

By Senator Ring

32-00461A-12

2012684

1 A bill to be entitled
2 An act relating to economic development; requiring the
3 Department of Economic Opportunity to designate a
4 director of manufacturing; providing responsibilities
5 for the director; amending s. 220.191, F.S., relating
6 to a tax credit program for capital investment by
7 certain qualifying businesses; removing the creation
8 or retention of jobs as a criteria for a qualified
9 project; requiring a capital investment of at least
10 \$10 million as a criteria for a qualified project;
11 increasing the period authorized for a tax credit
12 under the program; creating a new category of annual
13 tax credit; providing additional annual credits for
14 sales taxes and ad valorem taxes paid by certain
15 qualifying businesses; providing tax credits for
16 qualifying businesses that are located out of state;
17 amending s. 288.106, F.S., relating to a tax refund
18 program for qualified target industry businesses;
19 providing legislative intent for the encouragement of
20 capital investment; providing that a capital
21 investment of a specified amount qualifies a target
22 industry business for the tax refund; creating s.
23 288.1084, F.S.; creating the Manufacturing Capital
24 Investment Tax Refund Program within the Department of
25 Economic Opportunity; providing legislative findings
26 and declarations; providing definitions; providing for
27 amounts of capital investments for certain
28 manufacturing businesses that are eligible for tax
29 refunds; providing for the application and approval

32-00461A-12

2012684

30 process for qualified projects; authorizing the
31 Division of Strategic Business Development in the
32 Department of Economic Opportunity to adopt rules;
33 providing an effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. The Department of Economic Opportunity shall
38 designate a director of manufacturing who shall:

39 (1) Serve as the liaison between state, regional, and local
40 agencies and manufacturers expanding in or relocating to the
41 state;

42 (2) Provide the manufacturers with permit applications for
43 all potential state and regional permits that are needed; and

44 (3) Facilitate the dissemination of information to
45 manufacturers about opportunities available for expanding in or
46 locating to this state.

47 Section 2. Section 220.191, Florida Statutes, is amended to
48 read:

49 220.191 Capital investment tax credit.—

50 (1) DEFINITIONS.—For purposes of this section:

51 (a) "Commencement of operations" means the beginning of
52 active operations by a qualifying business of the principal
53 function for which a qualifying project was constructed.

54 (b) "Cumulative capital investment" means the total capital
55 investment in land, buildings, and equipment made in connection
56 with a qualifying project during the period from the beginning
57 of construction of the project to the commencement of
58 operations.

32-00461A-12

2012684

59 (c) "Eligible capital costs" means all expenses incurred by
60 a qualifying business in connection with the acquisition,
61 construction, installation, and equipping of a qualifying
62 project during the period from the beginning of construction of
63 the project to the commencement of operations, including, but
64 not limited to:

65 1. The costs of acquiring, constructing, installing,
66 equipping, and financing a qualifying project, including all
67 obligations incurred for labor and obligations to contractors,
68 subcontractors, builders, and materialmen.

69 2. The costs of acquiring land or rights to land and any
70 cost incidental thereto, including recording fees.

71 3. The costs of architectural and engineering services,
72 including test borings, surveys, estimates, plans and
73 specifications, preliminary investigations, environmental
74 mitigation, and supervision of construction, as well as the
75 performance of all duties required by or consequent to the
76 acquisition, construction, installation, and equipping of a
77 qualifying project.

78 4. The costs associated with the installation of fixtures
79 and equipment; surveys, including archaeological and
80 environmental surveys; site tests and inspections; subsurface
81 site work and excavation; removal of structures, roadways, and
82 other surface obstructions; filling, grading, paving, and
83 provisions for drainage, storm water retention, and installation
84 of utilities, including water, sewer, sewage treatment, gas,
85 electricity, communications, and similar facilities; and offsite
86 construction of utility extensions to the boundaries of the
87 property.

32-00461A-12

2012684

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89 Eligible capital costs do ~~shall~~ not include the cost of any
90 property previously owned or leased by the qualifying business.

91 (d) "Income generated by or arising out of the qualifying
92 project" means the qualifying project's annual taxable income as
93 determined by generally accepted accounting principles and under
94 s. 220.13.

