

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 572

INTRODUCER: Commerce and Tourism Committee and Senator Sobel

SUBJECT: Reporting Requirements for Economic Development Programs

DATE: March 6, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	Fav/CS
2.			ATD	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 572 creates a project-based reporting system to be developed by the Department of Economic Opportunity (DEO) to allow the public to view information relating to economic development projects receiving state incentives. DEO is directed to maintain a website that publishes specific information on each state-incentivized project in a format that is easily accessible to the public. Information must be published within 48 hours of the expiration of the period of confidentiality.

The bill creates s. 288.076, F.S.

II. Present Situation:

Economic Development Incentives Application and Review

Under Florida’s current economic development framework, Enterprise Florida, Inc. (EFI), serves as the state’s economic development organization, operating under a contract with the Department of Economic Opportunity (DEO).¹ EFI is a public-private partnership that serves as

¹ Section 288.901, F.S.

the state's primary contact for businesses interested in pursuing relocation, expansion, or retention possibilities. EFI works with businesses to match business needs with state and local resources, including developing an economic development incentive proposal for the prospective business in order to "sell the State as a place to do business."²

After EFI has worked with businesses and offered incentives proposals, incentives applications are sent to DEO, who in turn evaluates incentive applications based on statutorily-defined requirements. DEO makes the final determination of incentive eligibility, executes incentives contracts, and is responsible for contract monitoring and compliance.³

EFI performs a prospective impact analysis on each potential project. Presently, the qualified target industry tax refund program,⁴ quick action closing fund,⁵ qualified defense contractor and space flight business tax refund program,⁶ and the brownfield redevelopment bonus refund program⁷ have statutory provisions that require any application for the incentive be evaluated prospectively for "economic benefits." EFI currently performs a similar prospective impact analysis for the high-impact sector performance grants⁸ and the capital investment tax credit program,⁹ but there is no statutory requirement for such an evaluation.¹⁰

Section 288.005(1), F.S., defines the term "economic benefits" to mean "the direct, indirect, and induced gains in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives." Direct economic effects are those resulting directly from the economic event, in this case the state's expenditure on the incentive to the applicant business. Indirect effects are the secondary effects of the economic event on suppliers, services, labor, and taxes. Induced effects are one step further and measure the effects on the economy as a result of spending from indirect effects as the money spent continues to cycle through the economy.¹¹

According to the Office of Economic and Demographic Research (EDR), EFI prospectively evaluates applications for each of the incentives and programs mentioned above using RIMS II multipliers, a model developed by the U.S. Department of Commerce's Bureau of Economic Analysis.¹² EDR is required to evaluate the model used by EFI for the prospective impact

² Enterprise Florida, Inc., *2012 Annual Incentives Report*, (2012), available at: http://www.floridajobs.org/about%20awi/open_government/2012_IncentivesReport.pdf, (last visited on February 15, 2013).

³ Section 288.061, F.S.

⁴ Section 288.106, F.S.

⁵ Section 288.1088, F.S.

⁶ Section 288.1045, F.S.

⁷ Section 288.107, F.S.

⁸ Section 288.108, F.S.

⁹ Section 220.191, F.S.

¹⁰ Office of Economic and Demographic Research, *Tax Refund Program for Qualified Target Industry Businesses: A review of the methodology and model used in determining the state's return on investment*, (9/1/2010), available at: <http://edr.state.fl.us/Content/special-research-projects/economic/ROI.pdf>, (last visited on February 15, 2013).

¹¹ Adapted from "What is IMPLAN?" by MIG. Available at: http://implan.com/v4/index.php?option=com_content&view=article&id=282:what-is-implan&catid=152:implan-appliance-&Itemid=2, (last visited on February 15, 2013).

¹² For more information on RIMS II multipliers and their application, see U.S. Department of Commerce, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)*, (March, 1997), available at: <http://www.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf>, (last visited on February 15, 2013).

analysis of all qualified target industry refund projects, and to report such findings every 3 years.¹³ The model evaluated by EDR and used by EFI for the qualified target industry tax refund program is also used across the programs previously mentioned except for the Innovation Incentive Program.¹⁴

In 2010, EDR produced its first report on the model used by EFI to evaluate qualified target industry refund projects. In their report, EDR concluded that the model being utilized by EFI was not fully in compliance with statutory requirements that EFI's model evaluate "return on investment" (ROI), defined as the gain in state revenues as a percentage of the state's investment. EDR determined that the model, which EFI terms a "payback ratio," needed changes to move incrementally closer to a true ROI. EFI and EDR worked to redefine certain variables for the impact analysis in the interim period. In the report, EDR noted that recommendations and changes on the model used by EFI "should be viewed as interim measures, pending completion of the new ROI model that will be ultimately required."¹⁵ The next report is due September 1, 2013.

