The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: PCS/SB 1752 (777190)

INTRODUCER: Policy and Steering Committee on Ways and Means

SUBJECT: Economic Development

DATE: March 17, 2010 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	Coburn	WPSC	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

PCS/SB 1752 amends several Florida business tax exemptions and tax credits, the Qualified Target Industry incentive program, and other economic development-related statutes in an effort to create jobs in Florida. It creates:

- tax credits for employers who hire jobless Floridians;
- a matching grant program for new research and development companies to draw down federal funds that assist in commercializing their discoveries; and
- opportunities to reduce regulatory impediments on businesses seeking permits or extensions of development orders.

Overall, this legislation is estimated to reduce revenues deposited into the General Revenue Fund by $46.0 million in FY 2010-11; $72.9 million in FY 2011-12, and $38.2 million in FY 2012-13. For revenues deposited into state trust funds, including those revenues shared with local governments, this legislation is estimated to reduce revenues by $0.2 million in FY 2010-11; to increase revenues by $0.7 million in FY 2011-12; and to reduce revenues by $0.7 million in FY 2012-13. For revenues imposed by local governments, the legislation is estimated to reduce revenues by $0.5 million in FY 2010-11, $0.2 million in FY 2011-12, and 0.8 million in FY 2012-13.

In addition, this legislation appropriates roughly $30 million from the General Revenue Fund.

This PCS substantially amends the following sections of the Florida Statutes: ss. 125.045, 159.803, 166.021, 212.05, 212.08, 213.053, 220.02, 220.191, 288.095, 288.106, 288.107, 288.125, 288.1251, 288.1252, 288.1253, 288.1254, 288.1258, 290.00677, 373.4141, 373.441, 403.061, F.S., and 403.814, F.S. It creates ss. 220.1896, 220.1899, and 288.9552, F.S. The bill

also amends ch. 2008-152, L.O.F.; creates several non-statute provisions; and specifically appropriates $30 million in general revenue.

PCS/SB 1752 takes effect upon becoming law, unless another date is specified within individual sections of the bill.

II. Present Situation:

Because PCS/SB 1752 addresses a range of economic-development issues, the "Present Situation" and "Effect of Proposed Changes" for each section of the bill will be explained here.

Local Reporting Requirements

Sections 1 and 3 create greater public transparency by requiring reports on economic development incentives on the local level.

Present Situation
Florida law recognizes that county and municipal governments are key partners in the economic development of this state, and specifies that expending local government revenues for economic development is a public purpose. Local economic-development incentive programs are important, also, because they can generate the funds needed to match state and federal incentives that require local participation. Anecdotally, each local government establishes the types of incentives to best suit its needs, and there is no publicly accessible database or clearinghouse on local economic development incentives or programs.

Also, some counties and municipalities have economic-development offices or bureaus staffed with their own employees, while other local governments contract with either private or quasi-private entities to manage industry recruitment or retention. There appear to be no standard reporting requirements for the outside entities, other than business audits, to indicate how the contracted funds were spent and whether the expenditures accomplished the local governments' economic development goals.

Unlike the lack of incentives data and economic development accomplishments at the local level, the state requires an annual report about its economic incentives. Enterprise Florida, Inc. (EFI), the state's public-private business recruitment entity, publishes a report every December about the state's various incentives, how many companies utilized them the previous year, and what was the average estimated return on investment (ROI).[1]

Effect of Proposed Changes
Section 1 amends s. 125.045, F.S., (applicable to counties) and **section 3** amends s. 166.021, F.S., (applicable to municipalities) to:

- Require local government contracts with private Economic Development Organizations (EDOs) and Economic Development Agencies (EDAs) to include a requirement for an annual report on how public contract funds were spent and what outcomes were achieved.

[1] The reporting requirement is in s. 288.095(3)(c), F.S.

This report will be included as an addendum to the local government's annual financial audits.
- Report annually to the Legislative Committee on Intergovernmental Relations (LCIR) the local economic development incentives granted during the previous fiscal year.

All counties and only those municipalities with either annual revenues or expenditures in excess of $25,000 must report to the LCIR, regardless of the level of incentives granted.

The LCIR is directed to compile the data submitted by the local governments.

Section 2 amends s. 159.803, F.S., to correct a cross-reference

Taxes on Purchases of Aircraft and Boats

Section 4 amends s. 212.05, F.S., to cap the sales and use tax at $18,000 on the purchase of aircraft and vessels.

Present Situation:
The tax rate on the sale of aircraft and boats in Florida is 6 percent of the purchase price. An aircraft that is purchased in Florida, but will not be used or stored in this state, qualifies for either a full or partial sales tax exemption, depending on the circumstances. Also, exemptions apply to certain sales, which further complicate the issue, as detailed below.

Aircraft
Section 212.05, F.S., provides exemptions from the sales and use tax on the *purchase* of an aircraft if the purchaser removes the aircraft from the state within 10 days after the date of purchase, or when the aircraft is repaired or altered, within 20 days after completion of the repairs or alterations. A purchaser must provide proof to the Department of Revenue (DOR) that the aircraft has been removed from the state within 10 days of purchase to maintain the tax-exempt status. If a purchaser fails to remove the aircraft within 10 days of purchase, fails to remove the aircraft within 20 days of repair, returns to Florida within 6 months after purchase, or does not submit correct information to the DOR, the purchaser must pay the use tax on the cost of the aircraft and a penalty equal to the tax payable.

Meanwhile, s. 212.06, F.S., provides that a use tax shall apply and be due on tangible personal property *imported* or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that, it shall be presumed that tangible personal property used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in Florida. Section 212.06(5)(a)1., F.S., provides that an aircraft exported outside of the continental U.S. is tax exempt when the purchaser provides a validated U.S. customs declaration and the canceled U.S. registry of the aircraft.

Section 212.08(11), F.S., provides that the sales tax imposed on an aircraft sold by a *manufacturer* is equal to the amount of sales tax that would be imposed by the state where the aircraft will be domiciled, up to the 6 percent imposed by Florida. This partial exemption applies only if the purchaser is a resident of another state who will not use the aircraft in Florida, a

purchaser who is a resident of another state and uses the aircraft in interstate or foreign commerce, or if the purchaser is a resident of a foreign country.

A number of miscellaneous sales and use tax exemptions related to aviation exist in s. 212.08, F.S.:

- Aircraft repair and maintenance labor charges – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight;
- Equipment used in aircraft repair and maintenance – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight; and
- Aircraft sales and leases – For qualified aircraft and for aircraft of more than 15,000 pounds maximum certified takeoff weight used by a common carrier, as defined by federal regulations.

Boats

Section 212.05, F.S., provides exemptions from the sales and use tax on the ***purchase*** of a boat by a non-resident from a registered dealer in Florida so long as:

- A boat larger than 5 net tons with a proper decal (qualifying boat) is removed from the state within 90 days of purchase;
- A boat weighing less than 5 net tons without a proper decal (non-qualifying boat) is removed from the state within 10 days of purchase; or
- A boat that is repaired or altered is removed from the state within 20 days of repair or alteration.

A boat purchaser is liable for use tax on the "cost price" of the boat and a penalty equal to the tax payable to DOR unless all of the provisions of s. 212.05, F.S., are met. This penalty is in lieu of the penalty imposed by s. 212.12(2), F.S., and is mandatory and cannot be waived by DOR. The use tax and penalty will be assessed on purchasers that:

- Do not remove a qualifying boat from this state within 90 days after purchase or a non-qualifying boat from this state within 10 days after purchase or, when the boat is repaired or altered, within 20 days after completion of such repairs or alterations;
- Permit the boat to return to this state within 6 months from the date of departure; or
- Fail to furnish the department with any of the required documentation within the prescribed time period.

As with aircraft, s. 212.06, F.S., provides that a use tax shall apply and be due on tangible personal property ***imported*** or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that, it shall be presumed that tangible personal property used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in Florida. Section 212.06(5)(a)1., F.S., provides that boats constructed in Florida for the purpose of being ***exported*** outside of the continental U.S. are tax exempt. To avoid paying a use tax on boat purchases in Florida, a purchaser must register the vessel out of state and keep that vessel outside of Florida for 180 days.

Effect of Proposed Changes:
Section 4 amends s. 212.05(5), F.S., to provide that the maximum amount of sales or use tax levied on the sale of an aircraft or boat may not exceed $18,000.

Tax Exemptions or Credits for MME, Enterprise Zone purchases, and Qualified Entertainment Expenditures

Section 5 makes three changes to the current sales and use tax: a new exemption is created (claimed as a refund of previously paid sales and use taxes), one sales and use tax exemption is narrowed, and a sales-tax credit is created (claimed as a refund of previously paid sales and use taxes).

Manufacturing machinery and equipment exemption

Present Situation
Florida is home to nearly 17,000 manufacturing establishments that employ more than 388,000 people earning more than $18.4 billion annually, for an average annual wage of approximately $47,457.[2] Under certain conditions, the purchase of manufacturing or industrial machinery and equipment is exempt from the sales and use tax. Those exemptions include provisions in s. 212.08(5)(b), F.S., for:

- Manufacturing machinery and equipment purchased for exclusive use by a new business in spaceport activities or for use in new businesses that manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state, and
- Manufacturing machinery and equipment purchased for exclusive use by an expanding facility engaged in spaceport activities or for use in expanding manufacturing facilities or plant units that manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state, when the machinery and equipment are used to increase the productive output of the expanded facility or business by not less than 10 percent.

According to the 2008 Florida Tax Handbook, these two exemptions were valued at $88.6 million for FY 08-09.[3]

A survey[4] prepared by Enterprise Florida, Inc., (EFI) indicated that seven of Florida's competitor states – Georgia, New York, North Carolina, South Carolina, Tennessee, Texas, and Virginia – exempt all manufacturing machinery and equipment purchases from state sales tax.

Effect of Proposed Changes
Section 5 amends s. 212.08(5)(b), F.S., to provide a third instance in which the purchase of manufacturing machinery and equipment (MME) is exempt from the sales and use tax.

[2] U.S. Department of Labor, Bureau of Labor Statistics, as cited by Enterprise Florida, Inc. See: http://www.eflorida.com/Manufacturing.aspx?id=7960. Last visited January 14, 2010.
[3] See http://edr.state.fl.us/reports/taxhandbooks/taxhandbook2008.pdf. Information on page 124. Last visited Feb. 14, 2010.
[4] Available at: http://maf.affiniscape.com/associations/8948/files/Summary%20of%20Sales%20and%20Use%20Tax%20Exemptions.pdf.

Beginning July 1, 2010**,** that portion of MME purchases for exclusive use by a business engaged in spaceport activities or for use in businesses that manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in Florida which exceeds the total amount paid for such items placed into service in Florida by the taxpayer in its tax year that began in 2008 is exempt from the sales and use tax, to the extent that the taxpayer can affirmatively demonstrate to DOR the actual costs incurred for the items and that the items have been located and placed into service in Florida. Tax year 2008 shall be the baseline year for future computations of this exemption, as long as the exemption exists.

