Central. RACECs are defined by OTTED based on measures of economic interdependence among the rural counties in each of the three geographic regions. A RACEC designation establishes each region as a priority assignment for REDI agencies and allows the Governor, through REDI, to waive criteria for certain economic development incentives including, but not limited to: the Qualified Target Industry Tax Refund Program, the Quick Response Training Program, the Rural Job Tax Credit Program and certain transportation projects.¹⁵ RACEC counties in each region also partner in creating catalyst sites that will attract key businesses. Franklin and Gulf counties are part of the Northwest RACEC.¹⁶

Florida's Great Northwest, Inc.

Florida's Great Northwest, Inc. is a non-profit regional economic development organization representing 16 counties in Northwest Florida. The organization was founded in 2000 and is comprised of local economic development groups, workforce development boards, educational institutions and private business. The organization builds strategic alliances with its public and private partners to facilitate the development of key industry clusters that could bring high paying jobs to the region.¹⁷

Changes Made By the Bill

In order to mitigate the economic impacts of the oil spill and boost recovery efforts in northwest Florida, the bill extends the RACEC program to certain counties affected by the oil spill. Second, the bill authorizes a recurring appropriation of funds for the purpose of creating a regional economic development program.

Rural Areas of Critical Economic Concern

The bill designates the counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton, and municipalities within those counties as a RACEC. Under current law, Bay, Escambia, Okaloosa, Santa Rosa, and Walton¹⁸ counties do not qualify for the RACEC program. However, the changes proposed in this bill are focused on and limited to making all seven counties a priority assignment for REDI and allowing the Governor, through REDI, to waive criteria for certain economic development incentives in any one of these counties.

The criteria for the following incentives could be waived in full or in part: the Qualified Target Industry Tax Refund Program, the Quick Response Training Program, and the Rural Job Tax Credit Program. As a RACEC, the designated counties will have priority status in the Transportation Regional Incentive Program and have additional flexibility in meeting the requirements for projects classified as developments of regional impact. Further, the RACEC designation may allow the counties to make certain amendments to their comprehensive plans, qualify such counties for the Tourist-orientated Directional Sign Program, and access grants under the Underserved Arts Community Assistance program.

The bill provides that this temporary designation will expire on June 30, 2014. Further, this designation will apply without any memorandum of agreement between OTTED and the local governments within this RACEC. Because Franklin and Gulf counties are part of the Northwest RACEC, both counties will continue to have access to RACEC waivers after the 2014 expiration date.

Regional Economic Development Program

The bill authorizes the Office of Tourism, Trade and Economic Development to contract with Florida's Great Northwest, Inc. in order to develop and implement a regional economic development program. For fiscal years 2011-2012, 2012-2013, and 2013-2014, an appropriation of \$10 million per fiscal year is authorized from General Revenue to fund the development of the regional program. The mission of the program is to promote research and development, commercialization of research, job creation, and

¹⁵ Section 288.0656(7)(a), F.S.

¹⁶ The N.W. RACEC includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Washington counties, and the City of Freeport in Walton County.

¹⁷ <http://www.floridasgreatnorthwest.com/WhatWeDo/visionmission.html>, (last visited 03/15/2011).

¹⁸ The city of Freeport is part of the Northwest RACEC.

economic diversification in seven designated oil spill counties.¹⁹ The bill provides that appropriated funds may not be used to pay the administrative costs of Florida's Great Northwest, Inc. Florida's Great Northwest Inc., is required to report quarterly to OTTED on the organization's activities and expenditure of funds. In addition, the organization must collaborate with educational entities, economic development organizations, local governments, and relevant state agencies to create a program framework and criteria for the expenditure of funds. The criteria for the expenditure of funds must include, at minimum, the following:

- A funding preference for the counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa Walton, and municipalities within those counties; and
- A preference for expedited permitting that will promote the mission of the program within the jurisdiction of eligible counties and municipalities.

The contract with Florida's Great Northwest and funding, reporting requirements, and limitations under the contract expire on June 30, 2014.

The bill has an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1: Amends s. 288.0656, F.S., designating certain counties as a Rural Area of Critical Economic Concern and providing that such counties be eligible for waiver of criteria for any economic development incentive allowed under the program.

Section 2: Provides an appropriation for a regional economic development program.

