

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1509 Economic Development
SPONSOR(S): Finance & Tax Council; Economic Development Policy Committee; Weatherford and others
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Economic Development Policy Committee, Finance & Tax Council, and empty rows.

SUMMARY ANALYSIS

This bill enhances various economic development incentives, tax credits, grants, and exemptions.

This bill amends s. 125.045 and s. 166.021, F.S., requiring counties and certain municipalities to provide an annual report regarding local economic development incentives to the Legislative Committee on Intergovernmental Relations.

The bill amends s. 196.1995, F.S, authorizing counties and municipalities to extend certain current economic development ad valorem tax exemptions by referendum.

The bill amends various provisions of ch. 288, F.S., by:

- Providing that Rural Regional Development Matching Grants can be used by economic development organizations for technical assistance to businesses in the rural counties and communities;
• Revising the Qualified Target Industry (QTI) Tax Refund Program allowing for additional credits for businesses in the High-Impact Business sectors, providing for greater oversight and evaluations, and extending the QTI program to June 30th, 2020;
• Revising the guidelines for High-Impact Sector Performance Grant award amounts;
• Providing a process for legislative consultation and review of Quick Action Closing (QAC) fund projects.

The bill also amends s. 290.00677, F.S., revising employee eligibility for rural enterprise zone job credits to include persons residing in a "rural community" rather than a rural county.

The bill revises s. 373.411, F.S., providing a process for local governments to appeal to the Governor and Cabinet a denial of a request to the Department of Environmental Protection for delegation of permitting authority.

The bill amends s. 403.061, F.S., directing the Department of Environmental Protection to expand the use of online self-certification for appropriate exemptions and general permits.

This bill provides permit extension and further clarification for the permit holders classification authorized by ch. 2009-96, L.O.F. This bill also creates a new initiative to catalogue state owned properties for the purpose of determining which may be declared surplus and sold. Furthermore, this bill extends the deadline for compliance with fuel tank upgrades described in Rule 62-761.510, F.A.C., for certain fuel service stations.

This bill provides, subject to legislative appropriation, a \$125,000 monthly distribution from General Revenue, for up to 240 months, to the National Swim Center at Cape Coral, beginning July 1, 2012 or upon the opening of the center to the public.

The 2010 Revenue Estimating Conference has estimated that the revision to employee eligibility for rural enterprise zone job credits will reduce General Revenue collections by \$0.1 million and will have an insignificant negative revenue impact on state trust funds and local government.

Except as otherwise provided in this act, this act will become effective upon becoming a law.

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

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Local Reporting Requirements; Counties

Present Situation

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

Some local governments have economic-development offices or bureaus staffed with their own employees, while others contract with either private or quasi-private entities to manage industry recruitment or retention. There does not appear to be standard reporting requirements for the outside entities, other than business audits, to indicate how the contracted funds were spent and whether the expenditures accomplished the local governments' economic development goals.

Currently, the state requires an annual report regarding its economic development incentives. Enterprise Florida, Inc. (EFI), the state's public-private business recruitment entity, publishes a report every December providing: the state's various incentives, the companies that utilized the incentives the previous year, and the average estimated return on investment (ROI).¹

Effect of Proposed Changes

This bill amends s. 125.045, F.S., requiring counties that contract with economic development agencies or entities to provide an annual report on how county economic development funds were spent and what outcomes were achieved. The counties will include this annual report as an addendum to their annual financial audit. Also, by January 15, 2010 each year, counties will provide an annual report to the Legislative Committee on Intergovernmental Relations on the economic development incentives provided to businesses during the previous fiscal year.

¹ S. 288.095(3)(c), F.S., provides for an economic development report by Enterprise Florida, Inc.

Section 2. Florida First Business Project

The bill amends 159.803, F.S., correcting a cross reference regarding the application and approval process for the certification of a qualified target industry business in s. 288.106(4)(b), F.S.

Section 3. Local Reporting Requirements; Municipalities

Present Situation

See Present Situation in section 1.

Effect of Proposed Changes

This bill amends s. 166.021, F.S., requiring municipalities that contract with economic development agencies or entities to provide an annual report on how municipal economic development funds were spent and what outcomes were achieved. The municipalities will include this annual report as an addendum to their annual financial audit. Also, by January 15, 2010 each year, any municipality having annual revenues or expenditures greater than \$250,000, will provide an annual report to the Legislative Committee on Intergovernmental Relations on the economic development incentives provided to businesses during the previous fiscal year.

Section 4. Economic Development Ad Valorem Tax Exemption

Present Situation

Section 3(c), Art. VII of the State Constitution authorizes any county or municipality, for the purpose of its respective tax levy and subject to the provisions of the subsection and general law, to grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipalities voting by referendum authorize the county or municipality to adopt such ordinances. An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

Section 196.1995, F.S., provides that such economic development ad valorem tax exemptions expire 10 years after the date such authority was approved in an election, but provides that such authority may be renewed for another 10-year period in a referendum. Some local governments have requested clarification of whether more than one 10-year renewal can be approved by referendum.

