

CHAPTER 2011-142

Senate Bill No. 2156

An act relating to governmental reorganization; transferring the functions and trust funds of the Agency for Workforce Innovation to other agencies; transferring the Office of Early Learning to the Department of Education; transferring the Office of Unemployment Compensation to the Department of Economic Opportunity; transferring the Unemployment Appeals Commission to the Department of Economic Opportunity; transferring the Office of Workforce Services to the Department of Economic Opportunity; requiring the Auditor General to conduct an audit of the Office of Early Learning; transferring the functions and trust funds of the Department of Community Affairs to other agencies; transferring the Florida Housing Finance Corporation to the Department of Economic Opportunity; transferring the Division of Housing and Community Development to the Department of Economic Opportunity; transferring the Division of Community Planning to the Department of Economic Opportunity; transferring the Division of Emergency Management to the Executive Office of the Governor; transferring the Florida Building Commission to the Department of Business and Professional Regulation; transferring the responsibilities under the Florida Communities Trust to the Department of Environmental Protection; transferring the responsibilities under the Stan Mayfield Working Waterfronts Program to the Department of Environmental Protection; transferring functions and trust funds of the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor to the Department of Economic Opportunity; transferring the Ready to Work program to the Department of Education; providing legislative intent with respect to the transfer of programs and administrative responsibilities; providing for a transition period; providing for coordination between the Agency for Workforce Innovation, the Department of Community Affairs, the Department of Education, and the Office of Tourism, Trade, and Economic Development and other state agencies to implement the transition; requiring that the Governor appoint a representative to coordinate the transition plan; requiring that the Governor submit information and obtain waivers as required by federal law; authorizing the Governor to transfer funds and positions between agencies upon approval from the Legislative Budget Commission to implement the act; directing the nonprofit entities to enter into a plan for merger; transitioning the Florida Tourism Marketing Corporation d/b/a VISIT Florida to Enterprise Florida, Inc.; providing legislative intent with respect to the merger of Enterprise Florida, Inc., the Florida Sports Foundation Incorporated, and the Florida Black Business Investment Board, Inc., into, and the transition of the Florida Tourism Industry Marketing Corporation d/b/a VISIT Florida to, Enterprise Florida, Inc.; providing for a transition period; requiring that the Governor appoint a representative to coordinate the transition plan; providing for the transfer of any funds held in trust by the entities to be transferred to Enterprise Florida, Inc., to be used for the funds' original purposes; requiring that the Governor submit information and obtain waivers as required by federal law; requiring the Department of Economic Opportunity to submit a business plan by September 1, 2011; specifying report details; requiring the Department of Economic Opportunity to submit a report on streamlining economic development and workforce functions by January 1, 2012; requiring a review of the Department of Economic Opportunity by July 1, 2016;

specifying the details of the review; providing a directive to the Division of Statutory Revision to assist substantive committees to prepare conforming legislation; creating s. 14.2016, F.S.; establishing the Division of Emergency Management as a separate budget entity within the Executive Office of the Governor; providing for the director of the division to serve at the pleasure of the Governor; amending s. 20.15, F.S.; establishing the Office of Early Learning as a separate budget entity within the Department of Education; providing for the office to administer the school readiness system and the Voluntary Prekindergarten Education Program; providing for the director of the office to serve at the pleasure of the Governor; creating s. 20.60, F.S.; creating the Department of Economic Opportunity as a new department of state government; providing for the executive director of the Department of Economic Opportunity to be appointed by the Governor and confirmed by the Senate; establishing divisions of the Department of Economic Opportunity and specifying their responsibilities; providing for the Department of Economic Opportunity to serve as the designated agency for the purposes of federal workforce development grants; authorizing the Department of Economic Opportunity to contract for training for employees of administrative entities and case managers of contracted providers; specifying that the Unemployment Appeals Commission is not subject to control, supervision, or direction from the Department of Economic Opportunity; specifying the responsibilities of the executive director of the Department of Economic Opportunity; requiring an annual report on the business climate and economic development in the state; requiring the Department of Economic Opportunity to establish annual performance standards for public-private partnerships; providing for the Department of Economic Opportunity to have an official seal; providing for the Department of Economic Opportunity to administer the role of state government with respect to laws relating to housing; amending s. 14.32, F.S.; specifying powers and responsibilities of the Chief Inspector General in the Executive Office of the Governor with respect to public-private partnerships; amending s. 201.15, F.S.; revising the distribution of excise taxes on documents; providing for specified distributions of funds to the State Economic Enhancement and Development Trust Fund in the Department of Economic Opportunity; amending s. 215.559, F.S.; providing for the Hurricane Loss Mitigation Program to be housed within the Division of Emergency Management; extending the repeal date of the program; deleting an obsolete provision relating to the use of funds for programs to retrofit certain existing hurricane shelters; creating s. 288.005, F.S.; defining the terms “economic benefits,” “department,” and “executive director”; amending s. 288.061, F.S.; providing for the Department of Economic Opportunity and Enterprise Florida, Inc., to review applications for state economic development incentives; reducing the review and approval period to 10 business days; authorizing the Department of Economic Opportunity to enter into an agreement with an applicant relating to all incentives offered by the state; amending s. 288.095, F.S.; providing for the Department of Economic Opportunity to approve applications for certification or requests for participation in certain economic development programs; amending s. 288.1081, F.S.; providing for the Economic Gardening Business Loan Pilot Program to be administered by the Department of Economic Opportunity; amending s. 288.1082, F.S.; providing for the Economic Gardening Technical Assistance Pilot Program to be administered by the Department of Economic Opportunity; amending s. 288.901, F.S.; creating Enterprise Florida, Inc., as a nonprofit corporation; specifying that Enterprise Florida, Inc., is subject to the provisions of chs. 119 and 286, F.S.; specifying that the board of directors of Enterprise Florida, Inc., is subject to certain requirements in ch. 112, F.S.; specifying the purposes of Enterprise Florida, Inc.; creating the board of directors for Enterprise Florida, Inc.; naming the Governor as chair of the board of