Section 3: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

For fiscal years 2011-2012, 2012-2013, and 2013-2014, an appropriation of \$10 million per fiscal year from general revenue is provided to the Office of Tourism, Trade, and Economic Development for the purpose of contracting with Florida's Great Northwest, Inc., to develop and implement a regional economic development program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill may, in part, mitigate the economic impacts of the oil spill and boost recovery efforts in northwest Florida.

¹⁹ Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa and Walton counties.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to economic recovery from the Deepwater
 3 Horizon disaster; amending s. 288.0656, F.S.; designating
 4 the Counties of Bay, Escambia, Franklin, Gulf, Okaloosa,
 5 Santa Rosa, and Walton, and the municipalities within
 6 those counties, as a rural area of critical economic
 7 concern for purposes of the Rural Economic Development
 8 Initiative; providing that the area is a priority
 9 assignment, eligible for certain waivers, and exempt from
 10 specified requirements; providing appropriations;
 11 providing for reserve, release, use, and reversion of
 12 appropriated funds; requiring the Office of Tourism,
 13 Trade, and Economic Development to contract with Florida's
 14 Great Northwest, Inc., to develop and implement an
 15 economic development program in the Counties of Bay,
 16 Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Wakulla,
 17 and Walton; providing contract requirements; providing for
 18 expiration; providing an effective date.

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 20 Be It Enacted by the Legislature of the State of Florida:

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 22 Section 1. Subsections (3) and (4) and paragraph (c) of
 23 subsection (6) of section 288.0656, Florida Statutes, are
 24 amended, and subsection (9) is added to that section, to read:

25 288.0656 Rural Economic Development Initiative.—

26 (3) REDI shall be responsible for coordinating and
 27 focusing the efforts and resources of state and regional
 28 agencies on the problems which affect the fiscal, economic, and

29 community viability of Florida's economically distressed rural
 30 communities and rural areas of critical economic concern,
 31 working with local governments, community-based organizations,
 32 and private organizations that have an interest in the growth
 33 and development of these communities to find ways to balance
 34 environmental and growth management issues with local needs.

35 (4) REDI shall review and evaluate the impact of statutes
 36 and rules on rural communities and rural areas of critical
 37 economic concern and shall work to minimize any adverse impact
 38 and undertake outreach and capacity-building efforts.

39 (6)

40 (c) The REDI representatives shall work with REDI in the
 41 review and evaluation of statutes and rules for adverse impact
 42 on rural communities and rural areas of critical economic
 43 concern and the development of alternative proposals to mitigate
 44 that impact.

45 (9) (a) For purposes of this section, the Counties of Bay,
 46 Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, and Walton, and
 47 the municipalities within those counties, are designated as a
 48 rural area of critical economic concern.

49 (b) The area is a priority assignment for REDI and
 50 eligible for waiver of criteria, requirements, or similar
 51 provisions of any economic development incentive pursuant to
 52 paragraph (7) (a) and is exempt from the requirements of
 53 paragraph (7) (b).

54 (c) This subsection expires on June 30, 2014.

55 Section 2. (1) For fiscal years 2011-2012, 2012-2013, and
 56 2013-2014, the sum of \$10 million per fiscal year in recurring

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57 funds from the General Revenue Fund is appropriated to the
58 Office of Tourism, Trade, and Economic Development for the
59 purpose of contracting with Florida's Great Northwest, Inc., to
60 develop and implement an innovative economic development program
61 to promote research and development, commercialization of
62 research, economic diversification, and job creation in the
63 Counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa,
64 Wakulla, and Walton. The funds shall be placed in reserve by the
65 Executive Office of the Governor and may be released as
66 authorized by law or the Legislative Budget Commission. The
67 funds may not be used to pay for the administrative costs of
68 Florida's Great Northwest, Inc. Any funds remaining on June 30,
69 2014, shall revert to the General Revenue Fund.

70 (2) The contract shall, at a minimum, require Florida's
71 Great Northwest, Inc., to report quarterly to the Office of
72 Tourism, Trade, and Economic Development and to collaborate with
73 educational entities, economic development organizations, local
74 governments, and relevant state agencies to create a program
75 framework and strategy, including specific criteria for the
76 expenditure of funds. The criteria for the expenditure of funds
77 shall, at a minimum, require a funding preference for the
78 Counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa,
79 Wakulla, and Walton, and the municipalities within those
80 counties, which provides for expedited permitting in order to
81 promote research and development, commercialization of research,
82 economic diversification, and job creation within those
83 jurisdictions.

