SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1186

SPONSOR: Appropriations Subcommittee on General Government, Senators Clary and Crist

SUBJECT: Rural Economic Development

DATE: March 11, 2002 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	CM	Favorable
2.	Bowman	Yeatman	CA	Favorable
3.	Fournier	Johansen	FT	Favorable
4.	Fabricant	Hayes	AGG	Favorable/CS
5.			AP	Withdrawn: Fav/CS
6.				

I. Summary:

Senate Bill 1186:

- Expands the group of individuals or entities eligible to receive grants from the Rural Infrastructure Fund by eliminating a requirement that recipients of grants be applicants to federal government programs for infrastructure funding;

- Expands the purposes for which grants from the Rural Infrastructure Fund may be used to include: fostering job-retention; improving existing infrastructure that has resulted in regulatory action prohibiting economic growth; and reducing the costs to community users of proposed infrastructure improvements that exceed such costs in other comparable communities;

- Modifies section 288.095 pertaining to the Economic Development Trust Fund to improve the efficiency of the budgeting process for the Qualified Defense Contractor (QDC) and Qualified Target Industry (QTI) tax refund programs, and adjusts the timing and responsibility for the annual report on programs funded through the Economic Development Incentives Account;

- Modifies the Qualified Defense Contractors (QDC) Tax Refund Program givingc QDC businesses, adversely impacted by the recent economic downturn, a temporary extension of time to meet the terms and conditions of their tax refund agreements. It ensures that no tax refunds will be paid until established performance conditions have been achieved and confirmed. It also helps to improve the efficiency of the budgeting process for the program and expands the QDC program's refund-prorating provisions;

- Modifies the Qualified Target Industry Tax Refund Program (QTI) allowing firms that temporarily fail to meet agreed targets due to the economic downturn to request an economic stimulus exemption. This would allow those businesses to maintain their eligibility to earn future refunds as the economy improves and they meet previously agreed conditions. The bill also improves the efficiency of the budgeting process for the QTI program and expands the QTI program's refund-prorating provisions for participating firms;

- Expands the existing authority allowing the Agency for Workforce Innovation and the Department of Revenue to share certain information with the Office of Tourism, Trade and Economic Development (OTTED) in its administration of the QTI and other incentive programs;

This bill substantially amends the following sections of the Florida Statutes: 288.0655, 288.095, 288.1045, and 288.106.

II. Present Situation:

Rural Infrastructure Fund

The Rural Infrastructure Fund is located within the Office of Tourism, Trade, and Economic Development to provide infrastructure grants to rural areas which are applicants for federal infrastructure funding programs. Section 288.0655, F.S. Grants may be awarded for up to 30 percent of the total infrastructure project cost. (Section 288.0655(1)(b), F.S.)

Eligible projects must be related to specific job-creating opportunities. Eligible uses of funds shall include improvements to public infrastructure for industrial or commercial sites and upgrades to or development of public tourism infrastructure.

Grants may also be awarded for infrastructure feasibility studies, design and engineering activities, or other infrastructure and planning activities. Section 288.0655(1)(c), F.S. Funds may be advanced to certain projects to be reimbursed with funds awarded through federal programs. (Section 288.0655(1)(d), F.S.) Funds may also be provided to local governments for the identification and preclearance review of land which is suitable for preclearance review. (Section 288.0655(1)(e), F.S.)

Unexpended appropriations to the Rural Infrastructure Fund do not revert to the General Revenue Fund. However, accrued interest within the Rural Infrastructure Fund reverts to the General Revenue Fund.

Tax Refund for Qualified Defense Contractors

In 1996, the QDC program was re-created and codified in s. 288.1045, F.S. (*See* s. 1, ch. 96-348, L.O.F.) In order to participate in the program and be eligible to receive tax refunds, a business must apply to the Governor's Office of Tourism, Trade, and Economic Development (OTTED) for certification. The statute prescribes information that must be submitted by a defense contractor in order to be certified (s. 288.1045(3), F.S.). The QDC program features a local financial support component, under which an eligible business must secure a resolution adopted by county government which recommends the project and which indicates that the necessary commitments of local financial support for the business exist. Local financial support means funding from local sources, public or private, which is equal to 20 percent of the annual tax refund for a qualified business (s. 288.1045(1)(o) and (3), F.S.).

Approved applicants enter into an agreement with OTTED and may receive refunds based on the payment of sales and use taxes, corporate income taxes, intangible personal property taxes, emergency excise taxes, excise taxes on documents, and ad valorem taxes. Tax refunds generally are paid to a participating business over a period of several years. A qualified applicant may not be qualified for any project to receive more than $5,000 times the number of jobs provided for in the tax refund agreement.

As of October 17, 2001, there were two active QDC program projects. These projects are scheduled to generate 350 new jobs and provide more than $1.6 million in future refunds to their sponsoring businesses. As of October 17, 2001, there have been approximately $2.4 million in actual disbursements to QDC program businesses, which have created or retained more than 1,100 jobs.