Eligible taxpayers may only claim this new exemption as a refund of previously paid sales taxes. This ensures that the legislation does not impose a potential mandate on local governments, resulting in the loss of a significant amount of local-option sales tax revenue. (A more detailed explanation is in "IV. Constitutional Issues." below.) The entire refund will be paid from the state General Revenue Fund.

This exemption is repealed effective July 1, 2012, pursuant to section 6 of this bill.

Tax exemption for building materials used in an enterprise zone
Present situation
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 57 enterprise zones.

Between October 1, 2007, and September 30, 2008, new businesses numbering 2,719 moved into or were created in enterprise zones and 9,600 new jobs were created by businesses in enterprise zones.[5] More than $40.3 million in state and nearly $22.5 million in local-government financial incentives were approved during that same period.

Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities. As noted above, the Office of Tourism, Trade, and Economic Development (OTTED) reported that nearly $40.36 million in state incentives was approved by DOR, between October 1, 2007, and September 30, 2008, for the enterprise zones. During the same time period, $22.47 million in incentives was provided by local governing bodies. 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.[6]

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.

[5] Florida Enterprise Zone Program Annual Report, October 1, 2007 - September 30, 2008. Published March 1, 2009. On file with the Senate Commerce Committee.
[6] Ibid, page 11.

- 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.

By far the most popular of the state enterprise zone incentives is the building materials tax refund; in FY 07-08, $25.6 million of the $40.3 million in state incentives paid was for building material refunds. That trend appears to be continuing, even in a down year, statewide, for construction: more than $38.6 million in state sales tax refunds have been applied for in the first 6 months of FY 09-10.[7] And as in years past, condominium owners are receiving the majority of building materials tax refunds -- $37.2 million of the $38.6 million already claimed.[8]

Effect of Proposed Changes

Section 5 also amends section 212.08(5)(g), F.S., to make condominium parcels or properties ineligible for the sales and use tax exemption for building materials used in an enterprise zone. Specifically, "condominium parcel" and "condominium property" are excluded from the definition of "real property" for the purposes of the enterprise zone tax exemption.

Film and entertainment tax credits

Present Situation

Florida's current film and entertainment incentive is a cash refund program, based on a percentage of qualified expenditures a certified production company documents it has spent in Florida. The incentive is subject to annual appropriation by the Legislature. [A more detailed description of Florida's current film and entertainment incentive program is in Section 19 below.]

Effect of Proposed Changes

Section 5 creates s. 212.08(5)(q), F.S., to permit a taxpayer to request a refund of previously paid sales and use taxes based on a credit granted pursuant to the new Florida film and entertainment incentive program, as detailed below in section 19 of this bill.

This new provision establishes that:

- For fiscal years beginning July 1, 2010, and ending June 30, 2015, a qualified production company is eligible for sales and use tax credits against its documented sales and use tax liabilities.

[7] Information provided by the Department of Revenue and on file with the Commerce Committee.
[8] Ibid.

- These tax credits cannot be applied to tax returns filed for any tax period beginning before July 1, 2011 – regardless of when the credits are awarded.
- The processes by which dealers remit sales and use tax covered by the tax credits must be via electronic data interchange or transfers. If a credit for qualified film and entertainment expenditures is greater than the taxes owed, then the excess amount of the credit may be carried forward to a succeeding reporting period.

Section 6 repeals the new manufacturing machinery and equipment exemption created in section 5, effective July 1, 2012.

Access to Confidential Tax Records

Section 7 amends s. 213.053, F.S., to allow DOR to disclose to OTTED and specified employees certain confidential tax information related to entities claiming the Film and Entertainment Industry tax credits created in s. 288.1254, F.S., and the Jobs for the Jobless Tax Credit created in s. 220.1896, F.S.

Section 8 amends s. 220.02, F.S., to specify the order in which the Jobs for the Unemployed corporate income tax credit (created in section 9) and the film and entertainment tax credit (created in sections 10 and 19) may be taken by a qualified business taxpayer against its state corporate income tax liability.

Jobs for the Unemployed Tax Credit

Section 9 creates s. 220.1896, F.S., to create a corporate income tax credit for businesses that are in targeted industry sectors and which hire unemployed Floridians who meet certain requirements.

Present Situation
Florida's unemployment rate was 11.8 percent in December 2009.[9] The top five professions that have sustained the greatest numbers of job losses over the last 12 months in Florida are: the construction industry (-59,900 jobs or 12.9 percent of the industry's workforce); trade, transportation, and utilities (-50,800 jobs); professional and business services (-40,500 jobs); manufacturing (-38,300 jobs); and financial activities (-22,700 jobs).[10]

Congress is considering several measures intended to stimulate job creation; among them is a proposal for a 1-year Social Security tax break for companies hiring new employees who have been out of work for at least 60 days.[11] Additionally, Georgia, Maryland, and New York are among the states whose legislatures are considering bills to create tax credits against state taxes for businesses that increase their payrolls. Meanwhile, since 1982 Kentucky has provided

[9] See http://www.floridajobs.org/publications/news_rel/LMSRelease012210.pdf. The U.S. unemployment rate that same month was 10 percent, according to http://www.bls.gov/news.release/pdf/empsit.pdf.
[10] Ibid.
[11] A fiscal analysis of some of the congressional job-creation proposals can be found at the Congressional Budget Office website, specifically http://www.cbo.gov/ftpdocs/111xx/doc11100/02-2010-Employment_Testimony.pdf. Last visited Feb. 12, 2009.

employers a credit of $100 per eligible hire against state income taxes owed for hiring residents who have been unemployed for 60 days and remain on the payroll for at least 180 days.[12]

Effect of Proposed Changes
New or existing businesses that meet the definition of a "qualified target industry" pursuant to s. 288.106, F.S.,[13] and which are subject to the state's corporate or franchise income tax, will be eligible for the new "Jobs for the Unemployed Tax Credit."

An eligible business will receive a $1,000 tax credit per year, for a maximum of 2 tax years, for each qualified employee. The tax-credit cap for all eligible businesses in each of the 2 fiscal years this credit is available is $5 million, to be distributed by OTTED on a first-come, first-served basis.

A "qualified employee" is defined as any person who:

- Was out of work and was determined to be monetarily eligible for unemployment benefits by the Agency for Workforce Innovation during a benefit year beginning on or after January 1, 2009;
- Was hired by the eligible business on or after July 1, 2010, and had not previously been employed by the business or its affiliated companies;
- Performed duties connected to the eligible business's operations on a regular, full-time basis for an average of at least 36 hours per week and for at least 12 months before the eligible business owner files for the tax credit; and
- Who has not been previously claimed by the eligible business for a tax credit under this program.

It is the responsibility of the business to affirmatively demonstrate to OTTED and to the Department of Revenue (DOR) that it is eligible to receive and use the tax credits. An eligible business may apply the tax credits up to the amount of its corporate tax liability in a tax year, and may carry forward any unused credits to the next tax year. The new section also prescribes penalties for businesses that fraudulently obtain or use these tax credits.

Corporate Income Tax Credits for New Film & Entertainment Incentive

Section 10 creates s. 220.1899, F.S., to acknowledge the availability of corporate income tax credits for qualified production companies that meet the requirements of s. 288.1254, F.S.

Present Situation
Florida's current film and entertainment incentive is a cash refund program, based on a percentage of qualified expenditures a certified production documents it spent in Florida. The incentive is subject to annual appropriation by the Legislature. [A more detailed description of Florida's current film and entertainment incentive program is in Section 19 below.]

Effect of Proposed Changes

[12] More information is available at http://www.oet.ky.gov/employer/UTC_Regs.pdf.
[13] More discussion on "qualified target industry" is available in Section 13 of this analysis.

Section 220.1899, F.S., is created to help implement the proposed new Florida film and entertainment incentive program as a transferable tax credit against corporate tax liability. This section parallels a similar sales and use tax credit created in s. 212.08(5)(q), F.S.

Specifically,

- For fiscal years beginning July 1, 2010, and ending June 30, 2015, a qualified production company will be eligible for tax credits against its documented corporate income tax liabilities.
- These tax credits cannot be applied to tax returns filed for any tax period beginning before July 1, 2011 – regardless of when they were awarded.
- The amount of credits applied in a tax year may not exceed the tax liability that year. If the credits awarded exceed the tax liability owed in a tax year, the credit balance may be carried forward to a succeeding tax year.

Modified Capital Investment Tax Credit (CITC) Incentive Program

Section 11 amends s. 220.191, F.S., to streamline the CITC incentive program and accelerate the claiming of tax credits over 20 years, to make the incentive more attractive to smaller or less capital-intensive companies.

Present Situation

The CITC is used to attract and grow capital-intensive industries that generally pay high wages. The incentive is an annual credit, provided for up to 20 years, against a company's corporate income tax. The amount of the annual credit is based on the eligible capital costs associated with a qualifying project. Eligible capital costs include all expenses incurred in the acquisition, pre-construction and construction activities, installation, and equipping of a project from the beginning of construction through commencement of operations.

To participate in the program, a new or expanding company must apply to EFI and be certified by OTTED prior to the commencement of operations. There are three categories of CITC projects:

- A high-impact business, which:
  - Operates within a "high-impact" industry sector, currently defined in statute as, but not limited to, aviation, aerospace, automotive, and silicon technology industries,[14] and
  - Creates at least 100 new jobs.
- A business defined as a "qualified target industry" (QTI) pursuant to s. 288.106, F.S.,[15] and which is induced by this incentive program to:
  - Create or retain at least 1,000 jobs, of which at least 100 of those jobs are new and which pay an average annual wage of at least 130 percent of the average annual private-sector wage in the state or region, and
  - Make a cumulative capital investment of at least $100 million after July 1, 2005.

[14] EFI's 2009 Incentives Report lists the industries under this CITC category as semiconductor manufacturing, transportation equipment manufacturing, information technology, life sciences, financial services, corporate headquarters, and clean energy. See page 27.

[15] See Section 13 of this analysis for a list of eligible industries.

- A new or expanded headquarters facility which:
  - Locates in an enterprise zone or a brownfield area;
  - Is induced by this incentive program to create at least 1,500 jobs that pay an average wage that is at least 200 percent of the average annual private-sector wage in the state or region; and
  - Makes a cumulative capital investment of at least $250 million.

Generally, the amount of the annual credit is up to 5 percent of the eligible capital costs generated by a qualifying project, for up to 20 years, except that the QTI businesses in the second category may take the tax credit for a maximum of 5 years.

The annual credit may not exceed a specified percentage of the annual corporate income tax or premium tax liability generated by the project, based on the amount of the company's capital investment. For example, a company that made a minimum capital investment of $100 million would be able to apply the value of its annual tax credit to erase 100 percent of its tax liability that year.[16]

Under no circumstance can the total tax credits awarded exceed the cumulative investment; nor can credits be taken in excess of the tax liability in a given tax year. Also, unused credits may be carried forward for up to 20 years.