The Innovation Incentive Program is not required by law to be evaluated for "economic benefits," but any potential project is required to have a break-even "return on investment" within a 20-year period, except for certain exceptions.¹⁶ Return on investment as it relates to the Innovation Incentive Program is not defined under current law. EFI evaluates the Innovation Incentive Program using the REMI model.¹⁷ EFI's modeling evaluation of the Innovation Incentive Program is not currently evaluated by EDR.¹⁸

Incentive and Program Reporting

In addition to conducting an up-front impact analysis of each potential economic development project, EFI is also required to produce an Annual Incentives Report¹⁹ that requires, among other things, an analysis of the economic benefits that actually occurred based on actual private investment, jobs created, and wages paid over the previous 3 years. The Annual Incentives Report compares the projected impacts of each incentive program over the previous 3 years to the confirmed, realized results. The Division of Strategic Business Development within DEO is required to assist EFI in the preparation of the Annual Incentives Report.²⁰

¹³ Section 288.106(4)(c)2., F.S.

¹⁴ *Supra* note 10 at page 20.

¹⁵ *Supra* note 10 at pages 3 and 4.

¹⁶ Section 288.1089, F.S., requires any potential business qualifying for the Innovation Incentive Program be a high-value research and development, innovation business, or an alternative and renewable energy project. Research and development and alternative and renewable energy projects are required to meet the break-even 20-year return on investment requirement, but applicants qualifying as "innovation business projects" are not required to demonstrate the return on investment requirements.

¹⁷ The REMI model is a proprietary model developed by Regional Economic Models, Inc. The model evaluates linkages in an economy and how economic impacts can impact the larger regional economy. For more information see "The REMI Model," available at: <http://www.remi.com/the-remi-model>, (last visited on February 15, 2013).

¹⁸ *Supra* note 10.

¹⁹ Section 288.907, F.S.

²⁰ Section 288.907(2), F.S.

The Annual Incentives Report also reports certain information such as the amount of awards given, jobs created, amount of capital investment, and wages paid. This information is organized by incentive program and by project. The Annual Incentives Report also includes information on incentive projects that occurred over the previous fiscal year, including the number of incentive applications received, recommendations from EFI to DEO, the number of final decisions issued by DEO for approval or denial, and the projects which incentive agreements were executed.

Other required information in the Annual Incentives Report includes:

- A description of federal or local incentives received, organized by project.
- The number of withdrawn or terminated projects that did not receive incentives due to not fulfilling the terms of their incentives agreement.
- An analysis of the economic benefits of incentives made to projects locating in state enterprise zones, rural communities, brownfield areas, or distressed urban communities.
- Identification of target industry businesses and high-impact businesses.
- Trends relating to business interest in and usage of the state's incentives programs, including the number of minority-owned and woman-owned businesses receiving incentives.
- Identification of incentive programs not utilized.

Section 288.095(3)(c), F.S., requires information similar to the Annual Incentives Report to be reported by DEO related to programs funded through the Economic Development Incentives Account in the Economic Development Trust Fund.

DEO also produces an annual report, which is required to include information on the state's business climate and economic development, as well as an identification of problems and recommendations.²¹

Information on local economic development incentives is collected by EDR. EDR is required to collect information relating to each county or municipality that granted local economic development incentives in excess of \$25,000 during a fiscal year.²² Counties and municipalities may complete their reporting requirements by completing a survey either online or by hard copy and returning it to EDR, who compiles the information into a single report.²³

DEO Incentives Portal

On August 2, 2012, DEO launched an online portal for the public to view economic development projects receiving state funds.²⁴ The portal allows the public to view:

- Completed projects approved from January 1996 through May 2012;

²¹ Section 20.60(10), F.S.

²² Section 125.045, F.S., requires counties to report economic development incentives of \$25,000 or more that were granted in the fiscal year. Section 166.021, F.S., requires municipalities with revenues and expenditures over \$250,000 to report economic development incentives of \$25,000 or more granted in the fiscal year.

²³ More information on the report and survey can be accessed by visiting <http://edr.state.fl.us/Content/local-government/economic-development-incentives/index.cfm>, (last visited on February 15, 2013).

²⁴ DEO press release, "DEO Launches Public Economic Development Incentives Portal, (August 02, 2012), available at: <http://www.floridajobs.org/news-center/news-feed/2012/08/02/deo-launches-public-economic-development-incentives-portal>, (last visited on February 15, 2013).

- Inactive or terminated projects that were approved from January 1996 through December 1998; and
- Quick Action Closing Fund projects approved from program inception (1999) through December 2011, which are not confidential.