Tax Refund Program for Qualified Target Industry Businesses

The Qualified Target Industry Tax Refund Program (QTI Program), s. 288.106, F.S., is one of the state's economic development incentives. Under the program, eligible businesses may receive refunds of previously paid taxes, based upon the creation of jobs at a certain salary level. As of October 17, 2001, there were 241 active QTI Program projects. These projects are scheduled to provide 56,706 new jobs and generate more than $213 million in future refunds for their sponsoring businesses. As of October 17, 2001, there have been approximately $23.5 million in actual disbursements to QTI Program businesses, which have created more than 17,500 jobs.

Section 288.106(4), F.S., requires each QTI Program business to enter into a written agreement with the Governor's Office of Tourism, Trade, and Economic Development (OTTED) concerning the business's participation in the program. Compliance with the terms and conditions of a tax refund agreement is a condition precedent for the receipt of a tax refund each year. The failure to comply with the terms and conditions of the tax refund agreement results in the loss of eligibility for receipt of all tax refunds previously authorized and the revocation by the director of OTTED of the certification of the business entity as a qualified target industry business. However, s. 288.106(5)(d), F.S., provides for a prorated tax refund, less a 5-percent penalty, for a QTI Program business that proves it has achieved at least 80 percent of its job creation goal. OTTED is concerned that recent economic conditions might cause many QTI Program businesses to miss their contractual performance targets, thus eliminating the businesses from the program. Section 288.106(4), F.S., also provides that a tax refund agreement must be signed by OTTED and the agreeing QTI Program business within 120 days after the issuance of a letter of certification but not before passage and receipt of a resolution of local financial support.

Additionally, as currently written, s. 288.106, F.S., creates a situation in which it is necessary to appropriate a larger amount for the QTI Program than will actually be paid to QTI Program businesses in a given year, with the majority of those payments being made from funds certified forward at the end of the fiscal year. Each August, when the Legislative Budget Request is prepared, OTTED requests sufficient appropriations to cover all tax refunds scheduled in active tax refund agreements and allows a small amount for new projects that may be approved and have tax refunds due in the following year. However, most of the funds will not actually be disbursed until after the end of the year for which the funds are budgeted – a potential spread of more than two years. When combined with the fact that the appropriations process begins nine months before the fiscal year begins and appropriation decisions are finalized in April of the previous fiscal year, the problems in estimating the required appropriation for the QTI Program are magnified. The following factors further complicate the appropriations process for the program:

The QTI Program is an incentive program. Businesses must be approved before they have made a decision to expand or locate in Florida.
There is a time lag between a QTI Program business' decision to expand or locate in Florida and the creation of the jobs and payment of taxes.
The QTI Program is performance-based, and, therefore, actual tax refund payments are not made until a QTI Program business has created the jobs and is paying the wages upon which the incentive approval was based.
Not all of the businesses approved for the QTI Program fully achieve the agreed-upon job creation and wage level, but this is not known until a business has submitted its tax refund claim and the information has been verified.
As allowed by statute, most QTI Program businesses wait until the end of the fiscal year to submit claims. Because the claims must be reviewed and verified before payment is made, refund payments are pushed past the end of the fiscal year.

Knowing that not all the funds appropriated will actually be paid out in refunds (since some businesses will drop out of the QTI Program during that two-year window and some claims will be disapproved), it might appear reasonable to appropriate a smaller amount based on an estimate of actual payments. However, current law requires that, if the Legislature does not appropriate an amount sufficient to pay all of the refunds scheduled in active agreements, OTTED must calculate what portion of each business's refund could be paid from the appropriation, and the businesses must be informed of the situation and told that they may only receive a pro rata share of the tax refund the state has agreed to pay if they meet the performance requirements (s. 288.095(3)(b), F.S.). Having to inform businesses that the state may not meet its QTI Program obligations would have negative consequences for the state's reputation in the national and international business community. A more detrimental situation could occur if the estimate of actual payments to be made under this scenario was not accurate and eligible businesses did not receive the contracted amount of tax refunds.

Section 288.106(5)(e), F.S., also provides that OTTED, with assistance from the Department of Revenue or the Department of Labor and Employment Security, must specify by written final order the amount of the tax refund that is authorized for a QTI Program business for the fiscal year within 30 days after the date that the claim for the annual tax refund is received by OTTED. Section 288.106(6)(b), F.S., provides that OTTED may request the assistance of those entities or any local government or authority with respect to monitoring the payment of QTI Program-related taxes.

Section 288.106(7), F.S., provides for a repeal of s. 288.106, F.S., on June 30, 2004.

III. Effect of Proposed Changes:

Rural Infrastructure Fund

The committee substitute bill expands the eligibility to receive grants from the Rural Infrastructure Fund by eliminating a requirement that grant recipients be applicants to federal programs for infrastructure funding. The bill also expands the purposes for which grants from the Rural Infrastructure Fund may be used to include: fostering job-retention; improving existing infrastructure that has resulted in regulatory action prohibiting economic growth; and reducing the costs to community users of proposed infrastructure improvements that exceed such costs in other comparable communities.