According to DOR, in tax year 2005, nearly $3.83 million in CITC were claimed on tax returns; none in 2006; $236,150 in 2007; and none so far claimed in tax year 2008.

As of December 2009, there are 16 active CITC projects, which have committed to make total cumulative capital investments of $2.2 billion in Florida and create 6,520 jobs paying an average annual wage of $55,076.[17]

Effect of Proposed Changes

Section 11 substantially changes several key features of s. 220.191, F.S., to potentially make it attractive to more businesses.

Combining the high-impact and QTI categories of eligible projects is the first significant change. The new category:

- Requires a new or expanding business to meet the definition of a QTI business;
- Create at least 50 new jobs, paying an annual wage of at least 130 percent of the annual average private statewide or regional wage; and
- Make a cumulative investment of at least $25 million in its Florida operations.

The other significant changes relate to the credits that will be earned only by businesses entering into agreements with OTTED on or after July 1, 2010, to participate in the CITC program:

- The availability of the tax credits is accelerated from 20 years to 10.

[16] Section 220.191(2)(c), F.S., allows the transfer of tax credits earned under this program by a solar panel manufacturing facility that meets specific job creation and salary requirements. This option has not been utilized.
[17] Supra FN 14. Page 28.

- The value of the credits awarded is front-loaded, as follows: 15 percent of the capital investment costs in each of years 1-4, 10 percent in each of years 4-7, and 5 percent in each of years 8-10.
- Certified businesses that meet the capital investment and wage requirements of their agreements, but not the job creation requirement are eligible for a pro-rated credit amount. For example, a business that achieved 85 percent of the new-jobs requirement, but met the other requirements, would receive credits prorated to 85 percent of their value.

Unchanged from current law is how much of the company's annual tax liability can be subtracted by the tax credits; that the total tax credits cannot exceed the cumulative investment; and if the value of a tax credit exceeds the company's tax liability for that year, the unused credit may be carried forward for up to 20 years.

Increase in Statutory Appropriations Cap on Certain Incentive Programs

Section 12 increases the statutory cap on the Qualified Target Industry (QTI) Tax Refund Incentive Program and the Qualified Defense Contractor and Spaceflight Business (QDSC) Tax Refund Program from $35 million annually to $100 million annually.

Present Situation
OTTED approves applications for certification pursuant to s. 288.1045 (3), F.S., for the QDSC tax refund program and s. 288.106, F.S., for the tax refund program for QTI businesses. Currently, s. 288.095, F.S., limits the total state share of tax refund payments scheduled for these programs to no more than $35 million annually. This cap has only been reached once, according to OTTED. In FY 09-10, the total appropriation for QTI, QDSC, and the High Impact Project Incentive Program was $21.3 million.

Effect of Proposed Changes
Section 12 amends s. 288.095, F.S., to increase the limit of tax refund payments available as tax refund payments for active, certified QTI and QDCS businesses to $100 million each fiscal year.

The Qualified Target Industry (QTI) Incentive Tax Refund Program

Section 13 amends s. 288.106, F.S., to implement recommended changes to the QTI program, based on Interim Project Report 2010-211 by the Senate Commerce Committee.

Present Situation
The Qualified Target Industry (QTI) Incentive Tax Refund Program[18] was created in 1994 as part of a retooling of Florida's economic development efforts. The QTI program was designed to encourage the recruitment or creation of higher-paying, higher-skilled jobs for Floridians, by awarding eligible businesses refunds of certain state or local taxes paid in exchange for creating jobs.

[18] Section 288.106, F.S.

The amount of the refund is based on the wages paid, number of jobs created, and where in the state the eligible business chooses to locate or expand, but the minimum is $3,000 per employee over the term of the incentive agreement signed by the business and the Governor's Office of Tourism, Trade and Economic Development (OTTED).

As of June 30, 2009,[19] some 880 business projects have been recommended for the QTI incentive; 848 have been approved by the former Department of Commerce or OTTED; and 730 have entered into QTI agreements with the state. Of those 730 projects, 260 remain "active," meaning they are eligible to receive tax refunds through the QTI program. These 260 projects have committed to create 45,043 jobs, paying an average wage of $44,916.
The QTI program sunsets on June 30, 2010, unless re-enacted.

Effect of Proposed Changes
The QTI program's original intent language is restored and modified, in an effort to re-establish the program's primary policy goals of higher-wage job creation and the diversification and strengthening of the state's economy. Definitions and content also are reorganized for greater clarity, and obsolete phrases are deleted or updated.

Other changes include:

- Amending the definition for "average private sector wage" to allow the local government where a QTI business is to be located to select either the state, county, or standard metropolitan area private-sector average annual wage as the baseline for calculating the QTI-required average annual wage. Unless waived by OTTED, a QTI business must pay at least 115 percent of the average private-sector wage. Currently, QTI businesses appear to base their 115 percent wage calculation on the state, county or SMA wage, whichever is lower.
- Specifying that renewable energy projects are exempt from the target industry requirement that QTI businesses be independent from Florida markets and Florida-based resources. This codifies an OTTED/EFI practice.
- Defining "return on investment" (ROI) as the gain in state revenues as a percentage of the state's economic incentive investment, which includes state grants, tax refunds, tax exemptions, tax credits, and any other types of state incentives. The ROI formula is expressed mathematically as:[20]

$$\text{ROI} = \frac{\text{(the gain in state revenues - the state's investment)}}{\text{the state's investment}}$$

OTTED also must consider the potential ROI of a QTI applicant business in making its decision whether to approve the business for the refund incentive program.

[19] 2009 Incentives Report, page 13. Published by EFI. Available at: http://www.eflorida.com/uploadedFiles/Florida_Knowledge_Center/My_eFlorida_EFI_and_Partners/Floridas_Economic_Perspective/2009%20Incentives%20Report.pdf. (Free registration required.) Site last visited Jan. 24, 2010. Page 13 of EFI's 2009 Incentives Report, supra FN 5.

[20] The ROI formula proposed in SB 1856 is consistent with generally accepted formulas. It is mathematically equivalent to the more common "Net Gain in State Revenues/State Investment." A sampling of information on ROI calculation includes: http://www.investopedia.com/terms/r/returnoninvestment.asp., http://www.investorwords.com/4316/ROI.html., and http://www.zeromillion.com/business/financial/financial-ratio.html.

- Requiring prospective QTI businesses to include on their QTI applications estimates on what proportion of their machinery, equipment and other capital resources purchased for their new or expanded Florida operations will be purchased out of state.
- Renaming the "economic stimulus exemption" as the more descriptive "economic recovery extension," and adding another 12 months to the time period for QTI businesses to apply for it. The new deadline is July 1, 2012.
- Allowing QTI businesses that pay, in any 1 year, taxes that are at least equal to their QTI incentive award to file their tax documentation once, not every year. This will reduce paperwork and duplicative effort for both the businesses and OTTED.
- Expanding application requirements to include an estimated percentage of the cost of machinery and equipment the company plans to purchase from out-of-state vendors.
- Directing OTTED to begin conducting post-award reviews and site visits of QTI businesses, beginning with those businesses that signed agreements after Jan. 1, 2006. OTTED must begin these reviews within 12 months of a QTI business filing for its final refund. A report on the first set of reviews is due to the Governor, the Senate President, and the Speaker of the House of Representatives by December 1, 2011. The purpose of the post-award reviews is to evaluate whether QTI businesses are continuing to contribute to the state's economy, or to the regions in which they are located. The review also may shed some light on why certain QTI businesses successfully conclude their participation in the program, and why other businesses drop out.
- Extending the QTI program to June 30, 2015, when it will be subject to another sunset review.

Section 14 amends s. 288.107, F.S., to correct a cross-reference necessary because of changes to the QTI program, in section 13.

Entertainment Industry Definition

Present Situation
The term "entertainment industry" is defined as persons or entities engaged in activities related to all production aspects for motion pictures, television programming, commercial advertising, music videos, and sound recordings, as well as persons or entities operating motion picture, television, or recording studios. Conspicuously absent from the definition is a reference to digital media.

Effect of Proposed Changes
Section 15 amends s. 288.125, F.S., to expand the definition of "entertainment industry" for the purposes of Florida's film and entertainment incentive program to include "digital media projects.

Florida Office of Film & Entertainment

Present Situation
Prior to 1993, management of the state's film and entertainment recruitment program was handled within the Florida Department of Commerce. In that year, the Florida Entertainment Commission was established as a direct support organization of the department, and operated as a not-for-profit organization headed by a board of directors appointed by the Governor, with day-

to-day operations handled by a board-appointed executive director. When the department was abolished in 1996, and OTTED was created to handle some of its responsibilities, the commission was replaced with the Florida Entertainment Industry Council, with a nearly identical structure and the same board members and executive director.[21] In 1999, the council was abolished and the Office of Film and Entertainment (OFE) was created within OTTED.[22] Section 288.1251, F.S., specifies the qualifications of OFE's executive director, who is hired by OTTED's executive director, and lists the responsibilities of the OFE, which include:

- Developing a 5-year plan to promote development of Florida's entertainment industry;
- Developing and facilitating a "smooth working relationship" between state and local agencies engaged in entertainment industry activities;
- Preparing an inventory and analysis of the state's indigenous entertainment industry;
- Identifying, soliciting, and recruiting entertainment production opportunities to Florida;
- Representing key decision makers within the national and international entertainment industry to Florida's entertainment industry and state and local officials; and
- Serving as a liaison between entertainment industry producers and labor organizations.

Some of the provisions of the current law, such as the last two responsibilities listed above, are either obsolete or inappropriate within the context of an office managed by state employees.

Effect of Proposed Changes

Section 16 amends s. 288.1251, F.S., to delete provisions directing the OFE and its executive director to serve as a liaison between entertainment producers and labor unions, and to represent the interests of out-of-state entertainment industry producers to Florida officials and the state's industry leaders.

Section 16 also directs OFE to update the state's entertainment industry plan every 5 years and makes several wording and technical changes.

Florida Film & Entertainment Advisory Council

Present Situation

Created in 1999, the 21-member council represents a spectrum of entertainment-related interest groups. Seventeen of the council members are to be voting members: seven members are chosen by the Governor, and five each by the President of the Senate and the Speaker of the House of Representatives. Initial appointments were to be made no later than August 1, 1999. The original terms were staggered pursuant to a formula specified in the section, but all subsequent terms were intended to be for 4 years.

The four ex officio, non-voting members to the council are the state's film commissioner, and one representative each from Enterprise Florida, Inc., Workforce Florida, Inc., and the Florida Tourism Industry Marketing Corporation (now called Visit Florida).

[21] A discussion of the evolution of a state film and entertainment entity can be found in the "Review of the Florida Entertainment Commission," Report 96-60, by the Office of Program Policy Analysis and Government Accountability. Report available at http://www.oppaga.state.fl.us/Reports/pdf/9660rpt.pdf. Last visited February 17, 2010.
[22] Chapter 99-251, L.O.F. (SB 1566).