Effect of Proposed Changes

The bill revises s. 196.1995(7), F.S., clarifying that the authority to renew economic development ad valorem tax extensions may be renewed for subsequent 10-year periods provided that each ten year renewal is approved in a referendum.

Section 5: National Swimming Center

This bill amends 212.20, F.S., providing, subject to legislative appropriation, that beginning July 1, 2012 or upon the opening to public of the National Swimming Center at Cape Coral, \$125,000 will be distributed monthly, for up to 240 month, to the National Swimming Center at Cape Coral.

Section 6. Capital Investment Tax Credit

Present Situation

The Capital Investment Tax Credit is used to attract and grow capital-intensive industries in Florida. It is an annual credit, provided for up to twenty years, against corporate income or premium tax liabilities generated by or arising out of the qualifying project. Eligible projects are those in designated high-impact portions of the following sectors: clean energy, biomedical technology, financial services, information technology, silicon technology, transportation equipment manufacturing, or be a corporate headquarters facility. The sum of all tax credits provided may not exceed 100 percent of the eligible capital costs of the project. Projects must also create a minimum of 100 jobs and invest at least \$25 million in eligible capital costs. 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. The level of investment and the project's Florida corporate income tax liability for the 20 years following commencement of operations determines the amount of the annual credit.²

The annual tax credit may not exceed the following percentages of the annual corporate income tax liability or the premium tax liability generated by or arising out of a qualifying project:

- One hundred percent for a qualifying project which results in a cumulative capital investment of at least \$100 million.
- Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million.
- Fifty percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.

Effect of Proposed Changes

The bill amends s. 202.191, F.S., correcting cross references for the definition of "qualifying project" to s. 288.106, F.S., which provides the tax refund program for qualified target industry businesses.

Section 7. Regional Rural Development Grants

Present Situation

A "rural community" is a county with a population of 75,000 or less; a county with a population of 125,000 or less that is contiguous to a county with a population of 75,000 or less; a municipality within a county with a population of 75,000 or less, or a municipality within a county with a population of 125,000 or less that is contiguous to a county with a population of 75,000 or less; or a federal enterprise community or an incorporated rural city with a population of 25,000 or less and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified by statute and verified by the Office of Trade, Tourism, and Economic Development (OTTED).³

Based on the most recent population estimates, thirty-two Florida counties are presently categorized as "rural" pursuant to the statutory definition outlined above. Most of these rural counties have been categorized into one of three Rural Areas of Critical Economic Concern (North Central, Northwest, and

² Section 220.191, F.S. See also Enterprise Florida, Inc., <http://eflorida.com/ContentSubpage.aspx?id=472> (Last visited April 19, 2010)

³ s. 288.0656, F.S.

South Central). The Rural Areas of Critical Economic Concern (RACECs) are defined by OTTED based on measures of economic interdependence among the rural counties in each of the three geographic regions.

Section 288.018, F.S., established the Regional Rural Development Grants Program. OTTED must establish a matching grants program to provide funding to regionally based economic development organizations representing rural counties and communities for the purpose of building the professional capacity of their organizations. OTTED is authorized to approve, on an annual basis, grants to such regionally based economic development organizations. The maximum amount an organization may receive in any year is \$35,000, or \$100,000 in a rural area of critical economic concern recommended by the Rural Economic Development Initiative and designated by the Governor, and must be matched each year by an equivalent amount of nonstate resources.

In approving the participants, OTTED must consider the demonstrated need of the applicant for assistance and require the following:

- Documentation of official commitments of support from each of the units of local government represented by the regional organization.
- Demonstration that each unit of local government has made a financial or in-kind commitment to the regional organization.
- Demonstration that the private sector has made financial or in-kind commitments to the regional organization.
- Demonstration that the organization is in existence and actively involved in economic development activities serving the region.
- Demonstration of the manner in which the organization is or will coordinate its efforts with those of other local and state organizations.

Effect of Proposed Changes

The bill provides that Regional Rural Development Grants provided in s. 288.018, F.S., may also be used by economic development organizations to provide technical assistance to businesses within the rural counties and communities. This provision will provide additional options for rural communities to attract new business and expand current infrastructure.

Section 8. Qualified Defense Contractor and Space Flight Business Tax Refund Program

Present Situation

The State of Florida offers various aerospace-specific financial incentives, along with a number of general business incentives, of which aerospace companies can take advantage, depending on their location and investment.

The Legislature created the Qualified Defense Contractor Tax Refund⁴ program in 1993 in response to the state's concerns that reductions in federal defense spending could result in losses of high-wage, high-technology jobs in Florida. The program has been amended several times in the intervening years, most recently in 2008, when it was extended to eligible space flight businesses participating in aerospace activities. It is now called the Qualified Defense Contract and Spaceflight Business (QDSC) Refund Program. This program sunsets June 30, 2014.