84 (3) This section expires on June 30, 2014.

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Section 3. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1425 State Minimum Wage
SPONSOR(S): Tobia and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1610

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Kruse <i>TK</i>	Kruse <i>TK</i>
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Agency for Workforce Innovation (AWI) is required to calculate and publish the state minimum wage. Current law requires employers to pay employees the minimum wage published by AWI for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations are eligible to receive the state minimum wage.

The bill provides greater specificity to AWI as to how to calculate the state minimum wage.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

ISSUE BACKGROUND

Minimum Wage Calculation

Pursuant to s. 24 of the Florida Constitution and s. 448.110, F.S., the Agency for Workforce Innovation is required to calculate and publish the Florida minimum wage. Section 448.110(4)(a) states in part: “[T]he Agency for Workforce Innovation (AWI) shall calculate an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1.” The changes made by the bill provide AWI with more specific direction as to how AWI should calculate the Florida minimum wage.

Current law requires employers to pay employees a minimum wage at an hourly rate published by AWI for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations are eligible to receive the state minimum wage. AWI must calculate an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In calculating the adjusted state minimum wage, AWI must use the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region. If the result of such adjustment by the CPI on the state minimum wage is less than either the previous year’s adjusted state minimum wage or the Federal minimum wage rate, then the greater of those two becomes the adjusted state minimum wage. Each adjusted state minimum wage rate takes effect on the following January 1, unless a new Federal minimum wage rate is issued and that rate is higher than the current adjusted state minimum wage rate. For example, on July 24, 2009, the new Federal minimum wage rate of \$7.25 became the new adjusted state minimum wage rate because it was higher than the adjusted state minimum wage rate at the time of \$7.21.

AWI and the Department of Revenue are required to annually publish the amount of the adjusted state minimum wage and the effective date. Publication is made by posting the adjusted state minimum wage rate and the effective date on the Internet home pages of the agency and the department by October 15 of each year. In addition, if funding is available, AWI must provide written notice of the adjusted rate and the effective date of the adjusted state minimum wage to all employers registered in the most current unemployment compensation database. Such notice must be mailed by November 15 of each year using the addresses included in the database.

AWI’s method for calculating the state minimum wage rate is currently the subject of a lawsuit. Florida Legal Services and the National Employment Law Project recently filed the lawsuit on behalf of four individual workers and three organizations that represent low-wage employees. The plaintiffs claim that AWI should have calculated the 2010 rate based off of the 2009 adjusted state minimum wage. The case is currently pending.

Changes made by the bill

The bill provides greater specificity to AWI as to how to calculate the adjusted state minimum wage rate. AWI is directed to first calculate the difference between the CPI from August of the previous year and then August of the current year. The difference will be the rate of inflation. The difference is then to be applied to the previous year’s wage rate calculation. The bill then states that the adjusted state minimum wage becomes the Florida minimum wage when both the previous year’s Florida minimum wage and the Federal minimum wage are lower than the adjusted state minimum wage rate.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Amends s. 448.110(4)(a), F.S., to revise the state minimum wage calculation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill currently provides no direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Agency for Workforce Innovation reports that the current bill still does not provide enough clarity to the minimum wage rate calculation. The bill sponsor has indicated that an amendment will be filed addressing the issue.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled

An act relating to the state minimum wage; amending s. 448.110, F.S.; providing requirements for the adjustment of the state minimum wage; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (4) of section 448.110, Florida Statutes, is amended to read:

448.110 State minimum wage; annual wage adjustment; enforcement.—

(4) (a) Beginning September 30, 2005, and annually on September 30 thereafter, the Agency for Workforce Innovation shall calculate an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In calculating the adjusted state minimum wage, the agency shall use the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region or a successor index as calculated by the United States Department of Labor. To determine the adjusted state minimum wage rate, the agency shall first calculate the difference between the Consumer Price Index from August of the previous year and from August of the current year and apply that difference to the previous year's wage rate calculation. The adjusted state minimum wage rate takes effect as the Florida minimum wage, as defined in s. 448.109(1)(b), when both the previous year's Florida minimum wage and the federal minimum wage are lower than the adjusted state minimum

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29 | wage rate. Each adjusted state minimum wage rate shall take
30 | effect on the following January 1, with the initial adjusted
31 | minimum wage rate to take effect on January 1, 2006.