Over the 2010 interim, the Legislature's Division of Statutory Revision identified several obsolete references in s. 288.1252, F.S., that it suggested should be updated.

Effect of Proposed Changes
Section 17 amends s. 288.1252, F.S., to remove obsolete references to the staggering of the initial terms for council members and other dated references; removes the Film and Entertainment Commissioner from the council she, in effect, staffs; and correctly identifies the state's tourism marketing entity as Visit Florida.

Travel for Staff of the Office of Film & Entertainment

Present Situation
Section 112.061, F.S., generally establishes standard travel reimbursement rates, procedures, and limitations for public officials, public employees, and "authorized persons whose travel is authorized and paid by a public agency." The section was amended in 2006 to raise meal, travel, and per diem reimbursement rates for the first time since 1981.

The only state entities with their own travel reimbursement procedures are the Office of Film and Entertainment and Space Florida; the Office of Insurance Regulation also may reimburse insurance examiners and supervisors performing specified tasks on a rate schedule different from that in s. 112.061, F.S. Additionally, the Secretary of State may approve first-class travel accommodations for Florida Artists award winners and their representatives "for health or security purposes."

Specifically regarding the OFE travel reimbursement provisions in s. 288.1253, F.S.:

- OTTED is directed to adopt rules related to the advancement for, or reimbursement of, travel or entertainment expenses:
    - Incurred by the Governor, Lieutenant Governor, their security staffs, the Film Commissioner, and the OFE staff "solely and exclusively in connection with the performance of the statutory duties of the Office of Film and Entertainment;"
    - Paid by the Governor, Lieutenant Governor, their security staffs, the Film Commissioner, and the OFE staff on behalf of "guests, business clients, or other authorized persons," such as local public officials or governor appointees incurred "solely or exclusively with the performance of the statutory duties of the Office of Film and Entertainment;" and
    - Incurred by "third-party vendors for the travel or entertainment expenses of guests, business clients, or authorized persons… participating in activities or events carried out by Office of Film and Entertainment in connection with that office's statutory duties."
- These rules must be approved by the Chief Financial Officer.
- Any unused advancement of funds must be repaid within 10 or 15 days, depending on certain circumstances.
- Falsifying travel or entertainment refund or advancement documentation is a second-degree misdemeanor, and anyone who receives an overpayment must return it.

According to the OFE's FY 2008-2009 travel report, the staff was reimbursed for $26,127.24 in travel-related expenses. Of that amount, $355.13 was designated as "entertainment expenses," and was spent on meals on seven different occasions by OFE's Los Angeles-based liaison.

Effect of Proposed Changes

Section 18 amends s. 288.1253, F.S., to streamline the travel expenses approval and reimbursement process for OFE staff. Provisions allowing the Film Commissioner, OFE employees, and others to be reimbursed for picking up the tab for expenses incurred by others participating in OFE activities are deleted.

Rewrite of the Film and Entertainment Incentive Program

Section 19 amends s. 288.1254, F.S., to change the Florida Film and Entertainment Incentive Program from a cash refund, subject to annual legislative appropriation, to a transferable tax credit; modifies the categories of eligible productions; and generally raises the value of the incentive reimbursement to qualified productions.

Present Situation

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program.[23] The program's dual purposes are to:

- Promote Florida as a site for filming, creating, or producing movies, television series, commercials, digital media, and other types of entertainment productions, and
- Sustain and develop the state's entertainment workforce, studios, and other related infrastructure.

The incentive program is administered by the Office of Film and Entertainment (OFE), subject to the policies and oversight of OTTED. Serving as an advisory board to OTTED and OFE is the Florida Film and Entertainment Advisory Council, consisting of 17 members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Currently, the program provides what amounts to a reimbursement of a certain percentage of qualified wage, equipment, and other expenditures, based on the type of production. There are three types, or "queues," of eligible productions: (a) general production (which includes two subcategories), (b) the independent Florida filmmaker, and (c) digital media products. Eighty-five percent of the state incentive funding is dedicated to the general production queue, 5 percent is dedicated to the independent Florida filmmaker Queue, and 10 percent is dedicated to the digital media production queue.

Two types of bonus incentives are available, depending on the type of production. General productions that film between June 1 and November 30, the so-called "hurricane season," are eligible for an additional "off-season" reimbursement of 5 percent of their qualified expenses. They also receive the incentive if they complete less than 75 percent of their principle photography due to a hurricane or tropical storm.

[23] Section 288.1254, F.S.

All certified productions are eligible for an additional reimbursement of 2 percent of the qualified expenses if the state's Film and Entertainment Commissioner, as advised by the Florida Film and Entertainment Advisory Council, determines they are "family friendly." This determination is based on an interview with the director and a review of the script. "Family friendly" is defined as productions that:

- Have cross-generational appeal;
- Are considered suitable for viewing by children aged 5 years or older;
- Are appropriate in theme, content and language for a broad family audience;
- Responsibly resolve issues raised in the film; and
- Do not include any act of smoking, sex, nudity, or vulgar or profane language.

"Qualified expenditures" related to a film or entertainment production are the basis of the cash incentive, not the amount of state taxes a production entity has paid while in Florida. Current law defines "qualified expenditures" as "production expenditures" incurred by a "qualified production" in Florida for:

- Goods purchased or leased from, or services provided by, a vendor or supplier in this state which is registered with the Department of State or the Department of Revenue and which is doing business in this state. Eligible production goods and services include:
    - Sound stages, back lots, production editing, digital effects, sound recordings, sets, and set construction;
    - Entertainment-related rental equipment, including cameras and grip or electrical equipment;
    - Meals, travel, and accommodations; and
- Salary, wages, or other compensation paid to Florida residents, up to a maximum of $400,000 per resident for the general production queue and the independent Florida filmmaker queue and up to a maximum of $200,000 for the digital media queue.

Further, only qualified expenditures for "qualified productions" are eligible for the incentive cash. A qualified production must meet the requirements in s. 288.1254, F.S., plus two additional criteria:

- At least half of its production crew and below-the-line production crew [24] are Florida residents or students enrolled full time in a film- and entertainment-related course of study at a Florida university, and
- OFE determines that the production does not contain obscene content, as defined in s. 847.001(10), F.S.[25]

Additionally, for a qualified production involving an event, such as an awards show, the term "qualified expenditures" excludes expenditures solely associated with the event itself and not directly required by the production. The term also excludes expenditures prior to certification, with the exception of those incurred for a commercial, a music video, or the pickup of additional episodes of a television series within a single season.

[24] "Below-the-line production crew" excludes actors, directors, producers, and writers.

[25] Pursuant to this section, "obscene means the status of material which: (a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; (b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value. A mother's breastfeeding of her baby is not under any circumstance "obscene."

Application and Award Process
OFE begins accepting incentive applications on July 1 of each fiscal year, and must review each application for completeness within 10 business days of receipt.

The completeness standards vary depending on the type of production. For example, for general productions that are films (Queue A), the application must include the script, screenplay or story boards; a synopsis; Florida Qualified Expenditures Budget; a shooting schedule; and an actor work schedule, if applicable. A digital media production must include with its application only a project synopsis; the Florida Qualified Expenditures Budget; and a detailed project production schedule.

The incentive is granted on a "first-come, first-served" basis per queue,[26] however, the state funds are not paid to the production entity until its receipts for the qualified expenditures are verified by an independent certified public accountant, which is licensed in Florida, reviewed and recommended for approval by OFE, and certified by OTTED. Sometimes, the incentive amount set aside for a production upon application is not supported by the verified documentation. In such cases, the excess incentive funds are awarded to the next certified production. There also have been years in which the OFE did not award all of the appropriated funds because of disqualified expenditures, and because the timing of productions did not coincide with the state's fiscal year.[27]

OTTED has authority to adopt rules, and develop policies and procedures, to administer the incentive program. No rules have been promulgated. The application forms and procedures are available on the Office of Film and Entertainment's website.[28]

Entities that submit fraudulent applications in order to obtain incentive funds are liable for repayment of those funds and a penalty, up to double the incentive awarded, plus any criminal penalties the applicant might have to pay. Also, these entities are liable for reimbursement of costs incurred by the state in investigating and prosecuting the fraudulent claims. There is no explicit mention in s. 288.1254, F.S., of the Department of Revenue participating in auditing the incentive recipients or recovering the funds.

OFE is directed to submit an annual report each October 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives, that outlines the return on the state's investment of the incentive program, and the program's economic benefits to the state.

Economic Impact
A four-part economic impact study of Florida's film and entertainment industry,[29] completed in early 2009 by the Haas Center for Business Research and Economic Development, concluded that in 2007, industry spending accounted for:

[26] Section 288.1254(4)(a), F.S.
[27] Section 3 of ch. 2007-125, L.O.F., provided for a two-year rollover of the $25 million appropriation for the film and entertainment incentive.
[28] See http://www.filminflorida.com. Last visited Feb. 14, 2010.

- $17.9 billion, or 2.4 percent, of Florida's Gross State Product (GSP);[30]
- $8.5 billion in personal income;
- $498 million in tax revenue to Florida; and
- 207,800 jobs (direct and indirect).

The Hass Center study also indicated that, based on economic modeling, for every $1 spent on a production within Florida, the state sees a return of that dollar plus an additional 60 cents.[31]

OFE calculates a more basic ROI by dividing the total amount of qualified expenditures by the total amount of incentive refunds awarded; for FY 2008-2009, the ROI is $6.44:$1.

In FY 2008-2009, there were 29 qualified productions (25 filmed productions and four digital media products) that spent about $55.3 million in qualified expenditures, including $37.3 million in wages to 6,434 Florida workers and $18 million to Florida businesses.[32] Eight of the qualified productions were carried over from FY 2007-2008.

Funding history
Legislative appropriations for the film incentive have fluctuated over the years. The incentive program received its first legislative appropriation in FY 2004-2005, in the amount of $2.45 million. The incentive program received appropriations of $10 million in FY 2005-2006; $20 million in FY 2006-2007; $25 million in FY 2007-2008; $5 million in FY 2008-2009; and $10.8 million in FY 2009-2010.