95 ~~(c) "Jobs" means full-time equivalent positions, as that
96 term is consistent with terms used by the Department of Economic
97 Opportunity and the United States Department of Labor for
98 purposes of unemployment tax administration and employment
99 estimation, resulting directly from a project in this state. The
100 term does not include temporary construction jobs involved in
101 the construction of the project facility.~~

102 ~~(e)-(f)~~ "Qualifying business" means a business that ~~which~~
103 establishes a qualifying project in this state and that ~~which~~ is
104 certified by the Department of Economic Opportunity to receive
105 tax credits pursuant to this section.

106 ~~(f)-(g)~~ "Qualifying project" means a facility in this state
107 meeting one or more of the following criteria:

108 1. A new or expanding facility in this state which is a
109 manufacturing facility or creates at least 100 new jobs in this
110 ~~state~~ and is in one of the high-impact sectors identified by
111 Enterprise Florida, Inc., and certified by the Department of
112 Economic Opportunity pursuant to s. 288.108(6), including, but
113 not limited to, aviation, aerospace, automotive, and silicon
114 technology industries. However, between July 1, 2011, and June
115 30, 2014, the requirement that a facility be in a high-impact
116 sector is waived for any otherwise eligible business from

32-00461A-12

2012684

117 another state which locates all or a portion of its business to
118 a Disproportionally Affected County. For purposes of this
119 section, the term "Disproportionally Affected County" means Bay
120 County, Escambia County, Franklin County, Gulf County, Okaloosa
121 County, Santa Rosa County, Walton County, or Wakulla County.

122 2. A new or expanded facility in this state which is
123 engaged in manufacturing and makes a capital investment of at
124 least \$10 million or a target industry designated pursuant to
125 the procedure specified in s. 288.106(2) and which makes ~~is~~
126 ~~induced by this credit to create or retain at least 1,000 jobs~~
127 ~~in this state, provided that at least 100 of those jobs are new,~~
128 ~~pay an annual average wage of at least 130 percent of the~~
129 ~~average private sector wage in the area as defined in s.~~
130 ~~288.106(2), and make a cumulative capital investment of at least~~
131 \$100 million on or after July 1, 2012. Jobs may be considered
132 ~~retained only if there is significant evidence that the loss of~~
133 ~~jobs is imminent.~~ Notwithstanding subsection (2), annual credits
134 against the tax imposed by this chapter may not exceed 50
135 percent of the increased annual corporate income tax liability
136 or the premium tax liability generated by or arising out of a
137 project qualifying under this subparagraph. A facility that
138 qualifies under this subparagraph for an annual credit against
139 the tax imposed by this chapter may take the tax credit for a
140 period not to exceed 10 ~~5~~ years.

141 3. A new or expanded headquarters facility in this state
142 which locates in an enterprise zone and brownfield area and is
143 induced by this credit to make ~~create~~ at least 1,500 jobs which
144 ~~on average pay at least 200 percent of the statewide average~~
145 ~~annual private sector wage, as published by the Department of~~

32-00461A-12

2012684

146 ~~Economic Opportunity, and which new or expanded headquarters~~
147 ~~facility makes~~ a cumulative capital investment in this state of
148 at least \$250 million.

149 (2) (a) An annual credit against the tax imposed by this
150 chapter shall be granted to any qualifying business in an amount
151 equal to 5 percent of the eligible capital costs generated by a
152 qualifying project, for a period not to exceed 20 years
153 beginning with the commencement of operations of the project.
154 Unless assigned as described in this subsection, the tax credit
155 shall be granted against only the corporate income tax liability
156 or the premium tax liability generated by or arising out of the
157 qualifying project, and the sum of all tax credits provided
158 pursuant to this section may ~~shall~~ not exceed 100 percent of the
159 eligible capital costs of the project. ~~A In no event may any~~
160 credit granted under this section may not be carried forward or
161 backward by any qualifying business with respect to a subsequent
162 or prior year. The annual tax credit granted under this section
163 may ~~shall~~ not exceed the following percentages of the annual
164 corporate income tax liability or the premium tax liability
165 generated by or arising out of a qualifying project:

166 1. One hundred percent for a qualifying project that ~~which~~
167 results in a cumulative capital investment of at least \$100
168 million.

169 2. Seventy-five percent for a qualifying project that ~~which~~
170 results in a cumulative capital investment of at least \$50
171 million but less than \$100 million.

