

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2008

SPONSOR: Appropriations Subcommittee on General Government, Commerce and Economic Opportunities Committee and Senator Diaz de la Portilla

SUBJECT: Economic Development/Enterprise Florida, Inc.

DATE: April 9, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Birnholz	Maclure	CM	Favorable/CS
2.	Hayes	Martin	AGG	Favorable/CS
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute makes several changes to provisions relating to state foreign office and Enterprise Florida, Inc., reporting requirements, including:

- revising the annual foreign office reporting date to December 1 for Florida foreign offices under contract with Enterprise Florida, Inc., (Enterprise Florida) so that the reports can be compiled and submitted to the Office of Tourism, Trade, and Economic Development (OTTED) by Enterprise Florida as part of Enterprise Florida’s annual report;
- allowing Enterprise Florida to hire an economic analysis firm for its return-on-investment report and a survey firm for its customer-satisfaction survey as opposed to requiring the use of a private accounting firm; and
- revising the due date of annual modifications to Enterprise Florida’s statewide strategic plan to January 31 in order to allow the Enterprise Florida board of directors to review and approve the strategic plan updates at its annual January board meeting.

This committee substitute also:

- amends s. 288.095, F.S., to increase the cap – to \$35 million from the current level of \$30 million – on the total state share of tax refunds that may be scheduled for payment in future fiscal years under the Qualified Defense Contractor and Qualified Target Industry tax refund programs;
- revises the content and re-assigns the responsibility from OTTED to Enterprise Florida, Inc., for completing and submitting the annual incentives report and changes the due date of the report from September 30 to December 31;

- alters the timeline for OTTED approval of Qualified Target Industry Tax Refund Program refunds in order to improve the budgetary process for this program;
- expands conditions under which a prorated tax refund shall be approved and specifies a method for calculating the prorated tax refund;
- authorizes OTTED to determine whether failure to comply with a tax refund agreement results in cancellation of the entire tax refund agreement and loss of eligibility as a qualified target industry;
- provides authority for a certified Qualified Target Industry business to request an extension of the time allowed to sign an agreement;
- amends s. 288.108, F.S., to provide authority for OTTED to award an interim grant payment to a qualified high-impact business commensurate with progress toward operating at full capacity; and
- amends s. 288.980, F.S., to clarify that OTTED may only utilize funds specifically appropriated for military base retention activities for such programs.

This committee substitute substantially amends the following sections of the Florida Statutes: 288.012, 288.095, 288.106, 288.108, 288.90151, 288.905, and 288.980.

II. Present Situation:

Enterprise Florida, Inc.¹

Created in 1992, Enterprise Florida, Inc., (Enterprise Florida) is a partnership between Florida's government and business leaders and is the principal economic development organization for the state.² Enterprise Florida's mission is to increase economic opportunities for all Floridians by supporting the creation of quality jobs and globally competitive businesses. It pursues this mission in cooperation with its statewide network of economic development partners.

Enterprise Florida operates under a contract with the Office of Tourism, Trade, and Economic Development (OTTED) and is responsible for developing specific programs and strategies that address creation, expansion, and retention of Florida business; the development of import and export trade; and recruitment of worldwide business. In addition, Enterprise Florida is responsible for:

- aggressively marketing Florida's rural and distressed urban communities as a location for potential new investment;
- assessing Florida's competitiveness against other business locations; and
- incorporating the needs of small and minority businesses into economic development, international trade, and workforce development.

Reports by State of Florida Foreign Offices

¹ See "Profile No. 6097," *Florida Government Accountability Report*, Florida Legislature's Office of Program Policy Analysis and Government Accountability, <http://www.oppaga.state.fl.us/profiles/6097/>, January 19, 2001.

² See s. 288.901, F.S.

Section 288.012, F.S., requires each State of Florida foreign office to submit to OTTED, by October 1 of each year, a complete and detailed report on its activities and accomplishments during the preceding fiscal year. The report must provide information such as the number of Florida companies assisted, the number of inquiries received about investment opportunities in Florida, the number of trade leads generated, the number of investment projects announced, and the estimated U.S. dollar value of sales confirmations. Enterprise Florida maintains that these reports should be part of its annual report (s. 288.906, F.S.) and, thus, should be submitted to OTTED by a date more consistent with that annual report.

Annual Incentives Report

Section 288.095(3)(c), F.S., requires OTTED to submit to the board of directors of Enterprise Florida, Inc., by September 30 of each year, a complete and detailed report all programs funded out of the Economic Development Incentives Account. Enterprise Florida, Inc., is required to review, comment, and submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, by December 1 of each year.