Effect of Proposed Changes

This bill amends 288.1045, F.S., providing that the definition of "jobs" for the QDCS Refund Program includes positions obtained from a temporary employment agency, leasing company, or union agreement under a professional employer organization agreement that results from projects in Florida. This section conforms to the "jobs" definition and various references in s. 288.106, F.S.

⁴ Section 288.1045, F.S.

Section 9. Qualified Target Industry Tax Refund Program

Present Situation

The Qualified Target Industry Tax Refund Program (QTI) was created by the Florida Legislature in 1994 to attract businesses that offer high-wage jobs, particularly headquarters, to relocate in Florida. This incentive includes refunds on corporate income, sales, ad valorem, intangible personal property, insurance premium, and certain other taxes. Businesses that locate or expand in Florida are eligible for tax refunds of \$3,000 per new job created. The tax refund increases to \$6,000 per job for businesses that locate in an enterprise zone or rural county. In addition, a business is eligible for a \$1,000 per job bonus if it pays over 150 percent of the average wage in the area, and a \$2,000 per job bonus if it exceeds 200 percent of the average wage. To qualify, the business must secure the local government's support. A local government is required to provide at least 20 percent of the amount of the state's award.

During the 2009 Legislative Session, changes were made to the QTI program to streamline the application process and provide relief for businesses struggling in a difficult economic climate. Applications must now be reviewed and certified pursuant to the standard timeline outlined in s. 288.061, F.S. Wage requirements for QTI expansion projects are now based solely on new jobs being created, rather than an average of all jobs, current and new.

Key definitions

A "target industry business" is defined as either a corporate headquarters or any business that is engaged in one of the target industries identified by OTTED and EFI as meeting the statutory criteria in s. 288.106(1)(o), F.S. Those criteria are:

- Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data.
- The industry should have stability, not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather, and relatively resistant to recession, so that the demand for its products or services is not necessarily subject to decline during an economic downturn.
- The industry should pay relatively high wages compared to statewide or area salary averages.
- The industry should be both market and resource independent. In other words, the business should not be reliant on Florida consumers to purchase its products or services in order to be profitable, nor should it rely on Florida resources – which is undefined but presumably could mean natural resources such as water, solar energy, organic compounds, or ores.
- The industry should contribute toward diversifying, strengthening, or expanding the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis.
- The industry should have strong positive impacts on or benefits to the state and regional economies.

Within the definition of "target industry business," the statute provides that "special consideration should be given to Florida's growing access to international markets or to replacing imports," and to the "development of strong industrial clusters that include defense and homeland security businesses."

Specifically excluded as "target" industries are: any business engaged in retail activities; any electrical utility company; any phosphate or other solid-minerals severance, mining, or processing operation; any oil or gas exploration or production operation; or any business subject to regulation by the state Division of Hotels and Restaurants. Implicitly excluded is agriculture.

The “targeted industry list” actually is a list of seven industrial categories, with several business types listed under each. It is published in EFI’s annual Incentives Report and is attached to OTTED’s annual legislative budget request. Originally, the list of target industries was approved by the Legislature, but since 1996 the list has been developed by OTTED, in consultation with EFI.

The seven categories are manufacturing facilities; finance and insurance services; wholesale trade; information industries; professional, scientific, and technical services; management services; and administrative and support services. For 2009, there are 36 individual types of businesses under the umbrella of the seven industrial categories, ranging from pharmaceutical manufacturing, to film production, to customer support centers.

Another key definition is “average private sector wage in the area,” which can mean one of the following, the statewide average annual private-sector wage, the average annual private-sector wage in the county, or standard metropolitan area (MSA) where the business is locating or expanding. Part of the negotiation process between EFI and the applicant business will define which one of these three is used as the basis for computing an applicant business’ average annual wage requirement. Depending on the business’ prospective location, there could be a wide variance in the average private-sector salaries paid in these three geographic areas.

Other eligibility criteria:

- Meeting the definition of “targeted industry business” is just the first step for a business interested in applying for a QTI incentive. The business also must:
- Agree to create at least 10 new jobs or, if a Florida business planning to expand its operations, agree to create a net increase in employment of at least 10 percent. OTTED may grant a waiver to the minimum 10-percent increase in new jobs by an existing business within an enterprise zone or a rural county.
- Agree to pay each new employee an annual salary that is at least 115 percent of the average private sector wage in the area. OTTED may waive the wage requirement for businesses that locate in a rural county or city, in an enterprise zone, or in a brownfield area, if requested and justified in writing by the local governmental entity and EFI.
- Receive a commitment of a 20-percent match (cash or in-kind) from the local government where the business proposes to locate or expand. The form of the commitment must be a resolution passed by the county commission. The local match can include the amount of ad valorem tax abatement or the appraised market value of publicly owned land or structures deeded to or leased by the QTI business. If a local government provides less than its 20-percent match, OTTED reduces the state award by the same amount.