172 3. Fifty percent for a qualifying project that ~~which~~
173 results in a cumulative capital investment of at least \$25
174 million but less than \$50 million.

32-00461A-12

2012684

175 4. Twenty-five percent for a qualifying project that
176 results in a cumulative capital investment of at least \$25
177 million, but less than \$10 million.

178 (b) A qualifying project that ~~which~~ results in a cumulative
179 capital investment of less than \$10 ~~\$25~~ million is not eligible
180 for the capital investment tax credit. An insurance company
181 claiming a credit against premium tax liability under this
182 program is shall not ~~be~~ required to pay any additional
183 retaliatory tax levied pursuant to s. 624.5091 as a result of
184 claiming such credit. Because credits under this section are
185 available to an insurance company, s. 624.5091 does not limit
186 such credit in any manner.

187 (c) A qualifying business that establishes a qualifying
188 project that includes locating a new solar panel manufacturing
189 facility in this state that generates a minimum of 400 jobs
190 within 6 months after commencement of operations with an average
191 salary of at least \$50,000 may assign or transfer the annual
192 credit, or any portion thereof, granted under this section to
193 any other business. However, the amount of the tax credit that
194 may be transferred in any year shall be the lesser of the
195 qualifying business's state corporate income tax liability for
196 that year, as limited by the percentages applicable under
197 paragraph (a) and as calculated prior to taking any credit
198 pursuant to this section, or the credit amount granted for that
199 year. A business receiving the transferred or assigned credits
200 may use the credits only in the year received, and the credits
201 may not be carried forward or backward. To perfect the transfer,
202 the transferor shall provide the department with a written
203 transfer statement notifying the department of the transferor's

32-00461A-12

2012684

204 intent to transfer the tax credits to the transferee; the date
205 the transfer is effective; the transferee's name, address, and
206 federal taxpayer identification number; the tax period; and the
207 amount of tax credits to be transferred. The department shall,
208 upon receipt of a transfer statement conforming to the
209 requirements of this paragraph, provide the transferee with a
210 certificate reflecting the tax credit amounts transferred. A
211 copy of the certificate must be attached to each tax return for
212 which the transferee seeks to apply such tax credits.

213 (d) If the credit granted under subparagraph (a)1. is not
214 fully used in any one year because of insufficient tax liability
215 on the part of the qualifying business, the unused amounts may
216 be used in any one year or years beginning with the 21st year
217 after the commencement of operations of the project and ending
218 the 30th year after the commencement of operations of the
219 project.

220 (3) (a) ~~Notwithstanding subsection (2),~~ An annual credit
221 against the tax imposed by this chapter or chapter 212 or ad
222 valorem taxes paid as defined in s. 220.03(1) shall be granted
223 to a qualifying business that ~~which~~ establishes a qualifying
224 project pursuant to subparagraph (1) (f) 3. ~~(1) (g) 3.~~, in an amount
225 equal to the lesser of \$15 million or 5 percent of the eligible
226 capital costs made in connection with a qualifying project, for
227 a period not to exceed 20 years beginning with the commencement
228 of operations of the project. The tax credit shall be granted
229 against the corporate income tax liability of the qualifying
230 business and as further provided in paragraph (c). The total tax
231 credit provided pursuant to this subsection shall be equal to no
232 more than 100 percent of the eligible capital costs of the

32-00461A-12

2012684

233 qualifying project.

234 (b) If the credit granted under this subsection is not
235 fully used in any one year because of insufficient tax liability
236 on the part of the qualifying business, the unused amount may be
237 carried forward for a period not to exceed 20 years after the
238 commencement of operations of the project. The carryover credit
239 may be used in a subsequent year when the tax imposed by this
240 chapter for that year exceeds the credit for which the
241 qualifying business is eligible in that year under this
242 subsection after applying the other credits and unused
243 carryovers in the order provided by s. 220.02(8).