directors; specifying appointment procedures, terms of office, selecting a vice chairperson, filling vacancies, and removing board members; providing for the appointment of at-large members to the board of directors; specifying terms; allowing the at-large members to make contributions to Enterprise Florida, Inc.; specifying ex officio, nonvoting members of the board of directors; specifying that members of the board of directors serve without compensation, but are entitled to reimbursement for all reasonable, necessary, and actual expenses as determined by the board of directors; amending s. 288.9015, F.S.; specifying the powers of Enterprise Florida, Inc., and the board of directors; authorizing liberal construction of the statutory powers of Enterprise Florida, Inc.; prohibiting Enterprise Florida, Inc., from pledging the full faith and credit of the state; allowing Enterprise Florida, Inc., to indemnify, purchase, and maintain insurance on its board members, officers, and employees; amending s. 288.903, F.S.; specifying the duties of Enterprise Florida, Inc.; amending s. 288.904, F.S.; providing for legislative appropriations; requiring a private match equal to at least 100 percent of the appropriation of public funds; specifying potential sources of private funding; requiring a one-to-one match for private to public contributions for marketing and advertising activities; directing the board of directors to develop annual budgets; providing for Enterprise Florida, Inc., to enter into an agreement with the Department of Economic Opportunity; requiring performance measures; requiring review of the activities of Enterprise Florida, Inc., as a return on the public's financial investment; amending s. 288.905, F.S.; directing the board of directors of Enterprise Florida, Inc., to hire a president, who serves at the pleasure of the Governor; specifying that the president also be known as the "Secretary of Commerce"; defining the president's role and responsibilities; forbidding an employee of Enterprise Florida, Inc., from earning more than the Governor, but providing for the granting of performance-based incentive payments to employees which may increase their total compensation in excess of the Governor's; amending s. 288.906, F.S.; requiring Enterprise Florida, Inc., to prepare an annual report by December 1 of each year; specifying the content of the annual report; creating s. 288.907, F.S.; requiring Enterprise Florida, Inc., to create an annual incentives report; specifying the required components of the report; creating s. 288.912, F.S.; requiring that certain counties and municipalities annually provide to the partnership an overview of certain local economic development activities; creating s. 288.92, F.S.; authorizing Enterprise Florida, Inc., to create divisions; requiring certain divisions; providing for hiring of staff; creating s. 288.923, F.S.; creating the Division of Tourism Marketing; providing definitions; requiring Enterprise Florida, Inc., to contract with the Florida Tourism Industry Marketing Corporation; specifying the division's responsibilities and duties, including a 4-year marketing plan; requiring an annual report; amending s. 288.1226, F.S.; establishing the Florida Tourism Marketing Corporation as a direct-support organization of Enterprise Florida, Inc.; establishing the membership of the board of directors of the corporation; establishing the membership of the board of directors of the corporation; making changes to conform to the act; amending s. 409.942, F.S.; deleting requirements that Workforce Florida, Inc., establish an electronic transfer benefit program; amending s. 411.0102, F.S.; requiring each participating early learning coalition board to develop a plan for the use of child care purchasing pool funds; amending ss. 11.40, 11.45, 14.20195, 15.182, 16.615, 17.61, 20.181, 39.001, 45.031, 69.041, 112.63, 112.665, 112.3135, 119.071, 120.54, 120.80, 125.045, 159.803, 159.8081, 159.8083, 159.809, 161.142, 161.54, 163.3164, 166.021, 171.204, 175.021, 186.504, 186.505, 189.403, 189.412, 189.413, 189.425, 189.427, 189.4035, 190.009, 190.047, 191.009, 191.015, 202.037, 212.08, 212.096, 212.097, 212.098, 212.20, 213.053, 215.5588, 216.136, 216.292, 216.231, 218.32, 218.37, 218.64, 220.03, 220.181, 220.182, 220.183, 220.1895, 220.1896, 220.1899, 220.191, 222.15,