32 | Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDTS 11-02 Department of Labor and Employment Security

SPONSOR(S): Economic Development & Tourism Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee		Kruse <i>MK</i>	Kruse <i>MK</i>

SUMMARY ANALYSIS

The Department of Labor and Employment Security (DLES) was created in 1978 when it was removed from the Florida Department of Commerce. It consisted of one administrative support division, six program divisions, and administratively housed several independent entities. The process for the abolishment of DLES began in the 1999 Legislative Session, and subdivisions and programs of the department were transferred or repealed through several legislative bills until the department was formally abolished by the Legislature in 2002.

Current statute provides DLES with authority to enter into an agreement with a county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses or other similar registrations and applications for renewals of licenses or other similar registrations. Since DLES has been abolished, this statute is obsolete.

The bill repeals the section of law described above to remove it from the statutes.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Labor and Employment Security

The Department of Labor and Employment Security (DLES) was created in 1978 when it was removed from the Florida Department of Commerce.¹ It consisted of one administrative support division, six program divisions, and administratively housed several independent entities.

The process for the abolishment of DLES began in the 1999 Legislative Session,² and subdivisions and programs of the department were transferred or repealed through several legislative bills until the department was formally abolished by the Legislature in 2002.

Section 288.038, F.S., provides DLES with authority to enter into an agreement with a county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses or other similar registrations and applications for renewals of licenses or other similar registrations. The agreement had to specify the time within which the tax collector must forward any applications and accompanying application fees to the department.

Since DLES has been abolished, this statute is obsolete.

Changes made by the bill

The bill repeals s. 288.038, F.S., to remove this obsolete section of law.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Repeals s. 288.038, F.S.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹ Chapter 78-201, L.O.F.

² Chapter 99-240, L.O.F.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

BILL

ORIGINAL

YEAR

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A bill to be entitled
An act relating to former Department of Labor and
Employment Security; repealing s. 288.038, F.S., which
relates to agreements appointing county tax collectors
as agents of the Department of Labor and Employment
Security for licenses and other similar registrations;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

- Section 1. Section 288.038, Florida Statutes, is repealed.
- Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDTS 11-03 Florida-Caribbean Basin Trade Initiative
SPONSOR(S): Economic Development & Tourism Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee		Kruse MK	Kruse MK

SUMMARY ANALYSIS

In 2000, the Legislature created the Florida-Caribbean Basin Trade Initiative as part of the Seaport Employment Training Grant Program (STEP). STEP was required to establish and administer the Florida-Caribbean Basin Trade Initiative for the purpose of assisting small and medium-sized businesses to become involved in international activities and helping them to identify markets with product demand, identify strategic alliances in those markets, and obtain the financing to effectuate trade opportunities in the Caribbean Basin. Funding was appropriated for that year only and the program has been inactive since that time.

The bill repeals the section of law that created the Florida-Caribbean Basin Trade Initiative.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2000, the Legislature created the Florida-Caribbean Basin Trade Initiative as part of the Seaport Employment Training Grant Program (STEP). STEP was required to establish and administer the Florida-Caribbean Basin Trade Initiative for the purpose of assisting small and medium-sized businesses to become involved in international activities and helping them to identify markets with product demand, identify strategic alliances in those markets, and obtain the financing to effectuate trade opportunities in the Caribbean Basin. The initiative was designed to focus assistance to businesses located in urban communities and offer export readiness, assistance and referral services, internships, seminars, workshops, conferences, and e-commerce plus mentoring and matchmaking services, but not duplicate Enterprise Florida services. STEP was required to administer the Initiative pursuant to a performance-based contract with the Office of Tourism, Trade, and Economic Development.

The Legislature allocated \$300,000 to be administered by STEP for establishing the Florida-Caribbean Basin Trade Initiative, but no additional funding has been appropriated since that time. In addition, Enterprise Florida staff state that the program has been inactive since it was created in 2000.

Changes made by the bill

The bill repeals s. 288.386, F.S., which created the Florida-Caribbean Basin Trade Initiative.

The bill has no fiscal impact.