244 (c) The credit granted under this subsection may be used in
245 whole or in part by the qualifying business or any corporation
246 that is ~~either~~ a member of that qualifying business's affiliated
247 group of corporations, is a related entity taxable as a
248 cooperative under subchapter T of the Internal Revenue Code, or,
249 if the qualifying business is an entity taxable as a cooperative
250 under subchapter T of the Internal Revenue Code, is related to
251 the qualifying business. Any entity related to the qualifying
252 business may continue to file as a member of a Florida-nexus
253 consolidated group pursuant to a prior election made under s.
254 220.131(1), Florida Statutes (1985), even if the parent of the
255 group changes due to a direct or indirect acquisition of the
256 former common parent of the group. Any credit can be used by any
257 of the affiliated companies or related entities referenced in
258 this paragraph to the same extent as it could have been used by
259 the qualifying business. However, any such use does ~~shall~~ not
260 ~~operate to~~ increase the amount of the credit or extend the
261 period within which the credit must be used.

32-00461A-12

2012684

262 ~~(4) Prior to receiving tax credits pursuant to this~~
263 ~~section, a qualifying business must achieve and maintain the~~
264 ~~minimum employment goals beginning with the commencement of~~
265 ~~operations at a qualifying project and continuing each year~~
266 ~~thereafter during which tax credits are available pursuant to~~
267 ~~this section.~~

268 (4)~~(5)~~ Applications shall be reviewed and certified
269 pursuant to s. 288.061. The Department of Economic Opportunity,
270 upon a recommendation by Enterprise Florida, Inc., shall first
271 certify a business as eligible to receive tax credits pursuant
272 to this section before ~~prior to~~ the commencement of operations
273 of a qualifying project, and such certification shall be
274 transmitted to the Department of Revenue. Upon receipt of the
275 certification, the Department of Revenue shall enter into a
276 written agreement with the qualifying business specifying, at a
277 minimum, the method by which income generated by or arising out
278 of the qualifying project will be determined.

279 (5)~~(6)~~ The Department of Economic Opportunity, in
280 consultation with Enterprise Florida, Inc., may ~~is authorized to~~
281 develop the necessary guidelines and application materials for
282 the certification process described in subsection (4) ~~(5)~~.

283 (6)~~(7)~~ The qualifying business shall ~~It shall be the~~
284 ~~responsibility of the qualifying business to~~ affirmatively
285 demonstrate to the satisfaction of the Department of Revenue
286 that the ~~such~~ business meets the ~~job creation and~~ capital
287 investment requirements of this section.

288 (7) Qualifying businesses, including corporations that are
289 not domiciled in this state, subchapter S corporations under the
290 Internal Revenue Code, limited liability companies, sole

32-00461A-12

2012684

291 proprietorships, or partnerships, may take credits pursuant to
292 this chapter against taxes paid pursuant to chapter 212 or ad
293 valorem taxes paid as defined in s. 220.03(1).

294 (8) The Department of Revenue may specify by rule the
295 methods by which a project's pro forma annual taxable income is
296 determined.

297 Section 3. Subsection (1) and paragraph (e) of subsection
298 (6) of section 288.106, Florida Statutes, are amended to read:

299 288.106 Tax refund program for qualified target industry
300 businesses.—

301 (1) LEGISLATIVE FINDINGS AND DECLARATIONS.—The Legislature
302 finds that retaining and expanding existing businesses in the
303 state, encouraging the creation of new businesses in the state,
304 attracting new businesses from outside the state, and generally
305 providing conditions favorable for the growth of target
306 industries creates high-quality, high-wage employment
307 opportunities for residents of the state and strengthens the
308 state's economic foundation. The Legislature also finds that
309 incentives narrowly focused in application and scope tend to be
310 more effective in achieving the state's economic development
311 goals. The Legislature further finds that higher-wage jobs
312 reduce the state's share of hidden costs, such as public
313 assistance and subsidized health care associated with low-wage
314 jobs. Therefore, the Legislature declares that it is the policy
315 of the state to encourage capital investment, the growth of
316 higher-wage jobs, and a diverse economic base by providing state
317 tax refunds to qualified target industry businesses that
318 originate or expand in the state or that relocate to the state,
319 regardless of the legal structure of those businesses.

