

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** H0003E (PCB COM 03E-02) Economic Investment Mega Fund Incentive  
**SPONSOR(S):** Commerce  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Commerce	14 Y, 0 N	McDonald	Billmeier
2)			
3)			
4)			
5)			

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### SUMMARY ANALYSIS

The bill creates the Economic Investment Mega Fund Incentive (Mega Fund) within the Office of Tourism, Trade, and Economic Development (OTTED) in the Office of the Governor to assist in bringing high-impact business projects to the state or expanding such projects in the state.

The bill requires that a business submit a written application to Enterprise Florida, Inc., (EFI) asking to be considered for the Mega Fund. The application must be submitted before the business decision is made to locate in or expand the business in the state. In order to be reviewed by OTTED for a Mega Fund award, the business must: 1) operate in a designated target industry business or a designated high impact sector; 2) pay an annual average wage equaling at least 125% of the average private sector statewide wage or wage in the area where it is to be located, unless located in a Brownfield area, rural city or county, or enterprise zone in which case a waiver can be obtained if recommended by EFI and approved by OTTED; 3) create 200 jobs or 100 jobs for certain businesses or business locations; 4) increase jobs by a net of 10% for expansions with certain exceptions; 5) and have a cumulative investment of at least \$25 million within a 3-year period or, if a project is a research and development facility, a national or international headquarters, or located in a Brownfield area, enterprise zone, or rural city or county, have a cumulative investment of at least \$10 million within a 3-year period. EFI makes recommendations to OTTED which makes recommendations to the Governor for project approval or disapproval.

The bill requires the Governor to receive written approval from the President of the Senate and Speaker of the House of Representatives prior to giving approval. The bill requires the Executive Office of the Governor to recommend final approval of a project and release funds upon approval of a budget amendment by the Legislative Budget Commission. A performance based agreement is then entered into with the business.

EFI assists OTTED in validating the performance of a qualified business at the end of the agreement or when it is terminated. EFI is required to report the impact of the incentive award to the Governor and the Legislature.

The bill provides that any money appropriated for the Mega Fund Incentive may be used for funding of certain rural, military base, and entertainment industry statutorily created initiatives as well as the Quick Action Closing Fund. Approval for the use of money must be handled in the same manner as that for Mega Fund projects.

Section 2 of the bill amends the Quick Action Closing Fund to require review under s. 216.177, F.S.

No funding is provided in the bill. See Fiscal Comments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0003e.com.doc  
**DATE:** October 21, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill creates additional responsibilities for the Office of Tourism, Trade and Economic Development in the selection process and oversight of all awards made under the economic investment mega fund incentive.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background:**

##### ***Entities Primarily Responsible for Economic Development Incentives and Assistance***

##### ***Office of Tourism, Trade, and Economic Development***

The Office of Tourism, Trade, and Economic Development (OTTED) in the Executive Office of the Governor is responsible for promoting economic development, tourism, and international trade and is also responsible for assisting the Governor in formulating policies and strategies designed to provide economic opportunities for the state.

OTTED oversees the activities of five public-private partnerships intended to increase trade, job creation and retention, and "critical industry" development. These partnerships are Enterprise Florida, Inc., the Black Business Investment Board, the Florida Commission on Tourism (and its direct support organization, VISIT FLORIDA, Inc.), the Florida Sports Foundation, Inc., and the Florida Space Authority.

OTTED provides administrative oversight of the Office of Film and Entertainment and the Office of Urban Opportunity (Front Porch). OTTED administers several economic development programs and advocacy programs related to industry sector such as rural, defense, space, and transportation. OTTED approves and certifies business expansion and retention incentive programs, e.g., qualified target industry tax refund (QTI), the qualified defense tax refund, high impact industry grants, bond financing programs, and defense grant programs. OTTED also manages community development programs, such as enterprise zones, community contribution tax credits, urban and rural tax credit programs, and defense grant programs. OTTED serves as the lead agency for expediting permitting processes on economic development projects. Finally, OTTED is responsible for maintaining relationships and interaction with business, economic development, and community organizations and leaders to advocate on their behalf on issues before the Governor and the Legislature.