The effective date of the bill is July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Repeals s. 288.386, F.S.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

BILL

ORIGINAL

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A bill to be entitled
An act relating to Florida-Caribbean Basin Trade
Initiative; repealing the Florida-Caribbean Basin Trade
Initiative; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 288.386, Florida Statutes, is repealed.
Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDTS 11-04 Florida Trade Date Center
SPONSOR(S): Economic Development & Tourism Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee		Kruse <i>MC</i>	Kruse <i>MC</i>

SUMMARY ANALYSIS

The Legislature created the Florida Trade Data Center in 1992 as a comprehensive trade data resource and research center. The purpose of the Center was to create a trade information system that provides timely import and export information, trade opportunities, intermodal transportation information that measures cargo flow by transportation mode, commodity trends, trade activity between Florida and specific countries, and other relevant information. The Center has been inactive since 1999.

The bill removes references to the Florida Trade Data Center in sections of law that address state of Florida foreign offices, Florida-Caribbean Basin Trade Initiative, and the Florida seaport transportation and economic development funding.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Trade Data Center

The Legislature created the Florida Trade Data Center in 1992 as a comprehensive trade data resource and research center. The purpose of the Center was to create a trade information system that provides timely import and export information, trade opportunities, intermodal transportation information that measures cargo flow by transportation mode, commodity trends, trade activity between Florida and specific countries, and other relevant information. The Center has been inactive since 1999.

Changes made by the bill

The bill removes obsolete references to the Florida Trade Data Center in s. 288.012(2)(c), (d), and (e), F.S., (State of Florida Foreign Offices), s. 288.386(2), F.S., (Florida-Caribbean Basin Trade Initiative, and s. 311.07(3)(a), F.S., (Florida seaport transportation and economic development funding).

B. SECTION DIRECTORY:

- Section 1. Amends s. 288.012(2)(c), (d), and (e), F.S., to remove reference to the Florida Trade Data Center.
- Section 2. Amends s. 288.386(2), F.S., to remove reference to the Florida Trade Data Center.
- Section 3. Amends s. 311.07(3)(a), F.S., to remove reference to the Florida Trade Data Center.
- Section 4. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to the Florida Trade Data Center; amending
 3 s. 288.012, F.S.; removing reference to the Florida Trade
 4 Data Center; amending s. 288.386, F.S.; removing reference
 5 to the Florida Trade Data Center; amending s. 311.07,
 6 F.S.; removing reference to the Florida Trade Data Center;
 7 providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraphs (c), (d), and (e) of subsection (2)
 12 of section 288.012, Florida Statutes, are amended to read:

13 288.012 State of Florida foreign offices.—The Legislature
 14 finds that the expansion of international trade and tourism is
 15 vital to the overall health and growth of the economy of this
 16 state. This expansion is hampered by the lack of technical and
 17 business assistance, financial assistance, and information
 18 services for businesses in this state. The Legislature finds
 19 that these businesses could be assisted by providing these
 20 services at State of Florida foreign offices. The Legislature
 21 further finds that the accessibility and provision of services
 22 at these offices can be enhanced through cooperative agreements
 23 or strategic alliances between state entities, local entities,
 24 foreign entities, and private businesses.

25 (2) Each foreign office shall have in place an operational
 26 plan approved by the participating boards or other governing
 27 authority, a copy of which shall be provided to the Office of
 28 Tourism, Trade, and Economic Development. These operating plans

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29 shall be reviewed and updated each fiscal year and shall
30 include, at a minimum, the following:

31 (c) Provisions for access to information for Florida
32 businesses related to ~~through the Florida Trade Data Center.~~
33 ~~Each foreign office shall obtain and forward~~ trade leads and
34 ~~inquiries to the center on a regular basis.~~

35 (d) Identification of new and emerging market
36 opportunities for Florida businesses. ~~Each foreign office shall~~
37 ~~provide the Florida Trade Data Center with a compilation of~~
38 ~~foreign buyers and importers in industry sector priority areas~~
39 ~~on an annual basis. In return, the Florida Trade Data Center~~
40 ~~shall make available to each foreign office, and to Enterprise~~
41 ~~Florida, Inc., the Florida Commission on Tourism, the Florida~~
42 ~~Ports Council, the Department of State, the Department of~~
43 ~~Citrus, and the Department of Agriculture and Consumer Services,~~
44 ~~trade industry, commodity, and opportunity information. This~~
45 ~~information shall be provided to such offices and entities~~
46 ~~either free of charge or on a fee basis with fees set only to~~
47 ~~recover the costs of providing the information.~~

48 (e) Provision of access for Florida businesses to ~~the~~
49 ~~services of the Florida Trade Data Center,~~ international trade
50 assistance services provided by state and local entities,
51 seaport and airport information, and other services identified
52 by the Office of Tourism, Trade, and Economic Development.