Tax Refund for Qualified Defense Contractors

For qualified defense contractors, the committee substitute provides for the payment of prorated refunds if the business meets 80 percent of its agreed job targets and 90 percent of its agreed wage levels. Alternatively, a business that is in breach of the terms and conditions of its tax refund agreement may request of the Office of Tourism, Trade, and Economic Development (OTTED) an exemption from the statutory requirement that such businesses lose their certifications. To receive the exemption, however, the business must establish that negative economic conditions in the business's industry prevented the business from complying with the terms and conditions of its contract.

The committee substitute also makes revisions to s. 288.1045, F.S., to specify that claims for tax refunds must be submitted by January 31 for payment from the legislative appropriation for the following fiscal year. The changes are designed to enable OTTED to provide the Legislature with a more accurate estimate of the annual appropriation needed to satisfy tax refund claims. An applicant may not be certified as qualified after June 30,2004.

Tax Refund Program for Qualified Target Industry Businesses

The committee substitute amends s. 288.106, F.S., by altering the timeline for approval of Qualified Target Industry Tax Refund Program (QTI Program) refunds in order to improve the budgetary process for this appropriation. For all new QTI Program projects, or existing projects that request any modification to their agreement, QTI Program tax refund claims will be due by January 31 of each fiscal year for the jobs created by December 31 of that same fiscal year. The refunds associated with those claims will be paid out of the appropriation for the following fiscal year.

Under the new timeline, OTTED will know which businesses have submitted claims by the time the legislative session begins. By the time the legislative budget is complete, some of the claims that had been scheduled for the coming fiscal year can be eliminated, thus reducing the amount of the appropriations request. OTTED will also have had an opportunity to evaluate the claims before the fiscal year has begun and, with the exception of possible appeals, will be able to pay claims at the beginning of the fiscal year rather than after the end of the year.

The full advantages of these changes will not be realized immediately because they can only be applied to new QTI Program agreements, or to amended agreements, because the time frames and prerogatives specified in existing agreements must be honored. However, over a period of several years, these changes will significantly reduce the amount of QTI Program funds appropriated over actual refund payments and eliminate the problem of excessive forward certification of QTI Program funds for payment after the end of the fiscal year.

Conversion of existing agreements to the new QTI Program timeline might be accelerated if QTI Program businesses that are unable to meet the terms and conditions of their agreements qualify for and opt to exercise one of two new provisions in this section. First, the committee substitute amends s. 288.106(4)(b), F.S., to provide that a QTI Program business that does not fulfill its agreement may request an "economic stimulus exemption" from OTTED in lieu of any tax refund claim scheduled to be submitted after June 30, 2001, but before July 1, 2003. In determining whether to grant such an exemption, OTTED must consider the extent to which negative economic conditions in the requesting business's industry prevented the business from complying with the terms and conditions of its tax refund agreement. If granted an economic stimulus exemption, a QTI Program business must agree to renegotiate its tax refund agreement with OTTED to, at a minimum, ensure that the terms of the agreement comply with current law (including the new timeline) and relevant OTTED procedures. When amending the agreement of a business receiving an economic stimulus exemption, OTTED may extend the duration of the agreement for no more than one year. A QTI Program business that receives an economic stimulus exemption may not receive a tax refund for the period covered by the exemption.

The second new provision amends s. 288.106(5)(d), F.S., to expand conditions for approving a prorated tax refund by allowing businesses to receive a prorated refund for achieving at least 90 percent of the average wage specified in the tax refund agreement (but not less than statutory minimum average wage requirements) if it has achieved at least 80 percent of its projected employment and satisfied all other contractual requirements. Under s. 288.106(4)(b), F.S., as amended, a QTI Program business qualifying and opting for a prorated refund would also have to agree to renegotiate its tax refund agreement with OTTED to, at a minimum, ensure that the terms of the agreement comply with current law (including the new timeline) and relevant OTTED procedures.

The committee substitute also includes the following substantive provisions:

Amends s. 288.106(5)(e), F.S., to allow OTTED to grant an extension, for the purpose of allowing a QTI Program business to file additional information in support of its claim, of the time period during which OTTED must approve or disapprove a QTI Program business's tax refund claim and, if approved, the amount of the tax refund that is authorized to be paid;

Creates s. 288.106(5)(g), F.S., which expressly states that s. 288.106, F.S., does not create a presumption that a tax refund claim will be approved and paid;
Amends s. 288.106(6)(b), F.S., to add "jobs and wages" to the list of topics about which OTTED may ask the Department of Revenue, the Agency for Workforce Innovation, or any local government or authority with respect to monitoring the payment of QTI Program-related taxes;
Creates s. 288.106(6)(c), F.S., which expressly states that funds specifically appropriated for the QTI tax refund program may not be used for any purpose other than the payment of tax refunds authorized by s. 288.106; and

The committee substitute takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

B. Public Records/Open Meetings Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

For the Qualified Defense Contractor (QDC) Tax Refund Program and Qualified Target Industry (QTI) Tax Refund Program, expanding the conditions for approving prorated tax refunds and allowing non-compliant businesses to remain temporarily in the program could allow businesses to remain in the program until the economy rebounds.

C. Government Sector Impact:

By expanding the purposes and the eligible individuals for which the Rural Infrastructure Fund may be used, OTTED may have added expenses of evaluating additional grant proposals.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.