No business may receive more than \$1.5 million in QTI refunds in a single fiscal year, or more than \$5 million total over the term of its agreement with OTTED. The exception is for QTI businesses located in an enterprise zone, where the 1-year cap is \$2 million and the overall cap is \$7.5 million. Also, no business may receive more than 25 percent of the total award in a single fiscal year – consequently, QTI contracts between OTTED and a business typically are for a term of 4 years.

Taxes eligible for refund under the QTI program are:

- Corporate income taxes under ch. 220, F.S.;
- Insurance premium tax under s. 624.509, F.S.;
- Taxes on the sales, use, and other transactions under ch. 212, F.S.;
- Intangible personal property taxes under ch. 199, F.S.;
- Emergency excise taxes under ch. 221, F.S.;
- Excise taxes on documents under ch. 201, F.S.;
- Ad valorem taxes paid, as defined in s. 220.03(1), F.S.; and
- Certain state communications services taxes administered under ch. 202, F.S.

In s. 288.095(3) (a), F.S., the amount of annual state funding for the QTI and QDCS tax refunds is capped at \$35 million. Historically, the majority of the funds are paid out as QTI tax refunds because QTI is the more popular of the two incentive programs. In FY 2009-2010, the Legislature appropriated a

lump sum of \$21,637,000 collectively for the QTI, QDSC, and the High Impact Business Incentive Programs.

Effect of Proposed Changes

The QTI program's intent language is modified, in an effort to re-establish the program's primary policy goals of higher-wage job creation and the diversification and strengthening of the state's economy. This bill revises, clarifies, and deletes various definitions and content found in s. 288.106, F.S. These changes include:

- Revising the definition of "jobs" to include positions obtained from a temporary employment agency, leasing company, or union agreement under a professional employer organization agreement that results from projects in Florida.
- Providing a definition for "return on investment" (ROI) as the gain in state revenues as a percentage of the state's economic incentive investment, which includes state grants, tax refunds, tax exemptions, tax credits, and any other types of state incentives.
- Specifying that renewable energy projects are exempt from the target industry requirement that QTI businesses be independent from Florida markets and Florida-based resources.
- Providing that special consideration be given to the development of strong industrial clusters that include defense and homeland security businesses for QTI.
- Requiring Enterprise Florida, Inc., local governments, and various economic development organizations, entities, and professionals, to review and recommend a revised list for qualified target industries to the Governor, the President of the Senate, and the Speaker of the House of Representatives.
- Providing that the QTI program will allow businesses categorized as high-impact businesses to receive an additional bonus of \$2,000 multiplied by the number of jobs specified in the tax refund agreement with such businesses.
- Revising that "high-impact sector" include businesses that increase exports of its goods through a seaport or airport in the state by at least 10 percent in value or tonnage in each of the years that the business receives a tax refund.
- Allowing OTTED to waive QTI wage requirements for a manufacturing project located anywhere in the state so long as the jobs proposed pay an estimated annual average wage equaling at least 100 percent of the average private sector wage in the area where the business is to be located.
- Renaming the "economic stimulus exemption" as the more descriptive "economic recovery extension," and adding an additional 12 months to the time period for QTI businesses to apply. The new deadline is July 1, 2012.
- Allowing QTI businesses that pay, in any 1 year, taxes that are at least equal to their QTI incentive award to file their tax documentation once, not each year.
- Directing OTTED to begin conducting post-award reviews and site visits of QTI businesses, beginning with those businesses that signed agreements after Jan. 1, 2010. OTTED must begin these reviews within 12 months of a QTI business filing for its final refund. A report on the first set of reviews is due to the Governor, the Senate President, and the Speaker of the House of Representatives by December 1, 2011. The purpose of the post-award reviews is to evaluate whether QTI businesses are continuing to contribute to the state's economy, or to the regions in which they are located.
- Extending the QTI program to June 30, 2020, when it will be subject to another sunset review.

Section 10. Brownfield Redevelopment Bonus Refunds

Present Situation

In 1995, the U.S. Environmental Protection Agency (EPA) initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields. Florida followed suit in 1997 and enacted the Brownfield's Redevelopment Act to provide incentives for the private sector to redevelop abandoned or underused real property, the development of which was complicated by real or perceived environmental contamination.

The federal brownfields program was significantly expanded on January 11, 2002, when President Bush signed into law the Small Business Liability Relief and Brownfield's Revitalization Act, also known as the "Brownfield's Amendments." The main purpose of this new law was to create incentives for the redevelopment of brownfield properties and Superfund sites⁵ and provide grants to assess or cleanup a brownfields property.

The Florida Brownfield Redevelopment Act, consisting of ss. 376.77-376.85, F.S., provides legislative intent; a brownfield area designation process; environmental cleanup criteria; program eligibility and liability protections; and economic and financial incentives. Furthermore, s. 376.86, F.S., provides for a Brownfield Areas Loan Guarantee Program, and ss. 376.87 and 376.875, F.S., provides for brownfield property ownership clearance assistance and the creation of the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

As provided in s. 376.78, F.S., the Legislature declared that the reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment, and in addition there should be incentives to encourage voluntary cleanup.