53 Section 2. Subsection (2) of section 288.386, Florida
54 Statutes, is amended to read:

55 288.386 Florida-Caribbean Basin Trade Initiative.—

56 (2) To enhance initiative effectiveness and leverage

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57 resources, STEP shall coordinate initiative activities with
58 Enterprise Florida, Inc., United States Export Assistance
59 Centers, Florida Export Finance Corporation, ~~Florida Trade Data~~
60 ~~Center~~, Small Business Development Centers, and any other
61 organizations STEP deems appropriate. The coordination may
62 encompass export assistance and referral services, export
63 financing, job-training programs, educational programs, market
64 research and development, market promotion, trade missions, e-
65 commerce, and mentoring and matchmaking services relative to the
66 expansion of trade between Florida and the Caribbean Basin. The
67 initiative shall also form alliances with multilateral,
68 international, and domestic funding programs from Florida, the
69 United States, and the Caribbean Basin to coordinate systems and
70 programs for fundamental assistance in facilitating trade and
71 investment.

72 Section 3. Paragraph (a) of subsection (3) of section
73 311.07, Florida Statutes, is amended to read:

74 311.07 Florida seaport transportation and economic
75 development funding.—

76 (3)(a) Program funds shall be used to fund approved
77 projects on a 50-50 matching basis with any of the deepwater
78 ports, as listed in s. 403.021(9)(b), which is governed by a
79 public body or any other deepwater port which is governed by a
80 public body and which complies with the water quality provisions
81 of s. 403.061, the comprehensive master plan requirements of s.
82 163.3178(2)(k), and the local financial management and reporting
83 provisions of part III of chapter 218. However, program funds
84 used to fund projects that involve the rehabilitation of

BILL

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YEAR

85 | wharves, docks, berths, bulkheads, or similar structures shall
86 | require a 25-percent match of funds. ~~Program funds also may be~~
87 | ~~used by the Seaport Transportation and Economic Development~~
88 | ~~Council to develop with the Florida Trade Data Center such trade~~
89 | ~~data information products which will assist Florida's seaports~~
90 | ~~and international trade.~~

91 | Section 4. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDTS 11-05 Microenterprises
SPONSOR(S): Economic Development & Tourism Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee		Kruse MK	Kruse MK

SUMMARY ANALYSIS

In 1997, the Legislature authorized the Governor's Office of Tourism, Trade, and Economic Development to contract with a nonprofit or governmental organization to foster microenterprise development in Florida. The program provided a number of competitive grants to community-based nonprofit organizations located throughout the state, which in turn provided technical assistance and loans to low and moderate income individuals to help them achieve self-sufficiency through self-employment. However, the program experienced a high number of failures and the Legislature has not subsequently funded the program.

The bill repeals the law that created the microenterprise program.

The bill does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Microenterprises

In 1997, the Legislature authorized the Governor's Office of Tourism, Trade, and Economic Development (OTTED) to contract with a nonprofit or governmental organization to foster microenterprise development in Florida. The Legislature appropriated \$1 million to OTTED to support this endeavor in Fiscal Year 1997-98. OTTED subsequently entered into a contract with Enterprise Florida, Inc., to develop and administer a microloan program. EFI, in turn, outsourced the program's administration to a consulting firm. The program, known as MicroEnterprise Florida, provided competitive grants to 17 community-based nonprofit organizations located throughout the state. Under the program, the nonprofit organizations provided technical assistance and loans to low and moderate income individuals to help them achieve self-sufficiency through self-employment. Loan amounts ranged from \$500 to \$10,000. Loan repayments were made to the microloan providers so they could be used to capitalize additional loans. MicroEnterprise Florida reported that it assisted 216 microenterprise start-ups and 16 expanding businesses in Fiscal Year 1998-99. However, Enterprise Florida, Inc., representatives reported that approximately 70% of businesses assisted by the program failed. The Legislature did not fund the program after Fiscal Year 1997-98.