Tax Refund Programs

Qualified Defense Contractor Tax Refund Program (QDC Program): The QDC Program, s. 288.1045, F.S., is a tool to preserve and grow the state's high technology employment base in order to give the state a competitive edge as defense contractors consolidate defense contracts, acquire new contracts, or convert to commercial production.³ Pre-approved projects receive tax refunds of up to \$5,000 per job created or saved in Florida. Conversion of defense jobs to civilian production, acquisition of a new defense contract, and consolidation of a defense contract are considered eligible projects.

Qualified Target Industry Tax Refund Program (QTI Program): The QTI Program, s. 288.106, F.S., is another one of the state's economic development incentives. Under the program, eligible businesses may receive refunds of previously paid taxes, based upon the creation of jobs at a certain salary level.

As currently written, s. 288.106, F.S., creates a situation in which it is necessary to appropriate a larger amount for the QTI Program than will actually be paid to QTI Program businesses in a given year, with the majority of those payments being made from funds certified forward at the end of the fiscal year. Each August, when the Legislative Budget Request is prepared, OTTED requests sufficient appropriations to cover all tax refunds scheduled in active tax refund agreements and allows a small amount for new projects that may be approved and have tax refunds due in the following year. However, most of the funds will not actually be disbursed until after the end of the year for which the funds are budgeted – a potential spread of more than two years. When combined with the fact that the appropriations process begins nine months before the fiscal year begins and appropriation decisions are finalized in April of the previous

³ Information regarding the Qualified Defense Contractor Tax Refund Program is from Enterprise Florida, Inc., (December 2000).

fiscal year, the problems in estimating the required appropriation for the QTI Program are magnified. The following factors further complicate the appropriations process for the program:

- The QTI Program is an incentive program. Businesses must be approved before they have made a decision to expand or locate in Florida.
- There is a time lag between a QTI Program business’ decision to expand or locate in Florida and the creation of the jobs and payment of taxes.
- The QTI Program is performance-based, and, therefore, actual tax refund payments are not made until a QTI Program business has created the jobs and is paying the wages upon which the incentive approval was based.
- Not all of the businesses approved for the QTI Program fully achieve the agreed-upon job creation and wage level, but this is not known until a business has submitted its tax refund claim and the information has been verified.
- As allowed by statute, most QTI Program businesses wait until the end of the fiscal year to submit claims. Because the claims must be reviewed and verified before payment is made, refund payments are pushed past the end of the fiscal year.

Knowing that not all the funds appropriated will actually be paid out in refunds (since some businesses will drop out of the QTI Program during that two-year window and some claims will be disapproved), it might appear reasonable to appropriate a smaller amount based on an estimate of actual payments. However, current law requires that, if the Legislature does not appropriate an amount sufficient to pay all of the refunds scheduled in active agreements, OTTED must calculate what portion of each business’ refund could be paid from the appropriation, and the businesses must be informed of the situation and told that they may only receive a pro rata share of the tax refund the state has agreed to pay if they meet the performance requirements. [s. 288.095(3)(b), F.S.] Having to inform businesses that the state may not meet its QTI Program obligations would have negative consequences for the state’s reputation in the national and international business community. A more detrimental situation could occur if the estimate of actual payments to be made under this scenario was not accurate and eligible businesses did not receive the contracted amount of tax refunds.

Section 288.095, F.S., imposes a cap on the total state share of QDC and QTI tax refund payments scheduled in all active certifications for a fiscal year. For FY 2000-2001, the cap is \$24 million; for subsequent fiscal years, the cap is \$30 million. Based on the total financial obligations for projects already approved and under contract and projects that OTTED believes will be approved in the future, OTTED estimates the following project commitment levels:⁴

Fiscal Year	Estimated Project Commitment Level
2001-02	\$ 25,000,000
2002-03	\$ 30,927,600
2003-04	\$ 32,527,600

⁴ Source: Enterprise Florida, Inc.

The statute requires that compliance with the terms and conditions of the tax refund agreement is a condition precedent for the receipt of a tax refund each year. The failure to comply with the terms and conditions of the tax refund agreement results in the loss of eligibility for receipt of all tax refunds previously authorized and the revocation by the director of OTTED of the certification of the business entity as a qualified target industry business.

Section 288.106(5)(d), F.S., provides for a prorated tax refund, less a 5-percent penalty, for a qualified target industry business that proves it has achieved at least 80 percent of its job creation goal.

High-Impact Business Performance Incentive Grants (HIPI)

The HIPI Program, s. 288.108, F.S., is another one of the state's economic development incentives used to attract and grow major high impact facilities in Florida. Under the program, eligible businesses in designated high-impact sectors, e.g., silicon technology, may receive a business performance grant based on investment and employment goals. Section 288.108(3)(c) and (d), F.S., provide that a qualified high-impact business receives two payments; fifty percent based upon certification that operations have commenced and fifty percent based upon certification that the business is operating at full capacity.