The portal's website states that DEO expects to have all non-confidential projects available on the portal by March of 2013.²⁵ The portal website allows users to view projects by incentive program, by the county of the project's location, by the date of the project, and by the recipient business's name. Information provided includes the total state incentive awarded, payments to date, job requirements, and capital investment requirements.

Economic Development Confidentiality Requirements

Section 288.075, F.S., specifies confidentiality of records requirements relating to a business's plans to locate, relocate, or expand business activities in Florida. Currently, certain business records are confidential and exempt²⁶ from Florida's public records requirements when held by an economic development agency and requested to be exempt by the affected business. Examples of economic development agencies include the Department of Economic Opportunity (DEO), Enterprise Florida, Inc. (EFI), and public economic development agencies of local governments.

The following information is confidential and exempt from public records requirements for the duration specified:

- Upon written request, information relating to a business's plans, intentions, and interests to locate, relocate, or expand its business activities in Florida. This information remains confidential and exempt for 12 months and may be extended an additional 12 months. If a final project order is issued, the information becomes public the earlier of: 180 days after the final project order for a signed economic development incentive award agreement is issued, a date specified in the final project order, or when the information is otherwise disclosed.
- Proprietary confidential business information and trade secrets are always confidential and exempt.
- Information on a business's federal employer identification number, reemployment assistance account number, or Florida sales tax registration number is always confidential and exempt.
- Certain information pertaining to economic development incentive agreements. Specific sales, employee wage, and tax information remains confidential and exempt for the duration of the incentive agreement. Information including a business's name, expected number of jobs created or retained, total jobs, the amount of incentives awarded, and the committed

²⁵ DEO Economic Development Incentives Portal website, available at: <http://www.floridajobs.org/office-directory/division-of-strategic-business-development/economic-development-incentives-portal>. (last visited on February 15, 2013).

²⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

total annual wages remain confidential and exempt until the earlier of: 180 days after a final project order is issued for a signed economic development incentives agreement, a date specified in the final project order, or when the information is otherwise disclosed.

III. Effect of Proposed Changes:

The bill establishes an economic development incentive review and online publication process to be implemented by DEO.

Section 1 creates s. 288.076, F.S., relating to reporting for economic development programs.

The bill requires DEO to maintain a website that publishes information on economic development incentive awards to businesses. Information must be made available in an easy to use format that allows users to view and retrieve all required information at once. DEO has 48 hours after the expiration of the period of confidentiality to publish the following information on each project:

Projected Economic Benefits

DEO must publish the economic benefits *projected* to occur for each project at the time of the initial project award date.

Project Information

- The program or programs through which state investment is being made. “State investment” is defined by the bill as any state grants, tax exemptions, tax refunds, tax credits, or other state incentives awarded to a business under a program administered by DEO, including the capital investment tax credit.
- The maximum potential cumulative value of the state investment in a project.
- The target industries²⁷ or high-impact sectors²⁸ that the project may fall under.
- The county or counties that may be affected by the project.
- The total cumulative value of any local financial commitment and in-kind support for the project.

Participant Business Information

- The location of the participant business’s headquarters or the headquarters of the parent company if it is a subsidiary. “Participant business” is defined by the bill to mean an employing unit, as defined in s. 443.036, F.S., that has entered into an agreement with DEO to receive a state investment.
- The firm size class of the participant business, or where owned by a parent company, the firm size class of the participant business’s parent company, using firm size classes established by the U.S. Department of Labor’s Bureau of Labor Statistics. This information must also note whether the participant business qualifies as a small business under s. 288.703, F.S.
- The date of the project award.
- The expected duration of the contract.
- The anticipated date when the participant business will claim its last state investment.

²⁷ Section 288.106(2)(q), F.S.

²⁸ Section 288.108(6)(a), F.S.

Project Evaluation Criteria

- The economic benefits generated by the project.
- The net indirect and induced incremental jobs to be generated by the project. The bill states that “jobs” has the same meaning as in s. 288.106(2)(i), F.S., which means full-time equivalent positions, including positions obtained from a temporary employment agency or employee leasing company, or through a union agreement or coemployment under a professional employer organization agreement. Temporary construction jobs are not included in the definition.
- The net indirect and induced incremental capital investment to be generated by the project.
- The net indirect and induced incremental tax revenue paid to the state to be generated by the project.

Project Performance Goals

- The incremental direct jobs attributable to the project, identifying the number of jobs generated and the number of jobs retained.
- The number of jobs generated and the number of jobs retained by the project. For projects that begin after the bill’s effective date, DEO must report the median annual wage of persons holding such jobs.
- The incremental direct capital investment in the state generated by the project.
- The incremental projected tax revenue to the state paid by the participant business for the project.