##### ***Enterprise Florida, Inc.***

Enterprise Florida, Inc. (EFI), created in s. 288.901, F.S., is not a state agency but is one of several public-private partnerships that reports to OTTED and receives funds from the Legislature.

EFI is the principal economic development organization for the state. As such, it is the responsibility of EFI to provide leadership for business development in Florida by aggressively establishing a unified approach to the state's efforts of international trade and reverse investment; by aggressively marketing

the state as a pro-business location for potential new investment; by aggressively assisting in the retention and expansion of existing businesses and the creation of new businesses. Section 288.9015, F.S., directs EFI to develop and implement specific programs or strategies that address the creation, expansion, and retention of Florida business and the recruitment of world-wide business.

EFI assists businesses considering locating or expanding in Florida by providing information on potential sites, assisting businesses in applying for state financial incentives, and assisting businesses with regulatory and permitting issues.

EFI promotes and conducts activities intended to help recruit businesses to distressed rural and urban areas by helping local economic development organizations with marketing efforts and generating leads.

### ***Statutory Economic Development Incentives and Assistance***

There are several economic development incentives and assistance programs in statute, including, but not limited to, High Impact Business Performance Incentive Grant, Quick Action Closing Fund, Qualified Target Industry Tax Refund, Qualified Defense Contractor Tax Refund, and Capital Investment Tax Credit, and special incentives and assistance for business in their location in certain areas, such as rural, enterprise zones, and Brownfield areas.

***High Impact Business Performance Incentive Grant (HIPI)***, created in s. 288.108, F.S., is a negotiated incentive used to attract and grow major high impact facilities in Florida. Grants are provided to pre-approved applicants in certain high-impact sectors as designated by the Governor's Office of Tourism, Trade, and Economic Development (OTTED). Currently these sectors are silicon technology, transportation equipment manufacturing, and biomedical technology. After being recommended by Enterprise Florida, Inc. (EFI) and approved by OTTED, the high impact business is awarded 50% of the eligible grant upon commencement or operations and the balance once full employment and capital investment goals are met. In order to be eligible to participate, a company must apply to EFI prior to making a decision to locate or expand in the state. In order to be considered, the applicant company must:

1. Be in a high impact sector.
2. Create at least 100 new FTE jobs in Florida in a designated high-impact sector within a 3-year period; or, if a research and development facility, create at least 75 new FTE within a 3-year period.
3. Make a cumulative investment in Florida of at least \$100 million within a 3-year period, or if a research and development facility, make a cumulative investment of at least \$75 million within a 3-year period.

***Quick Action Closing Fund (QACF)***, s. 288.1088, F.S., was created in 1999 within OTTED for the purpose of helping Florida to compete for high-impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities. Enterprise Florida, Inc., evaluates proposals for the use of QACF, makes recommendations to OTTED, and describes the nature of the business and its products or services, the number of jobs created and the annual average wages of the jobs, the cumulative amount of investment, the impacts of the business at the regional or state level or upon the state's universities and community colleges, and what role the incentive is expected to play in the businesses' decision to locate or expand in the state or for a private investor to provide critical rural infrastructure.

Once EFI makes its evaluation and recommendation to OTTED, the director of OTTED must make a recommendation of approval or disapproval to the Governor. OTTED must also provide the Governor with proposed performance conditions the project must meet to obtain the incentive funds.

Once approved by the Governor, OTTED enters into a contract with the business and establishes the conditions and the payment of moneys from the QACF. Conditions in the contract include those factors

identified by EFI in its request to OTTED and also include sanctions for not meeting performance conditions. EFI is responsible for validating the performance of the contract and reporting to the Governor and the Legislature within 6 months after the contract expires.

Until June 26, 2003, and the enactment of Chapter 2003-270, Laws of Florida, the Governor was required to consult with the Legislature before giving final approval for using the QACF for the project and had to recommend approval of the project and release of moneys from the QACF pursuant to legislative consultation and review requirements of s. 216.177, F.S. The review requirement in s. 216.177, F.S., requires notice to the Legislative Budget Commission which must meet and approve any funding request. This process takes between 3-14 days. Currently, final approval and release of moneys are not required to be reviewed by the Legislative Budget Commission and undergo the consultation process required before.