Other Entertainment Industry Tax Incentives in Florida
Entertainment industry qualified production companies are eligible for several exemptions from the sales and use tax. In 2000, the Legislature authorized qualified production companies to obtain a single certificate of exemption, which allows the companies to benefit from these exemptions by not having to pay tax at the point of sale, rather than by having to seek reimbursement of the tax. Qualified production companies are exempt from paying sales and use tax for the following:

- Lease or rental of real property — Exempts from tax the lease or rental of real property that is used as an integral part of an activity or service performed directly in connection with the production of a qualified motion picture (including photography, sound and recording, casting, location scouting, and the creation of special and optical effects).[33]
- Fabrication labor — Exempts fabrication labor from tax when a motion picture producer uses his or her own equipment and personnel to produce a qualified motion picture.[34]
- Production equipment — Exempts from tax the purchase or lease of motion picture and

[29] "2008 Economic Assessment of the Florida Film & Entertainment Industry," prepared by the Haas Center for Business Research and Economic Development at The University of West Florida. Available at http://www.filminflorida.com/ifi/ea.asp. Last visited Feb. 14, 2010.
[30] Florida's total GSP (also known as Gross Domestic Product) in 2007 was estimated at $734.5 billion by the U.S. Bureau of Economic Analysis. See http://www.bea.gov/regional/gsp/. Last visited Feb. 14, 2010.
[31] Page 178 of previously cited "2008 Economic Assessment of the Florida Film & Entertainment Industry." The calculation does not take into account the state's various sales tax exemptions for film and entertainment expenses, the report states.
[32] OFE spreadsheet on file with the Senate Commerce Committee.
[33] Section 212.031(1)(a)9., F.S.
[34] Section 212.06(1)(b), F.S.

video equipment, and of sound recording equipment, used in Florida for motion picture or television production or for the production of master tapes or master records.[35]

- Master tapes — Exempts from tax the sale, lease, storage, or use in Florida of master tapes or records for sound recordings, master films, and master video tapes.[36]

The annualized estimated cost of these exemptions is $57.7 million in FY 2010-2011, according to the 2010 Florida Tax Handbook.[37]

Effect of Proposed Changes

Section 19 amends s. 288.1254, F.S., to make a number of significant changes to Florida's current film and entertainment incentive program. The legislation:

- Transforms the incentive from a cash refund dependent on annual legislative appropriations to a transferable tax credit program. The amount of tax credits available is $20 million annually, beginning in FY 2010-2011 through FY 2014-2015; however, the tax credits cannot be claimed prior to July 1, 2011.
- Specifies that these tax credits:
  - Can be carried forward for up to 5 years.
  - Can be transferred one time only to any other taxpayer, or can be distributed to the partners or other affiliated companies of the original recipient of the tax credits.
- If sales tax credits, can only be taken as refunds of taxes paid, in order to prevent the potential adverse reduction in local-option sales tax revenues. In effect, the refunds will be paid entirely with state general revenue.
- Reorganizes the current production "queues:"
  - 94 percent of the tax credits (or $18.8 million annually) would be allocated to the "general production queue" that includes movies, television series, and most other types of entertainment productions except commercials, music videos, and independent Florida films. To be eligible, the production must make a minimum $625,000 in qualified expenditures. The tax credit per production is 20 percent of qualified expenditures.
  - 3 percent of the tax credits (or $600,000 annually) would be allocated to the "commercial and music video queue." A production company under this category must spend at least $100,000 in qualified expenditures per commercial or video, and must exceed a threshold of $500,000 in qualified expenditures in a single state fiscal year. The tax credit is 20 percent of qualified expenditures, up to a cap of $500,000.
  - 3 percent of the tax credits (or $600,000 annually) would be allocated to the "independent production queue," which includes independent Florida films and certain digital productions. To be eligible, the production must make a minimum $100,000 and a maximum of $625,000 in qualified expenditures, and meet other requirements unique to this queue. The tax credit is equal to 20 percent of qualified expenditures.

[35] Section 212.08(5)(f), F.S.
[36] Section 212.08(12), F.S.
[37] Pages 150-153 of report, which is prepared by the Legislature's Office of Economic & Demographic Research and the Florida Department of Revenue. Available at http://edr.state.fl.us/taxhandbooks/taxhandbook2010.pdf.

- Makes available the "off-season" and "family-friendly" bonuses, but rewords their application:
  - The off-season bonus remains at 5 percent of qualified expenditures, and would be available only to feature films, independent films, a commercial, or a television series.
  - The family-friendly bonus is increased from 2 percent to 5 percent of qualified expenditures.
- Sunsets the tax credit incentive program on July 1, 2015.
- Similar to its current duties, the OFE would qualify productions as eligible to receive the tax credits, and also review audited expenditure documentation from the qualified production companies before the tax credits are released.
- OFE will continue to publish an annual report on the productions that take advantage of the incentive program and the estimated ROI to the state.

OFE Reporting Requirement

Present Situation

Section 288.1258(5), F.S., requires the OFE to keep annual records of how much film and entertainment-related businesses claim in sales and use tax exemptions[38] on eligible purchases, beginning January 1, 2001. This information, reported to OFE by the businesses via an electronic form, is compared to these businesses' estimated total expenditures on entertainment-related projects and products. OFE also is directed to maintain data showing annual growth in Florida-based entertainment industry companies, employment, and wages. All of this information is required to be submitted in a report to the Legislature by December 1 of each year.

The report does not include information about the film and entertainment incentive available in s. 288.1254, F.S.

The wording of how OFE is to compute the comparisons (expressed as an ROI in the report) is confusing. As written, the statute directs OFE to compare "the annual amount of funds exempted" to the "estimated total amount of funds expended." The first half of the equation could be interpreted to mean either those expenditures not subject to sales and use taxes, or the actual amount of sales tax not paid; OFE uses the latter interpretation to compute the ROI.

Then OFE divides the total estimated expenditures by the amount of taxes not paid on the exempt expenditures to derive an ROI.

The 2008-2009 report[39] concluded that the sales-tax exemptions created a $55.6:$1 ROI to the state. That computation resulted from dividing the total estimated film and entertainment expenditures in Florida in FY 08-09 of $780.85 million (including wages) by $14.04 million,[40] the value of the sales tax exemptions as reported by the businesses to OFE.

[38] Sections 212.031(1)(a)9., 212.06(1)(b), 212.08(5)(f), and 212.08(12), F.S., provide sales and use tax exemptions to film and entertainment related businesses, as detailed in Section 19 of this analysis, above.
[39] On file with the Senate Commerce Committee.
[40] Supra FN 29, the Florida Tax Handbook reported the value of the four film and entertainment related sales and use tax exemptions at $72.1 million.

Also, the report indicated that 5,671 full-time jobs and 27,882 freelance jobs were created by 762 film or entertainment companies that received sales tax exemptions.

Effect of Proposed Changes

Section 20 amends s. 288.1258, F.S., to broaden the reporting requirement and to clarify the ROI calculation. The ROI calculation will be calculated as a ratio of the sum of the sales and use tax exemptions granted and the film and entertainment incentives awarded (under s. 288.1254, F.S.), compared to the total amount of film and entertainment expenditures reported, including those by recipients of the s. 288.1254, F.S., incentive.

OFE also will compute a separate calculation focused on the certified productions only; in this formula, the sum of sales and use tax exemptions and incentives received by certified productions, divided by their total expenditures.

State Match for Federal Research Grants to New Florida Companies

Present Situation

The federal government has for many years recognized the benefits of early capitalization for new businesses. The U.S. Small Business Administration (SBA) Office of Technology administers the Small Business Innovation Research Program (SBIR)[41] and the Small Business Technology Transfer Program (STTR),[42] which were created to assist small businesses to achieve commercialization.[43]

SBIR and STTR grants help finance the startup and development stages of small companies, and encourage the commercialization of these companies' technology, product, or service. The only substantial difference between the programs is that the SBIR rewards for-profit businesses only, while nonprofit research institutions may qualify for a STTR grant.

Small businesses must meet certain eligibility criteria to participate in the SBIR and STTR programs. The business must be American-owned and independently operated; must have a principal researcher employed by the business; and must not have more than 500 employees. Each year, the SBIR requires 11 federal departments and agencies,[44] and the STTR requires five,[45] to reserve a portion of their research and development funds for award to small businesses. These agencies designate research and development topics, and accept grant proposals.

[41] The SBIR program was created by the Small Business Innovation Development Act of 1982 (P.L. 97-219), and has been reauthorized several times.
[42] The STTR program was created by Title II of the Small Business Research and Development Enhancement Act of 1992 (P.L. 102-564), and has been reauthorized several times.
[43] U.S. Small Business Administration website at: http://www.sba.gov/aboutsba/sbaprograms/sbir/index.html.
[44] U.S. Departments of: Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Transportation, the Environmental Protection Agency, the National Aeronautics and Space Administration, and the National Science Foundation.
[45] U.S. Departments of: Defense, Energy, Health and Human Services, the National Aeronautics and Space Administration, and the National Science Foundation.

The grant programs consist of three phases. Following submission of proposals, agencies make SBIR and STTR awards based on small business qualification, degree of innovation, technical merit, and future market potential. Small businesses that receive awards then begin a three-phase program:

- Phase I is the startup phase. Awards of up to $100,000 for approximately 6 months, to support exploration of the technical merit or feasibility of an idea or technology.
- Phase II awards of up to $750,000, for as many as 2 years, to expand Phase I results. During this time, the research and development work is performed and the developer evaluates the commercialization potential. Only Phase I award winners are considered for Phase II.
- Phase III is the period during which Phase II innovation moves from the laboratory into the marketplace. No SBIR funds support this phase. The small business must find funding in the private sector or other non-SBIR/STTR federal agency funding.

One recent report evaluating the successes of businesses that received SBIR or STTR grants indicated that 31 percent of SBIR recipients engaged in health-related research later received patents for their discoveries.[46]

In 2009, Florida companies received a total of 13 Phase I and/or Phase II SBIR or STTR awards totaling $3.6 million.[47] This was a significant decline from the previous 2 years, when Florida companies were awarded 171 SBIR or STTR grants in 2007 and 177 grants in 2008.[48] California, Massachusetts, and Virginia finished 1-2-3 in both grant categories in 2009.

Florida has no comparable state grant program. However, Enterprise Florida, Inc. (EFI), a public-private entity that serves as the state's business recruitment arm, has implemented the "Phase 0" Program to assist eligible companies in developing their SBIR/STTR applications.[49]

Effect of Proposed Changes

Section 21creates s. 288.9552, F.S., the Florida Research Commercialization Matching Grant Program (program). The program's goals are to:

- Increase the amount of SBIR and STTR research funds received by Florida companies;
- Accelerate the entry of new technology-based products into the market;
- Create technology-based jobs for Floridians;
- Provide leveraged resources to grant applicants to attract more investment;
- Speed the commercialization of promising technologies;
- Encourage the establishment and growth of high-quality technology firms in Florida; and

[46] "National Survey to Evaluate the NIH SBIR Program." National Institutes of Health Office of Intramural Research. Published January 23, 2009. Available online at: http://ftp.grants.nih.gov/grants/funding/sbir_2008surveyreport.pdf. Last visited February 12, 2010.

[47] 2009 Florida awardees at http://web.sba.gov/tech-net/public/dsp_awardlist.cfm?RequestTimeout=600. State-by-state search engine at http://web.sba.gov/tech-net/public/dsp_search.cfm. Last visited February 12, 2010.

[48] The SBIR/STTR grant programs have been funded by Congress through Continuing Resolutions (CR) since 2009, so this is likely one reason total awards have declined from $2 billion in 2008 to $173.3 million in 2009. The latest CR expires April 30, 2010. Substantive legislation related to extending the programs until 2023 (H.R. 2965/S.1233) is being considered by Congress.

[49] More information available at http://www.eflorida.com/ContentSubpage.aspx?id=872. Last visited February 14, 2010.

- Accelerate venture-capital deal flow and enhance the state's investment infrastructure.