32-00461A-12

2012684

320 (6) ANNUAL CLAIM FOR REFUND.—

321 (e) A prorated tax refund, less a 5 percent ~~5-percent~~
322 penalty, shall be approved for a qualified target industry
323 business if all other applicable requirements have been
324 satisfied and the business proves to the satisfaction of the
325 office that:

326 1. It has achieved at least 80 percent of its projected
327 employment; and

328 2. The average wage paid by the business is at least 90
329 percent of the average wage specified in the tax refund
330 agreement, but in no case less than 115 percent of the average
331 private sector wage in the area available at the time of
332 certification, or 150 percent or 200 percent of the average
333 private sector wage if the business requested the additional
334 per-job tax refund authorized in paragraph (3) (b) for wages
335 above those levels. The prorated tax refund shall be calculated
336 by multiplying the tax refund amount for which the qualified
337 target industry business would have been eligible, if all
338 applicable requirements had been satisfied, by the percentage of
339 the average employment specified in the tax refund agreement
340 which was achieved, and by the percentage of the average wages
341 specified in the tax refund agreement which was achieved.

342 Section 4. Section 288.1084, Florida Statutes, is created
343 to read:

344 288.1084 Manufacturing Capital Investment Tax Refund
345 Program.—

346 (1) LEGISLATIVE FINDINGS AND DECLARATIONS.—The Legislature
347 finds that attracting and expanding manufacturing businesses in
348 this state will accelerate capital investment, increase exports,

32-00461A-12

2012684

349 and provide high-quality, high-wage employment opportunities for
350 residents, and will enhance overall the state's economy. To meet
351 the needs of these manufacturing businesses, programs are needed
352 which provide incentives for significant capital investment.
353 Therefore, the Legislature declares that it is the policy of the
354 state to encourage the location and expansion of manufacturing
355 businesses in this state by providing state tax refunds for
356 capital investment.

357 (2) DEFINITIONS.—As used in this section, the term:

358 (a) "Business" means an employing unit, as defined in s.
359 443.036, which is registered for unemployment compensation
360 purposes with the state agency providing unemployment tax
361 collection services.

362 (b) "Capital investment" means the total capital investment
363 in land, buildings, and equipment in this state made in
364 connection with a qualifying project for no longer than the 3
365 years following the beginning of construction, initiation of the
366 project, or the purchase of machinery and equipment and until
367 the commencement of operations.

368 (c) "Division" means the Division of Strategic Business
369 Development in the Department of Economic Opportunity.

370 (d) "Economic benefits" means the gains in state or local
371 tax revenue as a percentage of the state or local investment.
372 The state or local investment includes state grants, tax
373 exemptions, tax refunds, tax credits, and other state or local
374 incentives. The economic-benefits calculation may be expressed
375 as a ratio of the increase in state or local revenues as
376 compared to the state or local investment.

377 (e) "Eligible capital costs" means all expenses incurred by

32-00461A-12

2012684

378 a qualifying business in connection with the acquisition,
379 construction, installation, and equipping of a qualifying
380 project for no longer than the 3-year period following the
381 beginning of construction, initiation of the project, or
382 purchase of machinery and equipment, and until the commencement
383 of operations, including, but not limited to:

384 1. The costs of acquiring, constructing, installing,
385 equipping, and financing a qualifying project, including all
386 obligations incurred for labor and obligations to contractors,
387 subcontractors, builders, and materialmen.

388 2. The costs of acquiring land or rights to land and any
389 cost incidental thereto, including recording fees.

390 3. The costs of architectural and engineering services,
391 including test borings, surveys, estimates, plans and
392 specifications, preliminary investigations, environmental
393 mitigation, and supervision of construction, as well as the
394 performance of all duties required by or consequent to the
395 acquisition, construction, installation, and reequipping of a
396 qualifying project.

397 4. The costs associated with the installation of fixtures
398 and equipment; surveys, including archaeological and
399 environmental surveys; site tests and inspections; subsurface
400 site work and excavation; removal of structures, roadways, and
401 other surface obstructions; filling, grading, paving, and
402 provisions for drainage, storm water retention, and installation
403 of utilities, including water, sewer, sewage treatment, gas,
404 electricity, communications, and similar facilities; and offsite
405 construction for utility extensions to the boundaries of the
406 property.

32-00461A-12

2012684

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Eligible capital costs do not include the cost of any property previously owned or leased by the qualifying business.

(f) "Expansion of an existing business" means the expansion of an existing business in this state by or through additions to real or personal property, resulting in a net increase in new capital investment of at least \$10 million.

(g) "Fiscal year" means the fiscal year of the state.