**Qualified Target Industry Tax Refund (QTI)**, created under s. 288.106, F.S., is available to Florida communities to encourage quality job growth in targeted high value-added businesses. A target industry is manufacturing facilities, finance and insurance services, wholesale trade (business to business electronic marketing), information industries, professional, scientific and technical services, management services, and administrative and support services. Targeted businesses must serve multi-state and/or international markets and must be able to locate in other states. Retail activities, utilities, mining and other extraction or processing businesses, and activities regulated by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation are statutorily excluded from consideration.

In order to participate in QTI, the applicant must indicate among other things that it will create a net of at least 10 new Florida jobs and pay an average annual wage of at least 115% of state, metropolitan statistical area, or local average wages. For a project located in a rural community or an enterprise zone, the net increase for employment may be waived and the wage requirement can also be waived in those areas as well as a designated Brownfield area.

Pre-approved applicants who create jobs in Florida receive tax refunds of \$3,000 per net new full-time equivalent Florida job created and \$6,000 in an enterprise zone or rural county. Additional refunds are available for wages above a certain level. An approved applicant can receive tax refunds on corporate income, sales, ad valorem, intangible personal property, insurance premium, and certain other taxes up to a maximum of \$5 million per single qualified applicant in all years, and no more than 25% of the total refund approved may be taken in any single fiscal year.

**Qualified Defense Contractor Tax Refund Program (QDC)**, created in s. 288.1045, F.S., is a tool to preserve and grow Florida's high technology employment base which helps the state in its competition as defense or homeland security contractors acquire new contracts or subcontracts, consolidate contracts or subcontracts or convert contracts to commercial production. 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, the acquisition of a new defense contract, or the consolidation of a defense contract are eligible projects.

An approved applicant may receive refunds on taxes it pays related to the project. This includes corporate income, sales, ad valorem, intangible personal property, and certain other taxes. Up to 25% of the total refund may be taken per year as long as the business is maintaining employment and wage levels at the agreed upon level or higher.

In order to participate in the program and be eligible to receive tax refunds, a business must apply to the Office of Tourism, Trade, and Economic Development for certification. The statute prescribes information that must be submitted by a defense contractor in order to be certified. The QDC Program features a local financial support component, under which an eligible business must secure a resolution adopted by county government which recommends the project and which indicates that the necessary commitments of local financial support for the business exist. Local financial support means funding

from local sources, public or private, which is equal to 20 percent of the annual tax refund for a qualified business.

***Military Base Retention Grants Program***, created in s. 288.980, F.S., includes the:

- Florida Defense Planning Grant Program, through which funds must be used to analyze the extent to which the state is dependent on defense dollars and defense infrastructure and prepare alternative economic development strategies (\$250,000 maximum per grant);
- Florida Defense Implementation Grant Program, through which funds must be made available to defense-dependent communities to implement the diversification strategies (\$100,000 maximum per grant); and,
- Florida Military Installation Reuse Planning and Marketing Grant Program, through which funds must be used to help counties, cities, and local economic development councils develop and implement plans for the reuse of closed or realigned military installations, including any necessary infrastructure improvements needed to facilitate reuse and related marketing activities (no maximum amount provided for grant).

***Capital Investment Tax Credit***, created in s. 220.191, F.S., is an annual credit provided for up to 20 years against the 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, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations. To be eligible a company must be in a designated high impact sector, create at least 100 new jobs, and make a cumulative capital investment of at least \$25 million in connection with the project during the period from the beginning of construction to the commencement of operation.

***Economic Development Transportation Fund***, created in s. 288.063, F.S., is designed to alleviate transportation problems that adversely impact a specific company's location or expansion decision. The elimination of the problem is to serve as an inducement to locate, retain, or expand a project in Florida and create or retain job opportunities for Floridians. Eligible projects are those that facilitate economic development by eradicating location-specific transportation problems on behalf of an eligible company. Up to \$2 million may be provided to a local government to implement the improvements. The amount funded is based on the cost of the necessary improvements and is limited to \$5,000 per job created and/or retained. Certain waivers can be obtained for areas of severe economic distress.