Effect of Proposed Changes

This bill amends 288.107, F.S., revising the definition of "jobs" to include positions obtained from a temporary employment agency, leasing company, or union agreement under a professional employer organization agreement that results from projects in Florida. This section conforms to the "jobs" definition and various cross-references in s. 288.106, F.S.

Section 11. High Impact Business

Present Situation

The High Impact Performance Incentive (HIPI) was created in 1997 and is designed to attract "high impact" sectors of the economy to Florida such as life sciences, financial services, and manufacturing industries such as transportation equipment, aviation and aerospace, automotive, and semiconductors. Section 288.108, F.S., defines "Eligible high-impact business" to mean a business in one of the high-impact sectors identified by EFI, and certified by the OTTED, which is making a cumulative investment in the state of at least \$100 million and creating at least 100 new full-time equivalent jobs in the state or a research and development facility making a cumulative investment of at least \$75 million and creating at least 75 new full-time equivalent jobs. Such investment and employment must be achieved in a period not to exceed 3 years after the date the business is certified as a qualified high-impact business.

Effect of Proposed Changes

Additionally, the bill lowers the job creation and investment requirements for HIPI. The number of jobs required to be created is lowered from 100 new full-time equivalent jobs to 50, and the cumulative investment requirement is lowered from \$100 million to \$50 million. Further, for a research and development facility, the cumulative investment requirement is lowered from \$75 million to \$25 million.

Section 12. Quick Action Closing Fund

Present Situation

Section 288.1088, F.S., provides the requirements that OTTED and EFI must follow in order to approve a Quick Action Closing Fund project for funding:

⁵ More information about the federal Superfund cleanup program, including a list of sites in each state, is available at <http://www.epa.gov/superfund/>.

- The company must be in an industry eligible for the Qualified Target Industry Tax Rebate program as referenced in s. 288.106, F.S. By law, the list of eligible industries is established by OTTED and EFI, and is updated annually.
- The project must have a positive payback ratio of at least 5 to 1. The project's economic impact must be at least 5 times that of the cost of the incentive. EFI uses an economic model that in effect calculates this number based on location, jobs, capital investment, etc. There is no minimum capital investment or minimum number of jobs, but these amounts would affect this ratio.
- The incentive must be deemed an inducement to the company's decision to locate, retain jobs, or expand in the state.
- The project must pay an average annual wage of at least 125 percent of the area-wide or statewide private sector average wage. This is the average wage of all jobs being incentivized or guaranteed to be added to or kept in the state by the company.
- The project must be supported by the local community in which the project is to be located. This is usually demonstrated through a resolution of either the county or city commission which may include local financial or in-kind support.

There are no restrictions as to what, if any, other incentive programs can be combined with the Quick Action Closing fund.

EFI reviews applications pursuant to s. 288.061, F.S., and determined eligibility of each project. Upon receipt of an application, EFI evaluates individual proposals for high-impact business facilities and forwards its recommendation regarding the use of moneys in the fund for such facilities to the director of OTTED. Within 22 calendar days after receiving the evaluation and recommendation from EFI, the director must recommend to the Governor approval or disapproval of a project for receipt of funds from the Quick Action Closing Fund. In recommending a project, the director must include proposed performance conditions that the project must meet to obtain incentive funds. The Governor must provide the evaluation of projects recommended for approval to the President of the Senate and the Speaker of the House of Representatives and consult with the President of the Senate and the Speaker of the House of Representatives before giving final approval for a project. The Executive Office of the Governor must recommend approval of a project and the release of funds pursuant to the legislative consultation and review requirements set forth in s. 216.177, F.S. The recommendation must include proposed performance conditions that the project must meet in order to obtain funds. Unused funds at the end of a fiscal year revert back to General Revenue.

After the 2004 and 2005 hurricane seasons, the Florida Legislature approved an Economic-Stimulus Exemption for QTI that allowed for projects contracted for awards the ability to be forgiven for one year if the business was unable to meet the performance requirements in the contract. This was necessary to ensure businesses were not penalized for the impacts of wide spread economic conditions beyond their control, and ensure that the business had an incentive to continue to grow in Florida after the downturn had passed.

OTTED has the ability to approve applications for an Economic Stimulus Exemption for tax refund claims submitted after January 1, 2009, but before July 1, 2011 to ensure that businesses are not penalized for the impacts of wide spread economic conditions beyond their control, and ensure that they have an incentive to continue to grow in Florida after the downturn has passed. A business must still meet job creation requirements in the future before receiving tax refunds. Under current law, OTTED may provide an economic development exemption for participants in the qualified target industry refund program, but only for that program and only through the time allowed in law.