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changes made by the act; repealing s. 14.2015, F.S., relating to the creation of the Office of Tourism, Trade, and Economic Development; repealing s. 20.18, F.S., relating to the creation of the Department of Community Affairs; repealing s. 20.50, F.S., relating to the creation of the Agency for Workforce Innovation; repealing 23.22(2), F.S., to conform a cross-reference; repealing 165.031(6), F.S., which includes the Department of Community Affairs in a definition; repealing 165.093, F.S., relating to the directing of all state and local agencies to cooperate in administering ch. 165, F.S.; repealing ss. 216.235, 216.236, 216.237, and 216.238, F.S., relating to the Innovation Investment Program, the selection of review boards to evaluate innovative investment projects, the appointment of the State Innovation Committee and approval of such projects, the funding, recordkeeping, and reporting for such projects, the establishment by state agencies of internal innovations funds, and the adoption of rules by the Department of Management Services for the program; repealing s. 287.115, F.S., relating to a requirement for the Chief Financial Officer to submit a report on contractual service contracts disallowed; repealing ss. 288.1221, 288.1222, 288.1223, 288.1224, 288.1227, and 288.1229, F.S., relating to the Florida Commission on Tourism and the Florida Tourism Industry Marketing Corporation; repealing s. 288.7011, F.S., relating to contracts between the Office of Tourism, Trade, and Economic Development and a certain nonprofit statewide development corporation; repealing ss. 288.7065, 288.707, 288.708, 288.709, 288.7091, and 288.712, F.S., relating to the Black Business Investment Board; repealing s. 288.12295, F.S., relating to a public-records exemption for donors for a direct-support organization on promotion and development of sports-related industries and amateur athletics; repealing s. 288.90151, F.S., relating to return on investment from activities of Enterprise Florida, Inc.; repealing s. 288.9415, F.S., relating to Enterprise Florida, Inc., and international trade grants; repealing ss. 409.944, 409.945, and 409.946, F.S., relating to the Inner City Redevelopment Assistance Grants Program, eligibility criteria for the program, and the membership of the Inner City Redevelopment Review Panel; repealing s. 943.402, F.S., relating to transfer of the criminal justice program of the Department of Community Affairs to the Department of Law Enforcement; repealing s. 42, ch. 2005-71, and s. 1, ch. 2005-261, Laws of Florida, relating to the authorization for funding certain dredging projects, to delete obsolete provisions; amending s. 220.191, F.S.; waiving the requirement that a facility located in a Disproportionally Affected County be in a high-impact sector in order to qualify for the capital investment tax credit; amending s. 288.106, F.S.; creating a process for the Department of Economic Opportunity to waive wage or local financial support eligibility requirements; providing a special incentive under the tax refund program for a limited time for a qualified target industry business that relocates from another state to a Disproportionally Affected County; creating s. 252.363, F.S.; tolling and extending the expiration dates of certain building permits or other authorizations following the declaration of a state of emergency by the Governor; providing exceptions; providing for the laws, administrative rules, and ordinances in effect when the permit was issued to apply to activities described in a permit or other authorization; providing an exception; amending s. 253.02, F.S.; requiring the Board of Trustees of the Internal Improvement Trust Fund to recommend to the Legislature whether existing multistate compacts for mutual aid should be modified or if a new multistate compact is necessary to address the Deepwater Horizon event or similar future incidents; requiring that the Board of Trustees of the Internal Improvement Trust Fund appoint members to the Commission on Oil Spill Response Coordination; providing for the designation of the chair of the commission by the Governor; requiring the commission to prepare a report for review and approval by the board of trustees; specifying the subject matter of the report; providing for future expiration;