The Florida Institute for the Commercialization of Public Research (institute)[50] will develop the grant program's policy goals and criteria, establish criteria for the grant awards, approve the awards, and review the program's progress and results. The committee is directed to review and determine grant awards within 45 days of receiving applications.

Grant applicants must meet the following criteria:

- Be a business entity that is registered with the Department of State.
- Must have its primary office and a majority of its employees domiciled in Florida, and conduct its principle research activities in Florida.
- Be a small company[51] for which a state matching grant is necessary for project development and implementation.
- Must have received a Phase I SBIR or STTR grant and an invitation to apply for a federal Phase II award. Applicants who have already received a Phase II award may apply for a state grant, but they must identify the end date of the federal award and provide justification of how the state grant will enhance, and not supplant, the federal funds.
- Utilize all sources of federal, local and private resources for the project to the maximum extent possible. No more than 25 percent of project funding may come from the new Florida program, and private sector investments should offset the total costs of the project.
- Conduct their projects receiving state grants in Florida.

The maximum, one-time award amount is $250,000.

Beginning December 1, 2011, and every year thereafter, the institute must submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives about the grant program's activities the previous fiscal year.

Section 22 amends s. 290.00677, F.S., to expand the employee eligibility for the enterprise zone jobs credit to include a persons residing in a "rural community" rather than a rural county. This modification allows a business residing in a rural enterprise zone to be eligible for the jobs credits if the business hires a resident of a rural county or a rural community (Highlands County is the only county that currently meets the definition of "rural community" but does not meet the definition of "rural county").

Expedited Permitting

Present Situation

[50] Website at http://www.florida-institute.com. Last visited February 12, 2010.

[51] The legislation does not define "small company." Unless otherwise specified, the SBA definition of "small business" likely would apply. SBA has established two widely used size standards: no more than 500 employees for most manufacturing and mining industries, and $7 million in average annual receipts for most nonmanufacturing industries. While there are many exceptions, these are the primary size standards by industry. See: http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.

The Department of Environmental Protection (DEP) and the five water management districts (WMDs) have statutory authority to issue permits for a variety of activities including, but not limited to, coastal construction, the use of sovereign submerged lands, consumptive use permits relating to groundwater, well construction, management and storage of surface water (dredge and fill permits, environmental resource permits, and NPDES permits delegated by the federal government), phosphate mining and land reclamation; limestone mining and reclamation; heavy mineral mining; and pollutant discharge and domestic wastewater discharge.

Florida statutes establish timelines for the review and approval of these various permits. For example, for permits related to the management and storage of surface waters, DEP and the WMDs have 30 days upon receipt of a permit application to review it for completeness and to ask the applicant for additional information, pursuant to s. 373.4141, F.S. An applicant may request a hearing contesting that request. But for those applicants who submit additional information, DEP or a WMD may, within 30 days of receipt, make a second request for information necessary to answer questions or issues raised by the new information.

Regardless, DEP or a WMD shall approve or deny a permit within 30 days of either the original application, the last item of timely requested additional information, or the applicant's request to begin processing the application.

Effect of Proposed Changes

Section 23 amends s. 373.4141, F.S., to require DEP, a WMD, or a local government with delegated permitting authority to approve or deny a permit within 30 days of receipt of any application for activities involving the management or storage of surface waters. After 30 days, the permit will be approved by default, unless the permit is part of a federally delegated program.

Local Government Delegation

Present Situation

DEP is the state's lead environmental permitting agency, issuing permits for activities impacting air, water, wetlands, and natural habitats. It has entered into operating agreements with the five water management districts, 11 county or city governments, and with the Reedy Creek Improvement District (Disney) to delegate specific permitting activities.[52] Section 373.441, F.S., provides the process and requirements for delegation of state permitting responsibilities to local governments.

Some local governments have expressed the desire for a more formal delegation process than that currently in law.

Effect of Proposed Changes

Section 24 amends s. 373.441, F.S., to create a permit-delegation appeals process before the Governor and Cabinet. Specifically, the bill:

[52] A complete list of the delegated entities and the operating agreements are available at: http://www.dep.state.fl.us/legal/Operating_Agreement/operating_agreements.htm.

- Provides for a local government to petition the Governor and Cabinet for the review of a request for a delegation of authority which DEP has not acted on within 1 year of the local government's submission, or which DEP has denied.
- Requires DEP to provide specific detail of why it denied a local government's request for a delegation of authority, including the statutory or rule provisions that the local government's submission did not satisfy.
- Specifies that the Governor and Cabinet may reverse DEP's decision.
- Provides that a county having a population of more than 75,000 or a municipality serving populations of more than 50,000 must apply for delegation of authority on or before June 1, 2011. A county, municipality, or local pollution control program that fails to apply for delegation of authority may not require permits that in part or in full are substantially similar to the requirements needed to obtain an environmental resource permit.

Promotes Self-Certification for Certain Permits

Present Situation

DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on adjacent uplands if the dock is the sole dock on the parcel. An applicant can easily determine if a private single family dock can be constructed without further notice or review by DEP. Also, the five WMDs have designed and support a shared permitting portal.

The portal is designed to direct the user to the appropriate district website for information on district permitting activities. With respect to self-certification, a recent report by the Legislative Committee on Intergovernmental Relations[53] indicated that some local governments do not accept self-certification for permit-exempt projects identified in statute, rule, or listed under DEP's self-certification process for single-family docks. Some local governments require a signoff from DEP permit-review staff to verify the exempt status of the project submitted under self-certification.

Effect of Proposed Changes

Section 25 amends s. 403.061, F.S., to direct DEP to expand the use of online self-certification for appropriate exemptions and general permits issued by itself and the WMDs, if the expansion is economically feasible.

Also, notwithstanding any other provision of law, a local government may not specify the form or method for documenting whether a project meets the requirements for authorization under ch. 161, F.S., for coastal permits; chapter 253, F.S., for sovereign-submerged land permits; ch. 373, F.S., for consumptive use permits; or ch. 403, F.S., for permits related to the management and storage of surface waters.

[53] Available at http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf.

General permit for certain activities designed by professional engineers

Present Situation

Section 403.814, F.S., specifies a process for issuing "general permits" for certain construction projects that are anticipated to have "minimal adverse environmental impact," and lists types of projects eligible for these general permits. An example of a project that is eligible for a general permit under the section is construction or maintenance of transmission lines in wetlands by an electric utility.

A general permit typically is issued in a streamlined process, requiring no formal agency action by DEP or a WMD because the activity is considered to have minimal negative impact to water quality or other natural resources. Applicants must publish a notice in a newspaper of general circulation in the area where the project will occur within 14 days of submitting the application to either DEP or a WMD. Any person whose substantial interests[54] are affected by the project has 21 days after the notice publication to request a hearing pursuant to ch. 120, F.S. But if no hearing is timely requested, the applicant may begin its activities 30 days after submitting the application to the agency.

Effect of Proposed Changes

Section 26 amends s. 403.814, F.S., to allow surface water management projects of up to 40 acres in size, which have been designed by a licensed professional engineer and which meet other specific criteria, to proceed without obtaining a DEP or WMD permit, as long as the agency is notified within 10 days after the project has begun. The activities may commence without any agency action by DEP or a WMD if the following criteria are met:

- The surface water management system's design plans and calculations are signed and sealed by a professional engineer;
- The system will not be located in surface waters or wetlands;
- The system will not cause adverse water-quality impacts to receiving waters and adjacent lands or to existing surface water storage and conveyance systems, or create adverse flooding, as provided by DEP or WMD rule;
- The system will not adversely affect water-quality standards of public water bodies ("waters of the state"), include Outstanding Florida Waters, as provided by DEP or WMD rule;
- The system will not adversely impact the minimum flow and level of surface or ground waters, as provided by DEP or WMD rule;
- The system will not cause adverse impacts to canals, levees, dikes, or other works of a WMD, as provided by DEP or WMD rule;
- The system will not be part of a larger plan of development or a sale;
- The system complies with all applicable National Pollutant Discharge Elimination System (NPDES) requirements, as implemented by DEP or WMD rule; and
- Within 10 days after project construction begins, the professional engineer who designed the project submits to DEP or the applicable WMD written notice of the project's commencement.

[54] The term "substantial interests" is not defined in statute, but rather in extensive case law. The seminal case is *Agrico Chemical Co. v. DER*, 406 So.2nd 478 (Fla 2nd DCA 1981).

Enterprise Zone Program

Section 27 directs OPPAGA to review and evaluate certain aspects of the Florida Enterprise Zone Program, in ss. 290.001- 290.014, F.S., over the 2011 interim. The topics to be reviewed include, but are not limited to:

- How the enterprise zone program has changed over the years;
- Whether it continues to address effectively and efficiently the issues that precipitated its creation;
- The direct and indirect costs of the program to the state and to the local governments that participate;
- Whether the program's tax incentives are effectively designed to benefit economically distressed or high-poverty areas, their residents, and their business owners; and
- Whether the program's application, review, and approval processes are transparent, effective, and efficient.

OPPAGA also is directed to submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 11, 2011.

Spending Flexibility for Space Florida

Present Situation

Space Florida, the state's lead entity for space-related economic development and educational activities, received $14.5 million in general revenue specifically to renovate Space Launch Complex (SLC)-36 into a multi-use, multi-vehicle launch facility for liquid-fueled rockets.

But Space Florida's plans for SLC-36 raised questions about the launch complex's feasibility and attractiveness to commercial launch clients, as detailed in a research memorandum prepared by OPPAGA.[55] Legislative concerns about the appropriation, a change in leadership at Space Florida, and the Obama Administration's new vision for NASA led to a re-evaluation by Space Florida staff of how the funds should best be spent. About $3.7 million of the $14.5 million have been spent at SLC-36 to complete about 40 percent of the necessary engineering and design work. Space Florida officials have requested more flexibility in how to use the remaining $10.8 million.

Effect of Proposed Changes

Section 28 amends Specific Appropriation 2649 of ch. 2008-153, L.O.F., to provide flexibility on how Space Florida uses the funds. Space Florida will be permitted to spend the funds on improvements at other SLCs which it owns or leases at Cape Canaveral, and on improvements to other space transportation facilities for the purposes of:

- Attracting new space vehicle testing and launch businesses to Florida;
- Address intermodal requirements and impacts of the launch ranges, spaceports, and other space transportation facilities; and

[55] "Review of Space Florida," dated Jan. 30, 2009, is on file with the Senate Commerce Committee.

- Assisting in the development of joint-use facilities and technology that support aviation and aerospace operations, including high-altitude and suborbital flights and range technology development.

This section will take effect upon the act becoming law.