(h) "Manufacturing" means a business in NAICS Codes 31, 32, or 33.

(i) "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President, and updated periodically.

(j) "New or expanding business" means a business that applies for a tax refund under this section before beginning or expanding operations in this state and that is a legal entity separate from any other commercial or industrial operation owned by the same business. The business may be a company incorporated in any state or nation, a limited liability company, a sole proprietorship, a partnership, a subchapter S corporation, or any other legally accepted business entity.

(k) "Project" means the creation of a new business or the expansion of an existing business for a period not to exceed 3 years.

(l) "Qualified project" means a proposal by a business that is designed to produce a positive economic benefit to the state consistent with the provisions of this chapter.

(m) "Tax refund" means a refund against:

32-00461A-12

2012684

- 436 1. Corporate income taxes imposed pursuant to chapter 220.
437 2. Insurance premium tax imposed pursuant to s. 624.509.
438 3. Sales, use, and other transactions imposed pursuant to
439 chapter 212.
440 4. Intangible personal property taxes imposed pursuant to
441 chapter 199.
442 5. Emergency excise taxes imposed pursuant to chapter 221.
443 6. Excise taxes on documents imposed pursuant to chapter
444 201.
445 7. Ad valorem taxes paid as defined in s. 220.03(1).
446 8. State communications services taxes imposed pursuant to
447 chapter 202.
448 9. State gross receipts tax for utility services imposed
449 pursuant to chapter 203.
450 10. State motor and other fuel taxes imposed pursuant to
451 chapter 206.
452 (3) TAX REFUND; ELIGIBLE AMOUNTS.—
453 (a) A qualified project is allowed a refund from the
454 Economic Development Incentives Account within the Economic
455 Development Trust Fund, established under s. 288.095, for the
456 amount of taxes paid for eligible capital costs certified by the
457 division which were paid by the business.
458 (b) A qualified project may receive tax refund payments
459 equal to 10 percent of the capital investment made.
460 (c) The amount of refunds made to all projects under this
461 section and s. 288.106 may not exceed the amount of funds set
462 aside for the Economic Development Incentives Account within the
463 Economic Development Trust Fund.
464 (d) A qualified project may not receive a refund under this

32-00461A-12

2012684

465 section for any amount of credit, refund, or exemption
466 previously granted to that business for any of the taxes listed
467 in subsection (2).

468 (e) Refunds made available under this section may not be
469 expended in connection with the relocation of a business from
470 one community in the state to another community unless the
471 division determines that, without such relocation, the business
472 will move outside the state or determines that the business has
473 a compelling economic rationale for relocation which is
474 consistent with the intent of this section.

475 (f) A business that fraudulently claims a refund under this
476 section:

477 1. Is liable for the amount of refund, which shall be
478 repaid and deposited into the Economic Development Incentives
479 Account within the Economic Development Trust Fund, and a
480 mandatory penalty in the amount of 200 percent of the tax
481 refund, which shall be deposited into the General Revenue Fund.

482 2. Commits a felony of the third degree, punishable as
483 provided in s. 775.082, s. 775.083, or s. 775.084.

484 (4) APPLICATION AND APPROVAL PROCESS.—To apply for
485 certification as an eligible business under this section, the
486 business must propose to make a \$10 million or greater capital
487 investment and file an application with the division before the
488 business locates or expands existing operations in the state.
489 The application must include, but need not be limited to:

490 (a) The applicant's federal employer identification number
491 and, if applicable, state sales tax registration number.

492 (b) The location of the applicant's proposed permanent
493 facility.

32-00461A-12

2012684__

494 (c) A description of the type of business activity or
495 product covered by the project, including a minimum of a five-
496 digit NAICS code for all activities included in the project.

497 (d) The proposed amount of capital investment to be made
498 for each year of the project.

499 (e) The anticipated commencement date of the project.

500 (f) A brief statement explaining how the estimated tax
501 refunds to be requested will affect the decision of the
502 applicant to locate or expand in this state.

503 (g) Any other information that the division determines is
504 appropriate for a capital investment refund.

505

506 The division shall annually certify those projects that qualify
507 for refunds.

508 (5) RULE DEVELOPMENT.—The division may adopt rules to
509 administer this section.

510 Section 5. This act shall take effect July 1, 2012.