defining the term “Disproportionally Affected County”; creating a process for the Department of Economic Opportunity to waive any or all job or wage eligibility requirements under certain circumstances when in the best interest of the public; defining the term “Disproportionally Affected County”; providing an appropriation to the Department of Economic Opportunity to contract with the Office of Economic Development and Engagement within the University of West Florida in order to develop and implement an economic development program for a Disproportionally Affected County; specifying a preference for a Disproportionally Affected County or municipalities within a Disproportionally Affected County which provide for expedited or combined permitting for certain purposes; providing for the appropriation to be placed in reserve by the Executive Office of the Governor for release as authorized by law or the Legislative Budget Commission; defining the term “Disproportionally Affected County”; providing for the deposit of funds received by entities involved in the Deepwater Horizon oil spill into applicable state trust funds; specifying permissible uses of such funds; designating the Department of Environmental Protection as the lead agency for expending funds for environmental restoration; designating the Department of Economic Opportunity as the lead agency for funds designated for economic incentives and diversification efforts; providing for a type two transfer of the Florida Energy and Climate Commission within the Executive Office of the Governor to the Department of Agriculture and Consumer Services; amending ss. 220.192, 288.9607, 366.82, 366.92, 377.6015, 377.602, 377.603, 377.604, 377.605, 377.606, 377.608, F.S.; eliminating the Florida Energy and Climate Commission and transferring its duties to the Department of Agriculture and Consumer Services; conforming provisions to changes made by the act; amending s. 377.701; transferring the duties of petroleum allocation from the Florida Energy and Climate Commission to the Division of Emergency Management; amending s. 377.703; conforming provisions to changes made by the act; transferring energy emergency contingency plans to the Division of Emergency Management; providing that the Department of Management Services shall coordinate the energy conservation programs of all state agencies; transferring administration of the Coastal Energy Impact Program to the Department of Environmental Protection; amending ss. 377.711, 377.801, 377.803, 377.804, 377.806, 377.807, 377.808, 403.44, 526.207, 570.954, and 1004.648, F.S.; conforming provisions to changes made by the act; amending s. 570.074, F.S.; providing for the creation of the Office of Energy and Water within the Department of Agriculture and Consumer Services; amending chapter 2010-282, Laws of Florida; conforming provisions to changes made by the act; authorizing the Department of Agriculture and Consumer Services to submit a budget amendment for a fixed capital outlay appropriation for federal energy grants; providing an effective date.

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

Section 49. Paragraph (b) of subsection (3) of section 120.54, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, is amended to read:

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

(b) Special matters to be considered in rule adoption.—

1. Statement of estimated regulatory costs.—~~Before~~ ~~Prior to~~ the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities.—

a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define “small business” to include businesses employing more than 200 persons, may define “small county” to include those with populations of more than 75,000, and may define “small city” to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule’s compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

b.(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the Small Business Regulatory Advisory Council and the Department of Economic Opportunity at least ~~Office of Tourism, Trade, and Economic Development~~ not less than 28 days before ~~prior to~~ the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the Small Business Regulatory Advisory Council and provided to the agency no later than 21 days after the council’s receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When

regulatory alternatives are offered by the Small Business Regulatory Advisory Council, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, ~~before~~ ~~prior to~~ rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days ~~after~~ ~~of~~ the filing of such notice, the agency shall send a copy of such notice to the Small Business Regulatory Advisory Council. The Small Business Regulatory Advisory Council may make a request of the President of the Senate and the Speaker of the House of Representatives that the presiding officers direct the Office of Program Policy Analysis and Government Accountability to determine whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. Within 60 days after the date of the directive from the presiding officers, the Office of Program Policy Analysis and Government Accountability shall report to the Administrative Procedures Committee its findings as to whether an alternative reduces the impact on small business while meeting the stated objectives of the proposed rule. The Office of Program Policy Analysis and Government Accountability shall consider the proposed rule, the economic impact statement, the written statement of the agency, the proposed alternatives, and any comment submitted during the comment period on the proposed rule. The Office of Program Policy Analysis and Government Accountability shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Administrative Procedures Committee shall report such findings to the agency, and the agency shall respond in writing to the Administrative Procedures Committee if the Office of Program Policy Analysis and Government Accountability found that the alternative reduced the impact on small business while meeting the stated objectives of the proposed rule. If the agency will not adopt the alternative, it must also provide a detailed written statement to the committee as to why it will not adopt the alternative.

Section 50. Subsection (10) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(10) ~~DEPARTMENT OF ECONOMIC OPPORTUNITY AGENCY FOR WORKFORCE INNOVATION.~~—

(a) Notwithstanding s. 120.54, the rulemaking provisions of this chapter do not apply to unemployment appeals referees.

(b) Notwithstanding s. 120.54(5), the uniform rules of procedure do not apply to appeal proceedings conducted under chapter 443 by the Unemployment Appeals Commission, special deputies, or unemployment appeals referees.

(c) Notwithstanding s. 120.57(1)(a), hearings under chapter 443 may not be conducted by an administrative law judge assigned by the division, but instead shall be conducted by the Unemployment Appeals Commission in unemployment compensation appeals, unemployment appeals referees, and the Department of Economic Opportunity Agency for Workforce Innovation or its special deputies under s. 443.141.