Effect of Proposed Changes

The bill revises the process for approval of Quick Action Closing Fund (QAC) projects by providing a procedure for the President of the Senate and the Speaker of the House of Representatives to notify the Governor that an action or proposed action exceeds delegated authority. Upon notification, the Governor must void the release of funds and to instruct OTTED to seek Legislative Budget Commission (LBC) approval. The bill also removes the requirement that the LBC release funds under certain circumstances. The bill also provides that QAC funds will be placed in reserve and carried over into the

next fiscal year instead of reverting back to General Revenue at the end of fiscal year for which it was appropriated.

Section 13. Innovation Incentive Program

Present Situation

In 2006, the Legislature created the Innovation Incentive Program to help ensure the availability of sufficient resources in order to compete effectively for extraordinary economic opportunities in high value research and development for business innovation projects. This program helps to draw innovative businesses to Florida and foster growth opportunities for the expansion of these businesses throughout the state. The innovation incentive program is administered by EFI, who further recommends and provides guidance to OTTED in the funding of the various incentive rewards.

Effect of Proposed Changes

This bill amends s. 288.1089, F.S., revising the definition of “jobs” to include positions obtained from a temporary employment agency, leasing company, or union agreement under a professional employer organization agreement that results from projects in Florida. This section conforms to the “jobs” definition and various cross-references in s. 288.106, F.S.

Section 14. Rural Enterprise Zones; Special Qualifications

Present Situation

The Legislature created the Enterprise Zone Program in 1982 to encourage economic development in economically distressed areas of the state by providing tax incentives designed to induce private investment that creates jobs and increases property values. There currently are 57 enterprise zones, all of which were either created or reauthorized by the Legislature.

Florida’s enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities, such as:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone
- Business Equipment Used in Enterprise Zones
- Rural Enterprise Zone Jobs Credit against Sales Tax
- Urban Enterprise Zone Jobs Credit against Sales Tax
- Business Property Used in an Enterprise Zone Community Contribution Tax Credit
- Electrical Energy Used in an Enterprise Zone
- Rural Enterprise Zone Jobs Credit against Corporate Income Tax
- Urban Enterprise Zone Jobs Credit against Corporate Income Tax
- Enterprise Zone Property Tax Credit
- Community Contribution Tax Credit

Currently, for the purposes of defining a “new employee” within the rural enterprise zone job credits incentives, the workers are required to live in the county where the enterprise zone is located for the employing business to receive the jobs tax credits, pursuant to s. 290.00677, F.S.

Effect of Proposed Changes

This bill amends s. 290.00677, F.S., correcting cross-references in order to expand the employee eligibility for the enterprise zone jobs credit to include persons residing in a “rural community” rather than a rural county. This modification allows a business residing in a rural enterprise zone to be eligible for the jobs credits if the business hires a resident of a rural community.

Section 15. Local Government Delegation

Present Situation

The Department of Environmental Protection (DEP) is the state's lead environmental permitting agency, issuing permits for activities impacting air, water, wetlands, and natural habitats. It has entered into operating agreements with the five water management districts, 11 county or city governments, and with the Reedy Creek Improvement District (Disney) to delegate specific permitting activities.⁶ Section 373.441, F.S., provides the process and requirements for delegation of state permitting responsibilities to local governments.

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

Effect of Proposed Changes

This bill amends s. 373.441, F.S., creating a permit-delegation appeals process before the Governor and Cabinet. Specifically, the bill:

- Provides for a local government to petition the Governor and Cabinet for the review of a request for a delegation of authority which DEP has not acted on within 1 year of the local government's submission, or which DEP has denied.
- Requires DEP to provide specific detail of why it denied a local government's request for a delegation of authority, including the statutory or rule provisions that the local government's submission did not satisfy.
- Specifies that the Governor and Cabinet may reverse DEP's decision. Provides that a county having a population of more than 75,000 or a municipality serving populations of more than 50,000 must apply for delegation of authority on or before June 1, 2011. A county, municipality, or local pollution control program that fails to apply for delegation of authority may not require permits that in part or in full are substantially similar to the requirements needed to obtain an environmental resource permit.
- This section is effective July 1, 2010.

Section 16. Online Self Certification

Present Situation

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

The portal is designed to direct the user to the appropriate district website for information on district permitting activities. With respect to self-certification, a recent report by the Legislative Committee on Intergovernmental Relations⁷ indicated that some local governments do not accept self-certification for permit-exempt projects identified in statute, rule, or listed under DEP's self-certification process for single-family docks. Some local governments require a signoff from DEP permit-review staff to verify the exempt status of the project submitted under self-certification.

Effect of Proposed Changes

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

⁶ A complete list of the delegated entities and the operating agreements are available at: http://www.dep.state.fl.us/legal/Operating_Agreement/operating_agreements.htm.

⁷ Available at <http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf> (Last visited April 19, 2010)

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

Section 17. Permit Extensions.