At this time, Space Florida plans to spend about $7 million of the remaining funds to bring the engineering and design work to 90 percent of completion. About $3.6 million will be used to match $1 million in anticipated federal funds to continue improvements at SLC-46, which Space Florida is developing into a commercial launch site for solid-fueled rockets.[56]

Additional funding for space-related activities

Present Situation

The last mission for the Space Shuttle program is scheduled for September 2010. The "moon to Mars" successor program (known as Constellation) is scheduled to begin launches no earlier than 2015.[57] The intervening period is referred to as the "shuttle gap," in which a number of employees in the aerospace industry, in Florida and elsewhere, likely will lose their current jobs.[58]

With the February 2010 announcement that the Obama Administration plans to scuttle the Constellation program and rely more on commercial spaceflight providers for actual space missions, and to refocus NASA's mission on research, job losses in the Space Coast may be greater than expected. Current estimates are that as many as 9,000 aerospace workers along the Space Coast could lose their jobs, with a ripple effect of up to 15,000 in job losses throughout the community.

Space Florida, the state's aerospace business development entity, has been working with state and regional partners to recruit new aerospace companies that may be able to compete for the proposed new U.S. space mission and projects.

Effect of Proposed Changes

Section 29 appropriates $20,039,000 in non-recurring general revenue toward space-related activities:

- $3.89 million to fund Space Florida's operating budget;
- $10 million to the Space Business Investment and Financial Services Trust Fund[59] for space infrastructure projects;

[56] More information about Space Florida's facilities is available in the Senate Commerce Committee's Issue Brief 2010-307, "Review of Space Florida's Infrastructure Projects," available at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-307cm.pdf.

[57] On January 14, 2004, then-President Bush announced a new mission for America's civil space program that calls for human and robotic missions to the moon, Mars, and beyond. See Report of the President's Commission on Implementation of United States Space Exploration Policy. Available at http://www.nasa.gov/pdf/60736main_M2M_report_small.pdf. Last visited Feb. 24, 2010.

[58] Senate Issue Paper 2009-305, Efforts to Address Workforce Issues Related to the Space Program. Published October 2008. Available at http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-305cm.pdf.

[59] This trust fund would be created with the passage of SB 2476.

- $3 million to OTTED for the exclusive use of providing targeted business development support services and business recruitment;
- $3.2 million for the exclusive purpose of job retraining efforts by Space Florida for aerospace workers impacted by the retirement of the Space Shuttle.

New Report on Availability of State Properties for Surplus

Present Situation

Chapter 253, F.S., governs the use, management, and transfer of state-owned lands. Unless otherwise specified, the title to state-owned lands is vested in the Board of Trustees of the Internal Improvement Trust Fund (trustees), comprised of the Governor and Cabinet. Specifically, s. 253.034, F.S., governs the uses of these lands, how they are to be managed, the authority to surplus, and requirements for the development of an inventory of public lands.

Regarding the surplusing of state-owned lands, the board must first determine if the lands are conservation or non-conservation lands. Most properties managed by DEP, the Division of Forestry, and the Fish and Wildlife Commission are conservation lands.[60] The trustees hold title to about 3.2 million acres of conservation lands.[61] Properties managed by the Department of Management Services (DMS) for use as state offices are designated as non-conservation lands.

Section 253.034, F.S., also includes provisions concerning authority for the determination of the value and sale price of surplus lands and concerning the methods to be used for such determination. For conservation lands, the trustees must determine that lands are no longer needed for conservation purposes and can dispose of them with an affirmative vote of three of the four trustees. For all other lands, the trustees can determine that they are no longer needed by the state and can dispose of them with an affirmative vote of three of four trustees.

Once a determination is made to surplus, DEP's Division of State Lands (division) sends notices to other state agencies approximately 2 months prior to a parcel of land being offered for lease, sublease, or sale to a local or federal unit of government or a private party per 18-2.019(5)(a), F.A.C. Section 253.034(6)(g), F.S., also states that the division shall determine the sales price of surplus lands. In doing so, the division must take into consideration an appraisal of the property, or, when the estimated value of the land is less than $100,000, a comparable sales analysis or a broker's opinion of value.

Chapter 2009-15, L.O.F., directed DMS to compile a list of all state-owned surplus real property valued at greater than $1,000 in order to determine potential cost savings and revenue opportunities from the sale or lease of assets, and identify current contracts for leased office

[60] In part, conservation lands mean lands that are currently managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation, except those lands that were acquired solely to facilitate the acquisition of other conservation lands. (For complete definition see s. 253.034(2)(c), F.S.)

[61] "State Lands Acquisition and Management," 2008 report published by the House of Representatives Committee on Conservation & State Lands. Page 30, Table 3. Report available at: http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2340&Session=2008&DocumentType=Reports&FileName=State%20Lands%20Acquisition%20and%20Management.pdf. Last visited January 18, 2010.

space in which the leased space is not fully used or occupied and include a plan for contract renegotiation or subletting unoccupied space.

According to its initial report in March 2009, DMS found:

- 566 private leases with 1.3 million square feet in potential excess space;
- 276 leases with potential excess space with terms of 24 months or less; and
- 80 percent of the leases have less than 2,500 SF of potential excess space.

DMS submitted a final report in December 2009 that indicated, based on additional analysis, that 29 state-owned properties with a total assessed value of $33.34 million were available for surplus.

Effect of Proposed Changes

Section 30 creates a new initiative to catalogue state-owned properties and structures, for the purpose of determining which may be declared surplus and sold. Specifically, this section:

- Directs the trustees to require all state agencies that manage state-owned land to compile lists of state-owned property under their management. Conservation lands are not included in this review.
- Specifies that the agencies' reports should include:
    - Information on the total acres of property or numbers of facilities, as appropriate, which are managed by the particular agency;
    - Which properties may have the potential for surplusing;
    - A brief history, description, and original purchase price or construction cost of each item listed;
    - The current annual management costs of each item listed; and
    - The current revenue generated by each item listed. Any agency whose list includes fewer than 10 percent of the state-owned acreage or facilities under its management shall provide a detailed and specific written explanation as to why it identified so few properties for surplus.
- Directs agencies which fail to identify at least 10 percent of state property inventory under their management to explain in detail why.
- Requires agencies to submit their individual reports to the trustees and the Legislative Budget Commission (LBC) by August 1, 2010. The Board of Trustees, in consultation with the LBC, will evaluate reports and determine, by November 15, 2010, which properties may be declared surplus and sold or exchanged for other compensation.
- Directs DMS to review the marketability of properties identified by the trustees and the LBC, and to submit by February 1, 2011 a report listing properties with surplus potential.
- The proceeds of the sale of these properties will be deposited in the state General Revenue Fund, to be used, to the extent practicable, for economic development activities.

Review of Commercialization Research Grant Program

Section 31 directs OPPAGA to conduct a review and evaluation of the Florida Research Commercialization Grant Program (created in Section 20, above) before the 2013 Legislative Session. Specifically, OPPAGA shall:

- Evaluate the use of federal grants and private investment by the grant recipients;
- Evaluate whether new businesses and new jobs are being created as a result of the grant program; and
- Recommend outcome measures for future review of the grant program.

OPPAGA must submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2013.

Savings Clause for chapter 2009-96, L.O.F.

Present Situation

Chapter 2009-96, L.O.F. (SB 360), known as the "Community Renewal Act," made a number of revisions to Florida's Growth Management Act and the Environmental Land and Water Management Act. The act modified the comprehensive plan amendment process, allowed additional growth in densely populated areas under certain circumstances, revised the consequences for local governments that have not complied with certain reporting requirements, and extended for an additional 2 years certain permits with expiration dates between September 1, 2008, though January 1, 2012.

In July 2009, several local governments filed for declaratory judgment[62] against the legislation, alleging that it violates the state's constitutional requirement that legislation address a single subject, pursuant to s. 6, Art. III, Fla. Const., and violates constitutional requirements on unfunded mandates to local governments, pursuant to s. 18(a), Art. VII, Fla. Const.

Effect of Proposed Changes

If ch. 2009-96, L.O.F., is overturned by the courts, **section 32** will:

- Allow DRIs or pending DRI applications, which were granted an extension in good faith under ch. 2009-96, L.O.F., to continue forward as exempt;
- Allow persons granted 2-year permit extensions under ch. 2009-96, L.O.F., to keep their extensions; and
- Save amendments to comprehensive plans and land development regulations that were designed to implement transportation concurrency exception areas created ch. 2009-96, L.O.F.

This section attempts to make any judgment that ch. 2009-96, L.O.F., is invalid prospective to avoid harming those who relied on the provisions of the bill.

2-Year Extension of Certain Permits

Present Situation

Pursuant to ch. 2009-96, L.O.F., certain state and local permits, approvals, and development orders, having an expiration date of September 1, 2008 through January 1, 2012, are extended for 2 years following the date of expiration. A developer must notify the agency or local government by December 31, 2009, in writing with a request to extend the expiration date for 2 years for the following:

[62] *City of Weston, et al v. The Honorable Charlie Crist, et al.* Case No. 2009 CA 002639. Available at http://www.clerk.leon.fl.us/index.php?section=2&server=image&page=high_profile/index.asp?year=2009.

- Permits issued by DEP or a WMD.
- Local government permits, including development orders, building permits, zoning permits, subdivision plat approvals, special exceptions, variances, and any other approval affecting the development of land.
- Development of Regional Impact (DRI) development orders and building permits.

Since passage of the legislation, several questions have been raised, including what types of local government permits are eligible for extension.

Effect of Proposed Changes

Section 33 repeats the permit extension language used in ch. 2009-96, L.O.F., except that it:

- Clarifies the type of permits eligible;
- States that the 2-year extension in this bill is in addition to the 2-year extension in ch. 2009-96, L.O.F.; and
- Gives permit holders until December 31, 2010, to apply for the extension.

Similarly to ch. 2009-96, L.O.F., the permit extension language creates caveats for certain contingencies. This extension does not apply to:

- Army Corps of Engineers' permits;
- Permit-holders that are not complying with the terms of their permits; or
- Permits that would interfere with court orders.

This section also gives local governments leeway to adjust permit extensions if the extension would result in unsafe or unsanitary conditions.

Extension of Florida Homebuyer Opportunity Program

Present Situation

The U.S. Housing and Economic Recovery Act of 2008 established a tax credit for first-time homebuyers worth up to $7,500. For homes purchased in 2008, the credit was similar to a no-interest loan and had to be in 15 equal, annual installments beginning with the 2010 income tax year.

This act has been amended twice. The American Recovery and Reinvestment Act of 2009 expanded the first-time homebuyer credit by increasing the credit amount to $8,000 for purchases made in 2009 before December 1 of that year. Later in 2009, the Worker, Homeownership and Business Assistance Act of 2009 was passed to extend the December 1, 2009, deadline. Now, taxpayers who have a binding contract to purchase a home by April 30, 2010, are eligible for the credit. Buyers, who no longer have to be first-time homeowners, must close on the home by June 30, 2010.[63]

In 2009, the State of Florida decided to partner, in effect, with the federal program as a way to reinvigorate the state's stagnant housing market. The Legislature created the Florida Homebuyer Opportunity Program,[64] funded with just over $30 million in State Housing Initiatives

[63] More information about the federal program is available at http://www.irs.gov/newsroom/article/0,,id=204671,00.html.
[64] Section 47 of ch. 2009-82, L.O.F.

