

Committee Substitute for Senate Bill No. 38-A

An act relating to economic development; creating s. 288.1081, F.S.; creating the Economic Gardening Business Loan Pilot Program within the Office of Tourism, Trade, and Economic Development; providing legislative findings and intent; providing eligibility criteria for the award of loans to certain businesses; providing application procedures; requiring loan agreements; providing terms of loans; providing for use of loan proceeds; providing criteria and application procedures for the selection of loan administrators; requiring a loan administrator to enter into a grant agreement; providing for the disbursement of certain funds from the Economic Development Trust Fund; requiring fees for the loan administrator; providing for the collection and deposit of loan payments; requiring the loan administrator to submit a report to the office; requiring the office to adopt rules; authorizing the use of emergency rulemaking procedures; requiring the office to submit a report to the Governor and Legislature; providing for reversion and carryforward of certain unexpended appropriations; prohibiting new loans after a specified date; providing for future repeal; creating s. 288.1082, F.S.; creating the Economic Gardening Technical Assistance Pilot Program within the office; requiring the office to contract for administration of the pilot program; requiring competitive procurement; requiring the provision of technical assistance to certain businesses; providing eligibility criteria for businesses to receive technical assistance; requiring the businesses to enter into agreements with the contracted entity administering the pilot program; requiring the businesses to report certain data; providing that the contracted entity is an economic development agency; providing for review of contracts; requiring the office to submit a report to the Governor and Legislature; authorizing the office to adopt rules; directing the Office of Program Policy Analysis and Government Accountability to submit a report to the Governor and Legislature; authorizing the expenditure of certain funds appropriated for the pilot program; providing an effective date.

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

Section 1. Section 288.1081, Florida Statutes, is created to read:

288.1081 Economic Gardening Business Loan Pilot Program.—

(1) There is created within the Office of Tourism, Trade, and Economic Development the Economic Gardening Business Loan Pilot Program. The purpose of the pilot program is to stimulate investment in Florida's economy by providing loans to expanding businesses in the state. As used in this section, the term "office" means the Office of Tourism, Trade, and Economic Development.

(2) The Legislature finds that it is vital to the overall health and growth of the state's economy to promote favorable conditions for expanding Florida

businesses that demonstrate the ability to grow. The Legislature further finds that, due to the current extraordinary economic challenges confronting the state, there exists a public purpose in expending state resources to stimulate investment in Florida's economy. It is therefore the intent of the Legislature that resources be provided for the pilot program.

(3)(a) To be eligible for a loan under the pilot program, an applicant must be a business eligible for assistance under the Economic Gardening Technical Assistance Pilot Program as provided in s. 288.1082(4)(a).

(b) A loan applicant must submit a written application to the loan administrator in the format prescribed by the loan administrator. The application must include:

1. The applicant's federal employer identification number, unemployment account number, and sales or other tax registration number.

2. The street address of the applicant's principal place of business in this state.

3. A description of the type of economic activity, product, or research and development undertaken by the applicant, including the six-digit North American Industry Classification System code for each type of economic activity conducted by the applicant.

4. The applicant's annual revenue, number of employees, number of full-time equivalent employees, and other information necessary to verify the applicant's eligibility for the pilot program under s. 288.1082(4)(a).

5. The projected investment in the business, if any, which the applicant proposes in conjunction with the loan.

6. The total investment in the business from all sources, if any, which the applicant proposes in conjunction with the loan.

7. The number of net new full-time equivalent jobs that, as a result of the loan, the applicant proposes to create in this state as of December 31 of each year and the average annual wage of the proposed jobs.

8. The total number of full-time equivalent employees the applicant currently employs in this state.

9. The date that the applicant anticipates it needs the loan.

10. A detailed explanation of why the loan is needed to assist the applicant in expanding jobs in the state.

11. A statement that all of the applicant's available corporate assets are pledged as collateral for the amount of the loan.

12. A statement that the applicant, upon receiving the loan, agrees not to seek additional long-term debt without prior approval of the loan administrator.

13. A statement that the loan is a joint obligation of the business and of each person who owns at least 20 percent of the business.

14. Any additional information requested by the office or the loan administrator.

(c) The loan administrator, after verifying the accuracy of a submitted application, shall award the loan to the applicant if the administrator determines that the applicant, as compared to other applicants submitting applications, is in the best position to use the loan to continue making a successful long-term business commitment to the state. The loan administrator also shall consider the following factors:

1. Whether the applicant has applied for or received incentives from local governments;

2. Whether the applicant has applied for or received waivers of taxes, impact fees, or other fees or charges by local governments; and

3. What other sources of investments or financing for the project that is the subject of the loan application will be available to the applicant.