Present Situation

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

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

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

Effect of Proposed Changes

The bill provides that permit extensions authorized in ch. 2009-96, L.O.F., are extended for a period of 2 years, as long as the affected permit holders comply with the specified requirements. The permit holders must notify the local government by December 31, 2010, that the extension is being sought. This bill also provides latitude for local governments to adjust permit extensions if the extension will result in unsafe or unsanitary conditions.

Section 18. State Properties for Surplus

Present Situation

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

Regarding the surplus of state-owned lands, the board must first determine if the lands are conservation or non-conservation lands. Most properties managed by DEP, the Division of Forestry, and the Fish and Wildlife Commission are conservation lands.⁸ The trustees hold title to about 3.2 million acres of conservation lands.⁹ Properties managed by the Department of Management Services (DMS) for use as state offices are designated as non-conservation lands.

Section 253.034, F.S., also includes provisions concerning authority for the determination of the value and sale price of surplus lands and concerning the methods to be used for such determination. For

⁸ In part, conservation lands mean lands that are currently managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation, except those lands that were acquired solely to facilitate the acquisition of other conservation lands. (For complete definition see s. 253.034(2)(c), F.S.)

⁹ "State Lands Acquisition and Management," 2008 report published by the House of Representatives Committee on Conservation & State Lands. Page 30, Table 3. Report available at: <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&Committeed=2340&Session=2008&DocumentType=Reports&FileName=State%20Lands%20Acquisition%20and%20Management.pdf>. (Last visited April 19, 2010.)

conservation lands, the trustees must determine that lands are no longer needed for conservation purposes and can dispose of them with an affirmative vote of three of the four trustees. For all other lands, the trustees can determine that they are no longer needed by the state and can dispose of them with an affirmative vote of three of four trustees.

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

Chapter 2009-15, L.O.F., directed DMS to compile a list of all state-owned surplus real property valued at greater than \$1,000 in order to determine potential cost savings and revenue opportunities from the sale or lease of assets, and identify current contracts for leased office space in which the leased space is not fully used or occupied and include a plan for contract renegotiation or subletting unoccupied space.

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

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

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

Effect of Proposed Changes

This bill creates a new initiative to catalogue state-owned properties and structures, for the purpose of determining which may be declared surplus and sold. State agencies are required to submit inventory data to DEP by July 1, 2010, and annually thereafter. The bill further directs DEP to submit to the Governor, the President of the Senate, and the Speaker of the House, a report recommending property for disposition by October 1, 2010 and annually thereafter.

Section 19. Fuel Tank Upgrades

Present Situation

In 1983, Florida was one of the first states in the union to pass legislation and adopt rules for underground and aboveground storage tank systems. All new and replacement underground storage tank systems must have secondary containment, and all remaining single-wall systems must replace their systems with secondary containment by 2010.¹⁰

Effect of Proposed Changes

The bill extends to June 1, 2013, the deadline for compliance with fuel tank upgrades described in Rule 62-761.510, F.A.C., for any fuel service station that changed ownership interest through a bona fide sale between January 1, 2008 and June 1, 2010.

Section 20. Effective Date

Except as otherwise provided in this act, this act shall take effect upon becoming a law.

¹⁰ Florida Department of Environmental Protection Website, <http://www.dep.state.fl.us/waste/categories/pss/default.htm>, last visited 4/19/2010. See also Chapter 376, F.S., and Rule Chapter 62-761, F.A.C. (Last visited April 19, 2010)

B. SECTION DIRECTORY:

- Section 1:** Amends s. 125.045, F.S., requiring counties to provide to the Legislative Committee on Intergovernmental Relations an annual report regarding economic development incentives.
- Section 2:** Amends s. 159.803(11), correcting a cross-reference for the Florida First Business Project.
- Section 3:** Amends s. 166.021, F.S., requiring certain municipalities to provide to the Legislative Committee on Intergovernmental Relations an annual report regarding economic development incentives.
- Section 4:** Amends s. 196.1995, F.S., clarifying the requirements for extending economic development ad valorem tax exemptions.
- Section 5:** Amends s. 212.20, F.S., providing an appropriation to the National Swim Center at Cape Coral.
- Section 6:** Amends s. 220.191, F.S., correcting cross-references for the Capital Investment Tax Credit.
- Section 7:** Amends s. 288.018, F.S., revising the Regional Rural Development Matching Grants Program.
- Section 8:** Amends s. 288.1045, F.S., revising a definition for the Qualified Defense Contractor and Space Business Refund Program.
- Section 9:** Amends s. 288.106, F.S., revising the Qualified Target Industry Businesses Tax Refund Program.
- Section 10:** Amends s. 288.107, F.S., revising a definition and correcting cross-references for Brownfield Redevelopment Bonus Refunds.
- Section 11:** Amends s. 288.108, F.S., revising the High-Impact Business incentive.
- Section 12:** Amends s. 288.1088, F.S., revising the Quick Action Closing Fund.
- Section 13:** Amends s. 288.1089, F.S., revising the Innovation Incentive Program.
- Section 14:** Amends s. 290.00677, revising and correcting cross-references for rural enterprise zones tax credits.
- Section 15:** Amends s. 373.441, F.S., revising the process for the delegation of state permitting responsibilities and procedures.
- Section 16:** Amends s. 403.061, F.S., directing DEP to expand the use of online self-certification.
- Section 17:** Provides for permits holder clarification and extension authorized under ch. 2009-96, L.O.F.
- Section 18:** Creates a new initiative to catalog state-owned properties for the purpose of identifying surplus inventory.
- Section 19:** Extends the deadline for compliance with fuel tank upgrades described in Rule 62-761.510, F.A.C., for certain fuel service stations.