Changes made by the bill

The bill repeals s.288.9618, F.S., which created the microenterprise law.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Repeals s. 288.9618, F.S.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDTS 11-06 United States Department of Defense Base Realignment Closure 2005
Process

SPONSOR(S): Economic Development & Tourism Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee		Kruse MK	Kruse MK

SUMMARY ANALYSIS

In 2004, the Legislature exempted from public disclosure certain records held by the Governor's Advisory Council on Base Realignment and Closure (BRAC) or the Office of Tourism, Trade, and Economic Development. Portions of the Governor's BRAC Advisory Council meetings or subcommittee meetings were also exempted from the Sunshine Law. The exemption was repealed on May 31, 2006, but has not been removed from statute.

The bill repeals the law that created a public records exemption for the items described above.

The bill does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2004, the Legislature exempted from public disclosure certain records held by the Governor's Advisory Council on Base Realignment and Closure (BRAC) or the Office of Tourism, Trade, and Economic Development. Specifically, that portion of a record was confidential and exempt that related to the: (1) strengths and weakness of military installations or missions in the state; (2) vulnerability or immunity of military installations in other states; and (3) state's strategy to retain its military installations in response to the 2005 BRAC round. Portions of the Governor's BRAC Advisory Council meetings or subcommittee meetings were also exempt from the Sunshine Law when the above exempt records were presented or discussed. Any records generated at those closed portions of the Advisory Council's meetings were also exempt from the public records law. The exemption was repealed on May 31, 2006, but remains in statute.

Changes made by the bill

The bill repeals the law that created a public records exemption for the items described above.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Repeals s. 288.982, F.S.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

BILL

ORIGINAL

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A bill to be entitled
An act relating to United States Department of Defense
Base Realignment and Closure 2005 process; repealing s.
288.982, F.S., which relates to a public records exemption
for certain records relating to the United States
Department of Defense Base Realignment and Closure 2005
process; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

- Section 1. Section 288.982, Florida Statutes, is repealed.
- Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDTS 11-07 Inner City Redevelopment Review Panel

SPONSOR(S): Economic Development & Tourism Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee		Kruse MK	Kruse MK

SUMMARY ANALYSIS

In 2000, the Legislature created the Inner City Redevelopment Assistance Grants Program to be administered by the Governor's Office of Tourism, Trade, and Economic Development (OTTED). The Legislature also created the Inner City Redevelopment Review Panel within OTTED to review grant proposals. OTTED reports that the review panel is inactive.

The bill repeals the law that created the Inner City Redevelopment Review Panel.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2000, the Legislature created the Inner City Redevelopment Assistance Grants Program to be administered by the Governor's Office of Tourism, Trade, and Economic Development (OTTED). The Legislature also created the Inner City Redevelopment Review Panel within OTTED to review grant proposals. Members were appointed by the Director of OTTED and were required to demonstrate experience and/or education in the redevelopment of the state's inner city in order to qualify. The panel was organized as follows:

- a) One member affiliated with the Black Business Investment Board;
- b) One member affiliated with the Institute on Urban Policy and Commerce at FAMU;
- c) One member affiliated with OTTED;
- d) One member who is also the president of Enterprise Florida, Inc. or the president's designee;
- e) One member who is also the Secretary of the Community Affairs or the secretary's designee;
- f) One member affiliated with the Better Jobs/Better Wages of Workforce Florida, Inc., if created. Otherwise, the member will be the president and chief operating officer of the Florida Workforce Development Board; and
- g) One member who is with the First Job/First Wages Council of Workforce Florida, Inc. If created. Otherwise, the member must be the Secretary of Labor and Employment Security or the secretary's designee.

OTTED reports that the review panel is inactive.

Changes made by the bill

The bill repeals s. 409.946, F.S., which created the Inner City Redevelopment Review Panel.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Repeals s. 409.946, F.S.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

BILL

ORIGINAL

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A bill to be entitled
An act relating to the Inner City Redevelopment Review
Panel; repealing s. 409.946, F.S., which relates to the
Inner City Redevelopment Review Panel; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 409.946, Florida Statutes, is repealed.
Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDTS 11-08 Telecommunications Company Workers

SPONSOR(S): Economic Development & Tourism Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee		Kruse MK	Kruse MK

SUMMARY ANALYSIS

In 1995, the Legislature created s. 446.60, F.S., to provide assistance to certain telecommunications workers. The statute provides that the now abolished Department of Labor and Employment Security was to provide assistance to local exchange telecommunications company workers pursuant to any applicable state or federal program within its jurisdiction, to any individual employed in the state by a local exchange telecommunications company on June 30, 1995, who is displaced, dislocated, severed, or retired from employment as a result of the introduction of competition. The need for assistance to these workers has long passed and the statute is inactive.