(d) A borrower awarded a loan under this section and the loan administrator must enter into a loan agreement that provides for the borrower's repayment of the loan.

(4) The following terms apply to a loan received under the pilot program:

(a) The maximum amount of the loan is \$250,000.

(b) The proceeds of the loan may be used for working capital purchases, employee training, or salaries for newly created jobs in the state.

(c) The security interest for the loan's collateral covering all of the borrower's available corporate assets to cover the amount of the loan must be perfected by recording a lien under the Uniform Commercial Code.

(d) The period of the loan is 4 years.

(e) The interest rate of the loan is 2 percent. However, if the borrower does not create the projected number of jobs within the terms of the loan agreement, the interest rate shall be increased for the remaining period of the loan to the prime rate published in the Wall Street Journal, as of the date specified in the loan agreement, plus 4 percentage points. The loan agreement may provide flexibility in meeting the projected number of jobs for delays due to governmental regulatory issues, including, but not limited to, permitting.

(f) For the first 12 months of the loan, payment is due for interest only, payable during the twelfth month. Thereafter, payment for interest and principal is due each month until the loan is paid in full. Interest and principal payments are based on the unpaid balance of the total loan amount.

(5)(a) The office may designate one or more qualified entities to serve as loan administrators for the pilot program. A loan administrator must:

1. Be a Florida corporation not for profit incorporated under chapter 617 which has its principal place of business in the state.

2. Have 5 years of verifiable experience of lending to businesses in this state.

3. Submit an application to the office on forms prescribed by the office. The application must include the loan administrator's business plan for its proposed lending activities under the pilot program, including, but not limited to, a description of its outreach efforts, underwriting, credit policies and procedures, credit decision processes, monitoring policies and procedures, and collection practices; the membership of its board of directors; and samples of its currently used loan documentation. The application must also include a detailed description and supporting documentation of the nature of the loan administrator's partnerships with local or regional economic and business development organizations.

(b) The office, upon selecting a loan administrator, shall enter into a grant agreement with the administrator to issue the available loans to eligible applicants. The grant agreement must specify the aggregate amount of the loans authorized for award by the loan administrator. The term of the grant agreement must be at least 4 years, except that the office may terminate the agreement earlier if the loan administrator fails to meet minimum performance standards set by the office. The grant agreement may be amended by mutual consent of both parties.

(c) The office shall disburse from the Economic Development Trust Fund to the loan administrator the appropriations provided for the pilot program. Disbursements to the loan administrator must not exceed the aggregate amount of the loans authorized in the grant agreement. The office may not disburse more than 50 percent of the aggregate amount of the loans authorized in the grant agreement until the office verifies the borrowers' use of the loan proceeds and the loan administrator's successful credit decisionmaking policies.

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

(e) A loan administrator, after collecting the servicing fee in accordance with paragraph (d), shall remit the borrower's collected interest, principal payments, and charges for late payments to the office on a quarterly basis. If the borrower defaults on the loan, the loan administrator shall initiate collection efforts to seek repayment of the loan. The loan administrator, upon collecting payments for a defaulted loan, shall remit the payments to

the office but, to the extent authorized in the grant agreement, may deduct the costs of the administrator's collection efforts. The office shall deposit all funds received under this paragraph in the General Revenue Fund.

(f) A loan administrator shall submit quarterly reports to the office which include the information required in the grant agreement. A quarterly report must include, at a minimum, the number of full-time equivalent jobs created as a result of the loans, the amount of wages paid to employees in the newly created jobs, and the locations and types of economic activity undertaken by the borrowers.

(6) All notes, mortgages, security agreements, letters of credit, or other instruments that are given to secure the repayment of loans issued in connection with the financing of any loan under the program, without regard to the status of any party thereto as a private party, are exempt from taxation by the state and its political subdivisions. The exemption granted in this subsection does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

(7) The office shall adopt rules under ss. 120.536(1) and 120.54 to administer this section. To the extent necessary to expedite implementation of the pilot program, the office may adopt initial emergency rules for the pilot program in accordance with s. 120.54(4).

(8) On June 30 and December 31 of each year, beginning in 2009, the office shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which describes in detail the use of the loan funds. The report must include, at a minimum, the number of businesses receiving loans, the number of full-time equivalent jobs created as a result of the loans, the amount of wages paid to employees in the newly created jobs, the locations and types of economic activity undertaken by the borrowers, the amounts of loan repayments made to date, and the default rate of borrowers.

