HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7109 PCB EDP 10-01 Tax Refund Program for Qualified Target Industry Businesses
SPONSOR(S): Economic Development & Community Affairs Policy Council, Economic Development Policy Committee, and Carroll
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1856

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Economic Development Policy Committee	14 Y, 0 N	Kruse	Kruse
1)	Economic Development & Community Affairs Policy Council	14 Y, 0 N, As CS	Kruse	Tinker
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Qualified Target Industry (QTI) Incentive Tax Refund Program, in s. 288.106, F.S., was created in 1994 as part of a retooling of Florida's economic development efforts. The QTI program was designed to encourage the recruitment or creation of higher-paying, higher-skilled jobs for Floridians, by awarding eligible businesses refunds of certain state or local taxes paid in exchange for creating jobs. The amount of the refund is based on the wages paid, number of jobs created, and where in the state the eligible business chooses to locate or expand, but the minimum is $3,000 per employee over the term of the incentive agreement signed by the business and the Governor's Office of Tourism, Trade and Economic Development (OTTED).

The bill makes a number of changes to the QTI program. The significant changes include:

- Extending the QTI program until June 30, 2020.
- Creating a definition of return on investment (ROI) for QTI projects.
- Allowing leased employees to be included in the job count.
- Directing OTTED to begin a review of terminated QTI projects.
- Requiring a review of the targeted industry list every three years in cooperation with economic development partners and universities.
- Exempting renewable-energy economic development projects from the requirement that qualified target industries must be independent of Florida resources and markets.

Unless reenacted by the Legislature, the QTI program sunsets on June 30, 2010.

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:

Qualified Target Industry Tax Refund Program (QTI)

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.

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.

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.

The Governor's Office of Tourism, Trade, and Economic Development (OTTED) has the ability to approve applications for an Economic Stimulus Exemption (ESE) 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.

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 Qualified Defense Contract and Space Business (commonly referred to as QDSC) 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 Program.

Application Process

In its application for certification, a target industry business must describe its proposed new or expanded operations, including the number of jobs it plans to create and the wages for those jobs; a brief statement on the role the tax refunds will play in the business' decision to locate in Florida; and an estimate on what proportion of the sales for its product or services will be made to out-of-state customers.

The application also must be accompanied by a resolution from the county or municipality in which the business will be located. The resolution must recommend that the business be certified as a qualified target industry business and commit the county or municipality to provide local financial support of at least 20 percent of the tax refund available under the program for the business to be eligible for a full refund unless the local contribution is waived under the conditions mentioned earlier. If a local government chooses to exercise the option to be exempt from the local financial support requirements of the program, then the business is not eligible for more than 80 percent of the tax refunds that would otherwise be available to it under the program.

Upon receipt of a completed application, OTTED must review the application based on a number of statutorily specified criteria, including the economic benefit of the jobs to be created by the applicant business; the effect of the QTI tax refunds on the viability of the project and the probability that the business will relocate or expand in Florida; and the business' expected long-term commitment to Florida.

Although OTTED must consider the above criteria in evaluating a QTI application, the statute does not establish minimum standards that must be met for certification, nor does it require OTTED to certify any business as a QTI business. If the application is approved, the OTTED director will certify, by letter, the business as a QTI business and state the value of the tax refund available to the business.

After a business is certified as a QTI business and wishes to receive the tax refunds, it must enter into a tax refund agreement with OTTED within 120 days of the certification. The agreement incorporates the application for certification as a QTI business, and the proposed number of jobs and salary projections will become contract requirements. The contract also will clearly state that the agreement to pay tax refunds is contingent upon appropriations from the Legislature.

All QTI businesses must file their claims for a tax refund by January 31 of each year, based on their tax expenditures of the prior calendar year. If a QTI business does not timely submit a claim for refunds or otherwise does not comply with the terms of its agreement with OTTED, it will be terminated from the QTI program. If it submits fraudulent claims for tax refunds, it must repay the refund amount to the Economic Development Trust Fund, plus pay into the state's General Revenue Fund a penalty equal to 200 percent of the tax refund it received; additionally, the business is considered guilty of a third-degree felony, punishable by a maximum $5,000 fine and up to 5 years in prison.

Enterprise Florida's (EFI) Role in the QTI Incentive Program

EFI is involved early in the QTI application process. It learns of a business' interest in moving to or expanding in Florida from a local economic development organization, directly from the business, or from the Governor's Office. EFI staff may meet with the prospective business' representatives to learn more about the company and evaluate its eligibility for Florida's incentives. If the company still expresses an interest in Florida as it narrows its location choices, the company is asked to complete an application for the QTI incentive program, if appropriate. EFI inputs that data into its economic impact model to determine, among other things, the estimated return-on-investment if the state were to offer the company incentives. This "payback ratio" indicates the amount of state taxes and related revenues that may be generated per tax dollar invested in incentives awarded to the business.

Based on its analysis, EFI recommends to OTTED whether to approve or reject an incentive package for a business.

Processing and Review of Tax Refund Claims

OTTED contracts with Sharpton, Brunson & Company (SBC), a public accounting firm, to process the claims for tax refunds under the QTI program (and seven other state incentive programs). SBC verifies whether a QTI business has achieved its job creation and average wage commitments by researching unemployment compensation insurance records maintained by the Agency for Workforce Innovation, and verifies the amount of taxes paid by the business by examining receipts, tax bills, and copies of cancelled checks submitted as documentation. SBC also makes occasional site visits to QTI businesses to verify their operations.