Total State Investment to Date

The total amount of state investment disbursed to the participant business to date, itemized by incentive program.

DEO is required to use the methodology and formulas developed by the Office of Economic and Demographic Research (EDR) to determine each project’s economic benefits. Each project’s economic benefits must be published on the DEO website within 48 hours after the conclusion of an agreement between a participant business and DEO. This ensures a project’s total economic benefits that actually occurred are published, allowing visitors of the website to view and compare the information with projected economic benefits at the time of the project’s award date. DEO is directed to publish a description of the methodology and formulas developed by EDR to calculate economic benefits of a project, and must publish the information on its website within 48 hours after receiving it from EDR.

The bill requires DEO to update information on its website for each project annually from its award date. Verified results must be updated for each project, including information on Project Information, Participant Business Information, Project Evaluation Criteria, Project Performance Goals, and Total State Investment discussed above. DEO must publish the date on which the information was last updated on the website.

Within 48 hours after the expiration of the period of confidentiality, DEO must publish the contract or award agreement with the participant business on its website. The agreement may be

redacted to protect a participant business from disclosure of any information that remains confidential or exempt by law.

The bill requires DEO to publish all information required above for all projects completed prior to the bill's effective date of October 1, 2013. DEO has until October 1, 2014, to compile and publish the information.

The bill clarifies that provisions restricting DEO's publication of any information on DEO's website is limited to that purpose, and is not to be construed as creating a public records exemption.

DEO may adopt rules to administer the provisions of the bill.

Qualified Target Industry Tax Refund Reports

DEO must publish on the website any reports of findings and recommendations concerning a business's failure to complete its qualified target industry tax refund program agreement within 48 hours after submitting the report.

Quick Action Closing Fund Timeline

The bill requires DEO to publish information on its website relating to Quick Action Closing Fund²⁹ (QACF) incentive projects, including the average number of days between the date DEO receives a completed QACF application and the date on which the application was approved.

Section 2 provides an effective date of October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁹ Section 288.1088, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is expected to increase the administrative costs of DEO as it relates to developing and maintaining all information made public by the bill.

EDR may incur administrative costs related to the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 4, 2013:

The CS makes the following changes:

- Requires certain information to be published by DEO on its website 48 hours after the expiration of the period of confidentiality rather than within 48 hours after a project award date.
- Replaces the term “beneficiary business” with “participant business” and provides a definition.
- Adds a definition for the term “jobs.” Updates definitions for the terms “project” and “project award date.”
- Removes requirements that DEO assign a unique code to each project that has certain identifying information withheld.
- Adds a requirement that DEO publish projected economic benefits at the time of the initial project award date, as well as the economic benefits for the entire project within 48 hours after the conclusion of an agreement between a participant business and DEO.
- Requires EDR to provide information on the methodology and model used to calculate economic benefits to DEO, rather than Return on Investment, and requires DEO to publish the information within 48 hours after receiving it from EDR.
- Removes requirement that DEO publish the number of full-time employees of the business or parent company and replaces it with a requirement that DEO publish the business’s firm size class or the firm size class of the parent company. Directs that firm sized classes are those defined by the U.S. Department of Labor’s Bureau of Labor Statistics.
- Adds a new section of required information entitled “Project Evaluation Criteria.”

- Removes requirements that DEO publish a business's North American Industry Classification System.
- Removes requirement that DEO publish the lowest, highest, and median wages associated with incremental direct jobs attributable to each project.
- Adds requirement that DEO publish median wage information for the jobs generated or retained by projects beginning after October 1, 2013.
- Changes requirement that DEO publish incremental direct tax revenue paid to the state by the beneficiary business to incremental projected tax revenue to the state paid by the participant business.
- Requires DEO to publish the total amount of state investment disbursed to a participant business to date, itemized by incentive program.
- Changes requirement that information on projects be updated on June 30 and December 31 of each year to require information on projects be updated at least annually from the project award date.
- Requires DEO to publish the date when information on each project was last updated.
- Removes requirement that DEO publish a timeline of QACF projects and replaces it with a requirement that DEO publish the average time between receipt of a completed QACF application and approval of the application by DEO.
- Changes due dates for DEO to gather and publish information on projects completed prior to the bill's effective date. DEO still has 1 year to gather and publish the information, but dates are changed from July 1, 2013, and July 1, 2014, to October 1, 2013, and October 1, 2014.
- Removes language allowing businesses to request a delay in the release of certain information.
- Removes the misdemeanor penalty for employees of DEO who violate the bill's provisions.
- Deletes Section 2 of the bill. Section 2 amended s. 288.075, F.S., relating to economic development confidentiality provisions.
- Changes the bill's effective date from July 1, 2013, to October 1, 2013.

B. Amendments:

None.