Partnership (SHIP) monies. The state program funds, to be distributed through and managed by the existing SHIP structure, would be used to provide up to $8,000 in down payment assistance to qualified homebuyers who are eligible to receive the federal tax credit. Recipients of these subordinate loans are expected to repay them after receiving their federal tax credit; if repaid within 18 months, these loans are interest-free.

As of November 15, 2009, the program had expended $1.73 million and closed on 220 loans.

The Florida program expires June 30, 2010. Any unexpended funds revert to their original purposes within the SHIP.

Effect of Proposed Changes

Section 34 amends s. 47 of ch. 2009-82, L.O.F., to extend for another 12 months the availability of state funding for the Florida Homebuyer Opportunity Program. This state program was designed to assist Floridians participating in the federal First-Time Homebuyer Program.

Funding for the Florida Research Commercialization Matching Grants

Section 35 appropriates $10 million from the General Revenue Fund to the Florida Institute for the Commercialization of Public Research to fund Phase 1 matching grants, pursuant to s. 288.9552, F.S. (created in Section 21, above).

Funding for SUS Research Grants

Present Situation

In 2007, the Legislature amended the Florida 21st Century Technology, Research and Scholarship Act, in s. 1004.226, F.S., to create a State University Research Commercialization Assistance Grant (SURCAG) Program.[65] This grant program provides early-stage capital funding to develop products that result from university research. Some of the activities for which the funding may be used are securing patents, establishing startup companies, developing license agreements, or attracting private investment.

The one-time appropriation of $4 million in FY 07-08 was later reduced to $2 million, because of budget cuts. Most of the funding was distributed in the form of 24 grants in 2008 to nine state universities to assist specific companies, specific research projects, or for general technology transfer activities.

Several of the original SURCAG recipients have begun marketing their discoveries. For example, Sharklet Technologies, is an LLC operating out of the University of Florida's Sid Martin Biotechnology Incubator. Sharklet[66] is marketing a germ-resistant adhesive film that can be applied to surfaces, such as restroom door handles, to prevent the spread of contact-borne illnesses. The company currently is developing a film that can be applied to the exterior of boats to prevent algae and barnacles from growing on them; if successful, it would replace commonly used copper-based paints which create environmental and water-quality problems.

[65] Section 2 of ch. 2007-189, L.O.F. Available at http://laws.flrules.org/files/Ch_2007-189.pdf.
[66] Website at http://www.sharklet.com. Last visited Feb. 12, 2010.

Effect of Proposed Changes
Section 36 appropriates an unspecified sum of money into the program for new early-stage, seed-capital funding for eligible proposals.

Section 37 provides a finding that the act fulfills an important state interest.

Section 38 provides severability from this legislation of any provision that the courts might rule as invalid.

Section 39 provides that, except as otherwise expressly provided in this legislation, the bill is effective July 1, 2010.

III. Effect of Proposed Changes:

See above.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent that this bill requires cities and counties to expend funds, the provisions of Section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the legislature must find that the law fulfills an important state interest (see section 37) and one of the following relevant exceptions must apply:

a. funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;

b. counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;

c. the expenditure is required to comply with a law that applies to all persons similarly situated;

d. the law must be approved by two-thirds of the membership of each house of the legislature.

Section 18(b) of Article VII of the State Constitution prohibits the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce county or municipal aggregate revenue-generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

However, subsection (d) of section 18, Article VII, provides an exemption from the constitutional requirements of both subsections (a) and (b) if the bill is determined to

have an "insignificant fiscal impact" on cities and counties. Long-standing practice of the legislature has been to define "insignificant fiscal impact" to mean 10 cents per capita, or, for FY 2010-2011, $1.9 million in the aggregate.

As noted above, section 19 and that portion of section 5 relating to the exemption for manufacturing machinery and equipment grant refunds of sales and use taxes (state and local) previously paid. The Revenue Estimating Conference has estimated that taxpayers may seek refunds attributable to $5.3 million in FY 2010-11, $10.6 million FY 2011-12, and $4.7 million each in FY 2012-13 and FY 2013-14 in local option sales taxes. However, the refunds are paid from the General Revenue Fund rather than the local government revenues. *[See "V. Fiscal Impact Statement" below.]*[67] As a result, section 19 and that portion of section 5 relating to the exemption for manufacturing machinery and equipment do not reduce the revenue-generating authority of cities and counties.

Section 4 of the bill caps the sales and use tax applicable to boats and aircraft at $18,000. This provision is expected to reduce local government revenues by $1 million annually. Thus, since the fiscal impact does not exceed threshold for "insignificant fiscal impact" under the provisions of subsection 18(d) of Art. VII, this provision appears to be exempt from the constitutional requirements of subsection 18(b) of Art. VII.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Overall, this legislation is estimated to reduce revenues deposited into the General Revenue Fund by $46.0 million in FY 2010-11; $72.9 million in FY 2011-12, and $38.2 million in FY 2012-13. For revenues deposited into state trust funds, including those revenues shared with local governments, this legislation is estimated to reduce revenues by $0.2 million in FY 2010-11; to increase revenues by $0.7 million in FY 2011-12; and to reduce revenues by $0.7 million in FY 2012-13. For revenues imposed by local governments, the legislation is estimated to reduce revenues by $0.5 million in FY 2010-11, $0.2 million in FY 2011-12, and 0.8 million in FY 2012-13.

	FY 2010-11	FY 2011-12	FY 2012-13
General Revenue Fund	($46.0 m)	($72.9 m)	($38.2 m)

[67] Section 5 of PCS/SB 1752 creates a 2-year sales tax exemption for certain manufacturing machinery and equipment purchases, and Section 19 replaces the current film and entertainment incentive program from a cash rebate of qualified expenditures with a transferable tax credit. More detail in the section-by-section analysis of the legislation.

State Trust Funds	(0.2 m)	0.7 m	(0.7 m)
Local government Revenues	(0.5 m)	(0.2 m)	(0.8 m)
Total	($74.2 m)	($103.0 m)	($43.6 m)

The fiscal impacts of discrete provisions of this bill are described below:

Section 4 caps the sales and use tax owed on purchases of aircraft and boats at $18,000. This provision is expected to reduce revenues deposited into the General Revenue Fund $9.3 million in FY 2010-11, $10.4 million in FY 2011-12, and $10.8 million in FY 2012-13. Revenues deposited in state trust funds is expected to be reduced by $1.1 million in FY 2010-11, $1.2 million in FY 2011-12, and $1.3 million in FY 2012-13. Local government revenues are expected to be reduced by $0.9 million in FY 2010-11, $1.0 million in FY 2011-12, and $1.0 million in FY 2012-13. In its report, the REC noted, "While it is expected that the reduced tax will lead to increased taxable purchases of aircraft and boats in Florida, the effect cannot be quantified."

Section 5 creates a third exemption for manufacturing machinery and equipment, under which the increment of new purchases over purchases in the base year of 2008 will be exempt from the sales and use taxes in ch. 212, F.S. The total estimated impact of this provision is a reduction of $39.9 million in FY 2010-2011; $44.3 million in FY 2011-2012; and $3.6 million in FY 2012-2013. These amounts will be subject to a claim for tax refund, payable from the General Revenue Fund.

Section 5 narrows the sales and use tax exemption for building materials used in enterprise zones. Condominium units and condominium properties will no longer be eligible. The REC estimates that this provision will increase revenues deposited into the General Revenue Fund by $3.3 million in FY 2010-11; $6.9 million in FY 2011-12; and $2 million in FY 2012-13. The impact on state trust funds is estimated to be $0.9 million in FY 2010-11; $1.9 million in FY 2011-12; and $0.6 million in FY 2012-13. Local government revenues are expected to increase by $0.4 million in FY 2010-11; $0.8 million in FY 2011-12; and $0.2 million in FY 2012-13.

Section 9 creates a non-transferable corporate income tax credit for businesses that hire Floridians who have been certified as eligible for unemployment benefits at any point on or after January 1, 2009, and who meet other criteria. By consensus, the REC at its March 5, 2010, meeting, adopted a state fiscal impact of $5 million in FY 2011-12 and $5 million in FY 2012-2013. There is no impact on local revenues.

Section 11 makes a number of changes to the existing Capital Investment Tax Credit incentive program, in s. 220.191, F.S., that are intended to broaden the appeal and applicability of the incentive program. Based on a number of assumptions related to project completion dates and company profitability, the REC at its March 5, 2010, meeting adopted by consensus the following state fiscal impacts:

- ($3.2 million) annualized for FY 10-11;
- Nothing in FY 11-12;
- ($700,000) in FY 12-13; and
- ($1.9 million) in FY 13-14.

There is no impact on local revenues.

Section 19 amends the state's film and entertainment incentive program, replacing the current cash refund incentive for qualified productions with a transferable tax credit incentive. The tax credit is limited to $20 million annually for five years. Again, these amounts are subject to claims for tax refunds, payable from the General Revenue Fund.

Section 22 expands the employee eligibility for the enterprise zone jobs credits. This provision is expected to reduce revenues deposited into the General Revenue Fund by $0.1 million annually. The impact on local government revenues is estimated to be insignificant.

B. Private Sector Impact:

Indeterminate, but potentially significant in terms of: access to capital for small businesses; a reduced tax liability for manufacturing, qualified target industries, and other types of businesses because of tax credits or tax exemptions contained within the bill; and improved opportunities for hiring of Floridians.

C. Government Sector Impact:

Overall, this bill appropriates roughly $30 million from the General Revenue Fund. Specifically, **Section 29 appropriates** slightly more than $20 million in nonrecurring general revenue for space-related activities, in four categories:

- $3.89 million to fund Space Florida's operating budget;
- $10 million for the Space Business Investment and Financial Services Trust Fund for space infrastructure projects;
- $3 million for OTTED for the exclusive use of providing targeted business development support services and business recruitment; and
- $3.2 million for the exclusive purpose of job retraining efforts by Space Florida for aerospace workers impacted by the retirement of the Space Shuttle.

Section 35 appropriates $10 million of nonrecurring funds from the General Revenue Fund to the Florida Institute for Commercialization of Public Research for matching grants to small, mostly high-tech start-up companies eligible under the Florida Commercialization Matching Grant Program created in Section 21 of this bill.

In addition, **Section 12** increases the statutory cap on the Qualified Target Industry (QTI) Tax Refund Incentive Program and the Qualified Defense Contractor and Spaceflight Business (QDSC) Tax Refund Program from $35 million annually to $100 million annually. If the tax refunds are fully utilized, the state would be liable for an additional $65 million in refund claims annually to eligible taxpayers from the General Revenue Fund. However, s. 288.095(3)(b), F.S., limits the amount of claims approved by OTTED to the amount appropriated for the fiscal year.

The Department of Revenue may incur some costs to update its software and forms to accommodate the new tax credits created in this bill. OTTED, DEP, and DOR also may experience heavier staff workloads, depending on the applicable provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.