Military Base Retention Grants

Section 288.980(2)(a), F.S., provides that OTTED is authorized to award grants from any funds available to it to support activities related to the retention of military installations potentially affected by federal base closure or realignment. In recent fiscal years, OTTED has referenced this section when utilizing excess QTI Program appropriations for military base retention activities via interim budget changes.

Reporting Requirements of Enterprise Florida

Enterprise Florida is required, under the provisions of s. 288.90151(8), F.S., to contract with a "private accounting firm" to conduct annual return-on-investment and customer-satisfaction reports. According to Enterprise Florida, the requirement to hire a "private accounting firm," rather than an economic analysis or survey firm, unnecessarily elevates the cost of the reports.

Section 288.905, F.S., requires Enterprise Florida to develop a statewide strategic plan for economic development and provide annual updates of the statewide strategic plan to the Governor and the Legislature by January 1 of each year. However, the Enterprise Florida board of directors typically meets soon after this deadline, thus forcing the board to approve changes to the strategic plan approximately three months prior to its submission to the Governor and the Legislature.

III. Effect of Proposed Changes:

This committee substitute makes several changes to provisions relating to state foreign office and Enterprise Florida, Inc., reporting requirements. This committee substitute also increases the

total annual tax refund payment cap for the Qualified Defense Contractor and Qualified Target Industry tax refund programs, alters the timeline for approval of Qualified Targeted Industries Tax Refund Program refunds by the Office of Tourism, Trade, and Economic Development (OTTED), and clarifies that OTTED may only utilize funds specifically appropriated for military base retention activities for such programs. The following is a section-by-section analysis of this committee substitute.

Section 1. This section amends s. 288.012, F.S., to revise the reporting date for Florida foreign offices under contract with Enterprise Florida, Inc., (Enterprise Florida). Information from the foreign offices is due to OTTED by December 1, rather than October 1, of each year. The reports must be compiled and submitted to OTTED by Enterprise Florida as part of Enterprise Florida's annual report (s. 288.906, F.S.).

Section 2. This section amends s. 288.095, F.S., to increase the cap – to \$35 million from the current level of \$30 million – on the total state share of tax refunds that may be scheduled for payment in future fiscal years under the Qualified Defense Contractor and Qualified Target Industry tax refund programs. Tax refund payments under these programs are paid out over a period of years. The cap on the amount of payments that can be scheduled in future years affects the ability to enroll new businesses in the program today because a new business cannot be enrolled if that would mean that the amount of payments scheduled in a future year exceeds the cap. By raising the cap on the amount of permissible future payments, this committee substitute has the effect of allowing program administrators to enroll additional businesses in the program, thereby increasing the likely total amount of refunds scheduled for payment in future years.

This section also amends s. 288.095, F.S., to revise the content and re-assign the responsibility from OTTED to Enterprise Florida, Inc., for completing and submitting the annual incentives report and changes the due date of the report from September 30 to December 1 of each year. Enterprise Florida, Inc., is required to include a separate analysis of the impact of tax refunds on rural communities, brownfield areas, and distressed urban communities. OTTED will assist Enterprise Florida, Inc., in the collection of data related to business performance and incentive payments.

Section 3. This section amends s. 288.106, F.S., by altering the timeline for approval of Qualified Target Industry Tax Refund Program (QTI Program) refunds in order to improve the budgetary process for this appropriation. For all new QTI Program projects, or existing projects that request any modification to their agreement, QTI Program tax refund claims will be due by January 31 of each fiscal year for the jobs created by December 31 of that same fiscal year. The refunds associated with those claims will be paid out of the appropriation for the following fiscal year.

Under the new timeline, OTTED will know which businesses have submitted claims by the time the legislative session begins. By the time the legislative budget is complete, some of the claims that had been scheduled for the coming fiscal year can be eliminated, thus reducing the amount of the appropriations request. OTTED will also have had an opportunity to evaluate the claims before the fiscal year has begun and, with the exception of possible appeals, will be able to pay claims at the beginning of the fiscal year rather than after the end of the year.

The full advantages of these changes will not be realized immediately because they can only be applied to new QTI Program agreements, or to amended agreements, because the time frames and prerogatives specified in existing agreements must be honored. However, over a period of several years, these changes will significantly reduce the amount of QTI Program funds appropriated over actual refund payments and eliminate the problem of excessive forward certification of QTI Program funds for payment after the end of the fiscal year.

This section also amends 288.106(4)(b) and (c), F.S., by authorizing OTTED to disapprove an annual tax refund claim without requiring that the entire tax refund agreement be canceled and authorizing OTTED to extend the time period the tax refund agreement must be signed based on a written request of the QTI business.