Once the documentation has been verified, OTTED reimburses a QTI business for its eligible taxes paid the previous year, up to 25 percent of the total tax refund specified in the QTI agreement.

2009 Enterprise Florida Incentives Report

Enterprise Florida, Inc. (EFI), recently released an annual report on the economic development incentives they administer, including the QTI program. According to their report, 848 applications for QTI have been approved since the inception of the program. Of those 848 approvals, EFI and applicants have reached 730 agreements for QTI projects. The total number of active QTI projects is 260. EFI claims that these 260 active projects have generated $4.2 billion in capital investment, created 45,043 jobs that pay an average wage of $44,916, and resulted in a 10 year payback ratio of $14.52 for every $1 of state investment. It should be noted that only 64 QTI projects have been completed since the program's inception.

During the 2009 fiscal year, EFI approved 59 applications for the QTI program and reached 51 agreements. There are currently 49 active projects from FY 2009. EFI claims these projects have generated $1 billion in capital investment, created 8,382 jobs that pay an average wage of $51,257, and resulted in a 10 year payback ratio of $12.33 for every $1 of state investment. QTI projects last a minimum of four years so projects from FY 2009 have yet to be completed.

The recent downturn of the country's economy has affected all business types, including those participating in the QTI program. As of December 2009, seven QTI businesses submitted ESE applications for January 2009 claims.

The QTI program will sunset on June 30, 2010, unless it is re-enacted by the Legislature. However, any valid QTI refund agreements existing on that date will remain in force through their terms.

Effect of Proposed Changes

The bill makes a number of significant and technical changes to the QTI program in s. 288.106, F.S., in addition to re-enacting the program for ten more years.

Section 1 amends s. 288.106, F.S., the QTI Tax Refund Program. The program's original intent language is restored and 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 section's definitions and content also are reorganized for greater clarity, and obsolete phrases are deleted or updated.

Changes to this section also include:

- Allowing a leased employee to be counted as filling a job. Under current law, a leased employee is considered an employee of the leasing company. This change may help small businesses qualify for the incentive because in many cases small businesses lease their employees.
- Specifying that renewable energy projects are exempt from the target industry requirement that QTI businesses be independent from Florida markets and Florida-based resources. This codifies an OTTED/EFI practice.
- Every three years, requiring OTTED and EFI to review and revise, as appropriate, the targeted industries list in cooperation with local economic development organizations, the state university system, and economists.
- Defining "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. Also requiring the Office of Economic and Demographic Research to review the ROI methodology and model used to calculate ROI every three years.
- OTTED also must consider the potential ROI of a QTI applicant business in making its decision whether to approve the business for the refund incentive program.
- Renaming the "economic stimulus exemption" as the more descriptive "economic recovery extension," and adding another 12 months to the time period for QTI businesses to apply for it. 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 <u>tax documentation</u> once, not every year. This will reduce paperwork and duplicative effort for both the businesses and OTTED in the remaining years of the contract.
- For of all agreements signed after July 1, 2010, if a business does not complete that agreement, OTTED must attempt to ascertain the causes of such failure and report its findings and any recommendations to the Governor, the Senate President, and the Speaker of the House of Representatives by December 1, 2011, and each December 1 thereafter. The review may shed some light on why certain QTI businesses successfully conclude their participation in the program, and why other businesses drop out.
- Extending the QTI program to June 30, 2020, when it will be subject to another sunset review.

Sections 2 through 6 correct cross-references and make definitional changes in various statutes to be consistent with changes made in proposed Section 1.

Section 7 specifies this act shall take effect July 1, 2010.

B. SECTION DIRECTORY:

Section 1. Amends s. 288.107, F.S., to revise the tax refund program for qualified target industry businesses.

Section 2. Corrects cross-references in s. 159.803, F.S., consistent with the changes proposed in Section 1.

Section 3. Corrects cross-references in s. 220.191, F.S., consistent with the changes proposed in Section 1.

Section 4. Corrects cross-references in s. 288.107, F.S., consistent with the changes proposed in Section 1.

Section 5. Corrects a definition in s. 288.1089, F.S., to be consistent with the changed definition proposed in Section 1.

Section 6. Corrects cross-references in s. 290.00677, F.S., consistent with the changes proposed in Section 1.

Section 7. Provides this act shall take effect July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   OTTED has indicated it may need additional staff or budget resources to perform the terminated project reviews.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows leased employees to be included in the job count. This change may allow small businesses which meet all QTI eligibility criteria, except for having leased employees, to utilize the incentive which may create some new level of economic activity.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 7, 2010, the Economic Development and Community Affairs Policy Council adopted an amendment, which:

- Removed new language which had provided a business that had agreed to a wage threshold of 150 percent or 200 percent of the average private sector wage the option to request their agreement be amended to decrease the contracted wage threshold, with a corresponding decrease in the tax refund, if the business was unable to reach the 150 or 200 percent threshold.

The bill was reported favorably and the analysis has been updated to reflect the council substitute.