The bill repeals the section of law that directed the former Department of Labor and Employment Security to provide assistance to displaced local exchange telecommunications company workers.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 1995, the Legislature created s. 446.60, F.S., to provide assistance to certain telecommunications workers. The statute provides that the now abolished Department of Labor and Employment Security was to provide assistance to local exchange telecommunications company workers pursuant to any applicable state or federal program within its jurisdiction, to any individual employed in the state by a local exchange telecommunications company on June 30, 1995, who is displaced, dislocated, severed, or retired from employment as a result of the introduction of competition under the act. The assistance was required to include maintaining a database of such workers to assist the industry in recruiting a trained workforce, if so requested by the worker. In addition, the Department of Labor and Employment Security was required to coordinate with the Enterprise Florida Jobs and Education Partnership, the Department of Commerce, and the Department of Education to assist new, existing, or expanding telecommunications businesses in Florida to apply for training grants under the guidelines and criteria of the Quick-Response Training Program.

The need for telecommunications worker job assistance has long passed and this statute is inactive.

Changes made by the bill

The bill repeals the section of law that directed the former Department of Labor and Employment Security to provide assistance to displaced local exchange telecommunications company workers.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Repeals s. 446.60, F.S.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to displaced local exchange
3 telecommunications company workers; repealing s. 446.60,
4 F.S., which relates to assistance for displaced local
5 exchange telecommunications company workers; providing an
6 effective date.

7

8 Be It Enacted by the Legislature of the State of Florida:

9

10 Section 1. Section 446.60, Florida Statutes, is repealed.
11 Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDTS 11-09 Agency for Workforce Innovation

SPONSOR(S): Economic Development & Tourism Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee		Kruse MK	Kruse MK

SUMMARY ANALYSIS

Current law mandates that both the Department of Corrections and the Agency for Workforce Innovation adopt rules to implement the Transition Assistance Program Act. However, the Act imposes no duties upon the Agency. The Joint Administrative Procedures Committee has recommended the removal of the Agency from the statute.

The bill removes the Agency for Workforce Innovation's requirement to adopt rules regarding the Transition Assistance Program.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pursuant to s. 11.60(4), F.S., the Joint Administrative Procedures Committee (JAPC) recently made a recommendation to the House Economic Development and Tourism Subcommittee as to the advisability of considering changes to the delegated legislative authority to adopt rules in specific circumstances, in this instance, s. 944.708, F.S.

Section 944.708, F.S., requires the Department of Corrections and the Agency for Workforce Innovation to adopt rules to implement ss. 944.701-944.707, F.S. The statute was amended in 2010 to change a reference from the Department of Labor and Employment Security to the Agency for Workforce Innovation. The Department of Corrections has adopted Rule 33-601.504, which provides policies for the Transition Assistance Program. Section 944.708, F.S., mandates that both the Department and the Agency adopt rules to implement the Transition Assistance Program Act, as it states: "The Department of Corrections **and** the Agency for Workforce Innovation **shall** adopt rules to implement the provisions of ss.944.701-944.707." (Emphasis added). However, the Agency for Workforce Innovation has taken the position that rulemaking is unnecessary because the Act imposes no duties upon the Agency. Acting upon that information, JAPC has recommended to the Subcommittee removal of the Agency from the statute.

Changes made by the bill

The bill removes the Agency for Workforce Innovation's requirement to adopt rules found in s. 944.708, F.S., regarding the Transition Assistance Program.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Amends s. 944.708, F.S., to remove reference to the Agency for Workforce Innovation.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to rulemaking for the Transition
3 Assistance Program Act; amending s. 944.708, F.S.;
4 removing reference to the Agency for Workforce Innovation;
5 providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Section 944.708, Florida Statutes, is amended
10 to read:

11 944.708 Rules.—The Department of Corrections ~~and the~~
12 ~~Agency for Workforce Innovation~~ shall adopt rules to implement
13 the provisions of ss. 944.701-944.707.

14 Section 2. This act shall take effect July 1, 2011.