This section also amends 288.106(5)(d), F.S., to expand conditions for approving a prorated tax refund by allowing businesses to receive a prorated refund for achieving at least 90 percent of the average wage specified in the tax refund agreement and specifies a method for calculating the prorated refund.

Section 4. This section amends s. 288.108, F.S., to revise the conditions for making payments under the High-Impact Business Performance Incentive Grant program. OTTED is authorized to negotiate interim performance goals and payments commensurate with the progress the business makes toward operating at full capacity. This may expand the front end of the grant payments. However, OTTED is limited to awarding grants of no more than 70 percent prior to commencement of full operations.

Section 5. This section amends s. 288.90151, F.S., to allow Enterprise Florida to hire an economic analysis firm for its return-on-investment report and a survey firm for its customer-satisfaction survey as opposed to requiring the use of a “private accounting firm.” According to Enterprise Florida, this change does not preclude the use of an accounting firm but allows Enterprise Florida the option of reducing costs through the use of “equally competent alternative resources.”

Section 6. This section amends s. 288.905, F.S., to revise the due date of annual modifications to Enterprise Florida’s statewide strategic plan to January 31 (from January 1). The new due date will allow the Enterprise Florida board to review and approve the strategic plan updates at its annual January board meeting prior to submission of the changes to the Governor and the Legislature.

Section 7. This section amends s. 288.980, F.S., to clarify that OTTED may only utilize funds specifically appropriated for military base retention activities for such programs.

Section 8. This section provides that this act shall take effect on July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

This committee substitute amends s. 288.095, F.S., to increase the cap – to \$35 million from the current level of \$30 million – on the total state share of tax refunds that may be scheduled for payment in future fiscal years under the Qualified Defense Contractor and Qualified Target Industry tax refund programs. Regardless of the cap amount set in law, the total amount of tax refund claims approved for payment by the Office of Tourism, Trade, and Economic Development (OTTED) may not exceed the amount appropriated to the Economic Development Incentives Account for such purposes for the fiscal year.
[s. 288.095(3)(b), F.S.]

The committee substitute changes current law so as to make discretionary, rather than mandatory, the loss of eligibility in the program for a business entity that fails to comply with the tax refund agreement. It also expands the conditions under which a prorated tax refund shall be approved. These changes may have a negative fiscal impact as a result of keeping more businesses in the program that would ordinarily drop out because they do not meet performance goals. For future fiscal years, more businesses in the program may increase the amount of tax refund claims pledged through the agreements between OTTED and the qualified target industry businesses. Although the tax refunds are subject to legislative appropriation, if the total amount of tax refund claims exceeds the amount appropriated, OTTED must determine the proportion of each refund claim to be paid. As a result, not appropriating the total amount pledged could have negative ramifications on Florida's economic development image in the business community.

For FY 2001-02, Senate Bill 2000, provides \$24,700,000 General Revenue Funds for the Qualified Target Industry and \$300,000 General Revenue Funds for the Qualified Defense Contract tax refunds. The committee substitute will not impact the FY 2001-02 proposed appropriation.

Furthermore, as a result of the amended Qualified Target Industry Tax Refund Program (QTI Program) timeline under s. 288.106, F.S., OTTED will know which businesses have submitted claims by the time the legislative session begins. Over a period of several years, this change will significantly reduce the amount of QTI Program funds appropriated over actual refund payments and eliminate the problem of excessive forward certification of QTI Program funds for payment after the end of the fiscal year.

This committee substitute also amends s. 288.980, F.S., to clarify that OTTED may only utilize funds specifically appropriated for military base retention activities for such programs.

B. Private Sector Impact:

Additional businesses may be able to take advantage of the Qualified Defense Contractor and Qualified Target Industry tax refund programs. Expanding the conditions for approving prorated tax refunds will allow more businesses to be eligible to receive a tax refund. This committee substitute also amends s. 288.106, F.S., to alter the timeline for approval of QTI Program refunds in order to improve the budgetary process for this appropriation. For all new QTI Program projects, or existing projects that request any modification to their agreement, QTI Program tax refund claims will be due by January 31 of each fiscal year for the jobs created by December 31 of that same fiscal year. The refunds associated with those claims will be paid out of the appropriation for the following fiscal year. According to OTTED, this timeline change will not significantly affect the QTI Program projects to which it will be applied (*i.e.*, new projects and existing projects that request any modification to their agreements).

C. Government Sector Impact:

Various reporting requirements will change for Enterprise Florida, Inc., and state foreign offices. This committee substitute also amends s. 288.106, F.S., to alter the timeline for approval of QTI Program refunds in order to improve the budgetary process for this appropriation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.