Section 20: Except as otherwise provided in this act, this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes made by the bill reflect that most job creation and business investments of today and the future likely are of smaller size, but not necessarily smaller in impact to a community. Additionally, these changes may incent bio-tech businesses, manufacturing facilities, and other research and development intensive businesses to locate or expand in the state since they may be able to take advantage of the incentives based on the lower job creation and investment requirements. These changes may also further the state's policy to induce the growth of the state's bio-industry clusters and further the diversification of the state's economy. Further, the bill's changes may provide additional options to rural communities to attract or help expand businesses in their area.

D. FISCAL COMMENTS:

The 2010 Revenue Estimating Conference has estimated that the revision to employee eligibility for rural enterprise zone job credits will reduce General Revenue collections by \$0.1 million and will have an insignificant negative revenue impact on state trust funds and local government.

This bill provides a distribution, subject to appropriation, \$125,000 monthly to the National Swim Center at Cape Coral, beginning in fiscal year 2012 or upon opening of the center to the public, for a period up to 240 months.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Economic Development Policy Committee adopted a Proposed Committee Substitute to HB 1509. The Proposed Committee Substitute:

- Amends the LBC approval process for the Quick Action Closing program to provide a legislative notification procedure that the governor has exceeded his delegated authority. Allows QAC funds to be carried over two fiscal years.
- Revises the incentives in the Qualified Target Industry Business Refund Program by increasing the tax refund program for High-Impact Businesses and by providing a waiver option on wage requirements for a manufacturing project.
- Expands eligibility for the Capital Investment Tax Credit and the High-Impact Business Program by increasing targeted business sectors and lowering the job creation and investment requirements.
- Allows the Rural Regional Development Matching Grants program to be used for technical assistance for businesses in rural communities.
- Authorizes the Institute for Commercialization of Public Research to make seed fund grants to businesses, who must raise matching funds to such grants.
- Clarifies how an economic development ad valorem tax exemption may be extended by referendum.

In addition, the bill removed the following provisions from HB 1509:

- Requiring counties to report annually how funds are spent and outcome results.
- Creating a “jobs for the unemployed” tax credit.
- Increasing the annual appropriations cap for QTI and QDSC.
- Allowing the capital investment tax credit amount to diminish over a 10-year period.
- Creating the Jobs for Florida Revolving Loan Program.
- Revising administrative provisions of the film and entertainment incentive.
- Requiring Department of Revenue to adopt rules that would authorize local governments to petition the Cabinet for delegation.
- Requiring OPPAGA to evaluate the Enterprise Zone program.
- Extending certain water-related permits.
- Delaying the expiration of the Florida Homebuyer Opportunity Program.

The bill was reported favorably as a committee substitute.

On April 14, 2010, the Finance & Tax Council adopted a strike-all amendment with 2 amendments to the strike-all amendment. The Council Substitute to the Committee Substitute:

- Amends s. 125.045, F.S., and s. 166.021, F.S., requiring counties and certain municipalities to provide an annual report regarding local economic development incentives to the Legislative Committee on Intergovernmental Relations.
- Amends s. 212.20, F.S., providing an appropriation for the National Swim Center at Cape Coral, subject to legislative funds being available.
- Further revises the QTI program in s. 288.106: providing new definitions; expanding “target industry business” concentration; expanding the high impact sector to include businesses that increase

exports of its goods through a seaport or airport in the state; providing greater oversight and evaluation of QTI initiatives; and extending the QTI program through June 30, 2020.

- Amends s. 290.00677, F.S., revising employee eligibility for rural enterprise zone job credits to include persons residing in a “rural community” rather than a rural county.
- Revises s. 373.411, F.S., clarifying the process for the delegation of state permitting appeals process.
- Amends s. 403.061, F.S., directing DEP to expand the use of online self-certification for appropriate exemptions and general permits.
- Provides clarification and further permit extension for the permit holders authorized by ch. 2009-96, L.O.F.
- Creates a new initiative to catalogue state owned properties for the purpose of determining which may be declared surplus and sold.
- Extends the deadline for compliance with fuel tank upgrades described in Rule 62-761.510, F.A.C., for certain fuel service stations.
- This amendment also corrects numerous cross-references and language clarification for various provisions provided within this bill.

This bill was reported favorably as a council substitute. The analysis has been updated to reflect these changes.