***Rural Community Development Revolving Loan Program***, created in s. 288.065, F.S., is established in OTTED to facilitate the use of existing federal, state, and local financial resources by providing local government with financial assistance to further promote the economic viability of rural communities. Funds may be used for finance initiatives directed toward maintaining or developing the economic base of rural communities, especially initiatives addressing employment opportunities for residents of these communities. The program provides for long-term loans, loan guarantees, and loan loss reserves to units of local governments, or economic development organizations substantially underwritten by a unit of local government within an area of a specified population.

***Rural Infrastructure Fund***, created in s. 288.0655, F.S., is established in OTTED to facilitate the planning, preparing, and financing of infrastructure projects in rural communities which will encourage job creation, capital investment, and the strengthening and diversification of rural economies by promoting tourism, trade, and economic development. Grants may be awarded for up to 30% of the total infrastructure project cost. Eligible uses of funds and authorized infrastructure are delineated.

### ***Economic Investment Mega Fund Incentive Proposal***

According to fact sheets provided by Enterprise Florida, Inc., and information provided by OTTED, the Governor's proposal on the Economic Investment Mega Fund Incentive is designed to supplement Florida's economic toolkit in at least two ways:

- Provide \$190 million to target projects that would diversify Florida's economy by attracting high-impact facilities that would boost high-wage job creation, and
- Provide a way for Florida to have a quickly employed closing fund.

Additionally, EFI states that the new fund offers a different set of advantages from existing economic development incentives. According to EFI, it enables a wider array of Florida industries to compete for mega projects. The High Impact Performance Incentive (HIPI) and Capital Investment Tax Credit (CITC) are limited to projects in silicon technology, biomedical technology, transportation equipment manufacturing and some information technology activities.

EFI stated that if all 10 eligible projects they currently are pursuing were to come to fruition, the economic activity of these projects would create more than 10,000 direct jobs. The estimated cumulative economic impact of these projects would create 53,521 jobs, increase Florida payrolls by \$1.35 billion each year, increase the Gross State Product by \$4.1 billion, and add \$121.4 million annually to state and local government.

### **Effect of Proposed Changes**

The bill creates the Economic Investment Mega Fund Incentive (Mega Fund) within the Office of Tourism, Trade, and Economic Development (OTTED) in the Office of the Governor. The Mega Fund is to ensure that sufficient resources are available to respond to extraordinary economic opportunities and to compete effectively for high-impact business projects to locate in Florida or for such businesses in Florida to expand. The fund is to assist the state in being better able to close any competitive gap with other states or countries vying for the same projects. These projects are to bring economic benefits to Florida through the numbers of new jobs created, the level of average wages paid, stimulation of the state's universities and community colleges, and ability to enhance the business climate of an area to encourage further economic growth in that area.

The bill requires that a business submit a written application to Enterprise Florida, Inc., (EFI) asking to be considered for the Mega Fund Incentive. The application must be submitted before the business decision is made on locating in or expanding business in the state. Information required to be provided includes such items as: location of project, description of type of business activity, product, or research and development included in the project; business investment in the project; total investment in the project; number of new full time equivalent (FTE) Florida jobs to be created by the end of each year of the project and the average wage; number of FTE currently employed in the state; commencement date of the project; proportion of sales resulting from the project to be made outside of the state; and details on why the Mega Fund Incentive is needed to close the deal.

In order to be considered for review by OTTED and for an award under the Mega Fund Incentive, the business must:

- operate in a designated target industry business under s. 288.106, F.S., or a designated high impact sector under s. 288.108, F.S.;
- pay an annual average wage equaling at least 125% of the average private sector wage in the area where it is to be located or the average statewide average private sector wage, unless located in a Brownfield area, rural city or county, or enterprise zone in which case a waiver can be obtained if recommended by EFI and approved by OTTED;
- create 200 jobs or 100 jobs if a research and development facility, a national or international headquarters, or if located in a Brownfield area, rural city or county, or enterprise zone; increase jobs by a net of 10% for expansions with exceptions provided for expansions in a Brownfield area, rural city or county, or enterprise zone; and
- have a cumulative investment of at least \$25 million within a 3-year period or, if a project is a research and development facility, a national or international headquarters, or located in a Brownfield area, enterprise zone, or rural city or county, have a cumulative investment of at least \$10 million within a 3-year period.