(9) Unexpended balances of appropriations provided for the pilot program shall not revert to the fund from which the appropriation was made at the end of a fiscal year but shall be retained in the Economic Development Trust Fund and be carried forward for expenditure for the pilot program during the following fiscal year. A loan administrator may not award a new loan or enter into a loan agreement after June 30, 2011. Balances of appropriations provided for the pilot program which remain unexpended as of July 1, 2011, shall revert to the General Revenue Fund.

(10) This section is repealed July 1, 2016, unless reviewed and reenacted by the Legislature before that date.

Section 2. Section 288.1082, Florida Statutes, is created to read:

288.1082 Economic Gardening Technical Assistance Pilot Program.—

(1) There is created within the Office of Tourism, Trade, and Economic Development the Economic Gardening Technical Assistance Pilot Program. The purpose of the pilot program is to stimulate investment in Florida's

economy by providing technical assistance for expanding businesses in the state. As used in this section, the term “office” means the Office of Tourism, Trade, and Economic Development.

(2) The office shall contract with one or more entities to administer the pilot program under this section. The office shall award each contract in accordance with the competitive bidding requirements in s. 287.057 to an entity that demonstrates the ability to implement the pilot program on a statewide basis, has an outreach plan, and has the ability to provide counseling services, access to technology and information, marketing services and advice, business management support, and other similar services. In selecting these entities, the office also must consider whether the entities will qualify for matching funds to provide the technical assistance.

(3) A contracted entity administering the pilot program shall provide technical assistance for eligible businesses which includes, but is not limited to:

(a) Access to free or affordable information services and consulting services, including information on markets, customers, and competitors, such as business databases, geographic information systems, and search engine marketing.

(b) Development of business connections, including interaction and exchange among business owners and resource providers, such as trade associations, think tanks, academic institutions, business roundtables, peer-to-peer learning sessions, and mentoring programs.

(4)(a) To be eligible for assistance under the pilot program, a business must be a for-profit, privately held, investment-grade business that employs at least 10 persons but not more than 50 persons, has maintained its principal place of business in the state for at least the previous 2 years, generates at least \$1 million but not more than \$25 million in annual revenue, qualifies for the tax refund program for qualified target industry businesses under s. 288.106, and, during 3 of the previous 5 years, has increased both its number of full-time equivalent employees in this state and its gross revenues.

(b) A contracted entity administering the pilot program, in selecting the eligible businesses to receive assistance, shall choose businesses in more than one industry cluster and, to the maximum extent practicable, shall choose businesses that are geographically distributed throughout Florida or are in partnership with businesses that are geographically distributed throughout Florida.

(5)(a) A business receiving assistance under the pilot program must enter into an agreement with the contracted entity administering the program to establish the business’s commitment to participation in the pilot program. The agreement must require, at a minimum, that the business:

1. Attend a minimum number of meetings between the business and the contracted entity administering the pilot program.

2. Report job-creation data in the manner prescribed by the contracted entity administering the pilot program.

3. Provide financial data in the manner prescribed by the contracted entity administering the program.

(b) The office or the contracted entity administering the pilot program may prescribe in the agreement additional reporting requirements that are necessary to track the progress of the business and monitor the business's implementation of the assistance. The contracted entity shall report the information to the office on a quarterly basis.

(6) A contracted entity administering the pilot program is authorized to promote the general business interests or industrial interests of the state.

(7) The office shall review the progress of a contracted entity administering the pilot program at least once each 6 months and shall determine whether the contracted entity is meeting its contractual obligations for administering the pilot program. The office may terminate and rebid a contract if the contracted entity does not meet its contractual obligations.

(8) On December 31 of each year, beginning in 2009, the office shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which describes in detail the progress of the pilot program. The report must include, at a minimum, the number of businesses receiving assistance, the number of full-time equivalent jobs created as a result of the assistance, if any, the amount of wages paid to employees in the newly created jobs, and the locations and types of economic activity undertaken by the businesses.

(9) The office may adopt rules under ss. 120.536(1) and 120.54 to administer this section.

Section 3. By December 31, 2012, the Office of Program Policy Analysis and Government Accountability shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which evaluates the Economic Gardening Technical Assistance Pilot Program in s. 288.1082, Florida Statutes, and the pilot program's effectiveness in expanding the targeted businesses.

Section 4. From the funds specifically appropriated to fund this act, up to \$1.5 million may be used to implement the Economic Gardening Technical Assistance Pilot Program created in section 2 of this act.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor January 27, 2009.

Filed in Office Secretary of State January 27, 2009.