EFI evaluates the proposals and makes recommendations to the director of OTTED including recommendations on any award amount, performance criteria to achieve payments under any award, and sanctions for failure to meet or maintain performance conditions. EFI and OTTED work together on negotiating an award amount. A maximum of \$150 million can be awarded to a qualified business. In order to receive an award over \$100 million, the qualified business must have indicated in the application that a minimum of 1000 jobs would be created and that there would be a minimum of a \$750 million cumulative investment within 3-years.

The director of OTTED recommends approval or disapproval of a project to the Governor. The bill requires the Governor to receive written approval from the President of the Senate and Speaker of the House of Representatives prior to giving approval. The Executive Office of the Governor recommends final approval of a project and releases the funds upon approval of a budget amendment by the Legislative Budget Commission. Upon approval, a performance based agreement is entered into with the business. Among other things included in the agreement is a schedule of payment and sanctions for failure to meet performance standards.

EFI assists OTTED in validating the performance of the qualified business at the conclusion of the agreement or when it is terminated. EFI is required to report the impact of the incentive award to the Governor and the Legislature.

The bill provides that any money appropriated for the Mega Fund Incentive may be used for funding of certain rural, military base, and entertainment industry statutorily created initiatives as well as the Quick Action Closing Fund. Approval for the use of money must be handled in the same manner as that for Mega Fund projects.

Section 2 of the bill amends the Quick Action Closing Fund to reinstate the requirement for review under s. 216.177, F.S.

#### C. SECTION DIRECTORY:

**Section 1.** Creates s. 288.1089, F.S., establishing the Economic Investment Mega Fund Incentive; providing findings and definitions; requiring a business to submit an application for consideration of eligibility for an incentive award; requiring the submission to Enterprise Florida, Inc.; specifying contents of application; providing minimum qualifications for a business to be reviewed by Enterprise Florida, Inc., and OTTED; requiring Enterprise Florida, Inc., to evaluate proposals and make recommendations to the director of OTTED; setting forth specific areas for evaluation and recommendation; providing award negotiation process for projects; establishing maximum incentive awards; providing process for final recommendation and approval of incentive awards; providing for award agreements and certain specifications for agreement content; requiring Enterprise Florida, Inc., to assist OTTED in validating performance of a qualified business at the conclusion of the incentive award agreement; requiring Enterprise Florida, Inc., to provide report to the Governor, President of Senate, and Speaker of the House of Representatives; allowing additional uses of appropriations for the Economic Investment Mega Fund Incentive and requiring approval by process.

**Section 2.** Amends s. 288.1088(3)(b), F.S., by adding the requirement that the Governor utilize the legislative consultation and review requirements set forth in s. 216.177, F.S., for seeking approval to use moneys from the Quick Action Closing Fund and by adding that recommendations for release of funds must include proposed performance conditions to be met by the project for receipt of funds.

**Section 3.** Provides an effective date of becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See Fiscal Comments.

#### 2. Expenditures:

Indeterminate. See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

Unable to determine. The bill provides a mechanism for local governments to gain revenue from qualified businesses locating in or expanding their businesses in an area. The size, location, or anticipated impact of such businesses on a local economy cannot be determined.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If funding is provided, there is a potential positive impact on industry sectors that are recruited to locate in Florida or to expand their businesses in Florida. This would also include a potential positive impact on rural economic development initiatives, on military base retention grants, and the entertainment industry that would be able to access such funds under certain review and approval requirements.

### D. FISCAL COMMENTS:

The bill provides no appropriation for the Economic Investment Mega Fund Incentive; therefore, there is no way to determine the revenues or expenditures for the proposal at this time. If funding is provided, not only will there be an impact on revenues but there will be some cost to OTTED for review of applications, evaluations and recommendations by Enterprise Florida, Inc., award negotiations, and award agreement development and monitoring. OTTED has not provided an indication of cost at this time.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds, does not reduce a county's authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

#### 2. Other:

On page 8, line 232, there is a question as to the constitutionality of legislative officers exercising the powers of what appears to be an executive act. The State Constitution provides that "no person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Art 2, Sec 3, Fla. Const.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**