

# 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 2410

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Garcia

SUBJECT: Economic Development Incentive Programs

DATE: April 3, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	MacLure	CM	Favorable/CS
2.	_____	_____	FT	_____
3.	_____	_____	ATD	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The committee substitute revises laws relating to several of the state's economic development programs.

### **Capital Investment Tax Credit Program**

The committee substitute modifies the definition of a "qualifying project" eligible to receive a capital investment tax credit to expressly include:

a new financial services facility in this state which creates at least 2,000 new jobs in this state, pays an average annual wage of \$50,000, and makes a capital investment of at least \$30 million.

### **Tax Refund Program for Qualified Defense Contractors**

The committee substitute extends the deadline to June 30, 2004, to apply for an economic-stimulus exemption for qualified defense contractors that have not received an economic stimulus-exemption before the effective date of this committee substitute. An economic-stimulus exemption will enable a qualified defense contractor that due to economic conditions or terrorism is unable to comply with its contract with the Office of Tourism, Trade, and Economic Development to remain in the Qualified Defense Contractor Program.

### **Tax Refund Program for Qualified Target Industry Businesses**

The committee substitute extends the deadline to June 30, 2004, to apply for a economic-stimulus exemption for a qualified target industry business that has not received an economic stimulus-exemption before the effective date of this committee substitute. An economic-stimulus exemption will enable a qualified target industry business that due to economic conditions or terrorism is unable to comply with its contract with the Office of Tourism, Trade, and Economic Development to remain in the Qualified Target Industry Program.

### **Quick Action Closing Fund**

The committee substitute allows the Governor to disburse quick action closing funds without consulting the Legislative Budget Commission. The committee substitute also allows the Governor with the approval of the President of the Senate and the Speaker of the House of Representatives to request a budget amendment from the Legislative Budget Commission for authority to reallocate unencumbered funds in the Quick Action Closing Fund to other economic development programs and operations in an emergency or special circumstance.

This committee substitute amends the following sections of the Florida Statutes: 220.191, 288.1045, 288.106, and 288.1088.

## **II. Present Situation:**

### **Enterprise Florida, Inc.**

In 1992, the Legislature created Enterprise Florida, Inc. (EFI), to assist in the coordination of the state's economic development efforts and to develop a strategic plan for economic development for Florida.<sup>1</sup>

Enterprise Florida, Inc., is a not-for-profit government-business partnership established to guide the development of Florida's economy. Its mission is to maintain a business-friendly climate conducive to the creation and retention of jobs. While not a state agency, EFI receives funds from the Legislature and is one of several public-private partnerships that report to the Office of Tourism, Trade, and Economic Development within the Executive Office of the Governor. The goals of EFI are to provide leadership for business development in Florida by establishing a unified approach to international trade, marketing the state as a pro-business location for potential new investment, and assisting businesses with the creation and retention of jobs. EFI assists businesses considering locating or expanding in Florida by providing information on potential sites, assisting businesses in applying for state financial incentives, and assisting businesses with regulatory and permitting issues. According to EFI, it is attempting to persuade a large financial services company to relocate some of its operations to Florida. The name of the company has been kept confidential; however, EFI refers to the company in code as the "Eden Project."

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<sup>1</sup> Section 288.901, F.S.

EFI assists Florida businesses in the exportation of their products and services by providing market information, export counseling, and trade leads. EFI also sponsors and actively participates in international trade events and missions. EFI also promotes and conducts activities intended to help recruit businesses to distressed rural and urban areas by helping local economic development organizations with marketing efforts and generating leads.

### **Office of Tourism, Trade, and Economic Development**

The 1996 Legislature created the Office of Tourism, Trade, and Economic Development (OTTED) in the Executive Office of the Governor when the Department of Commerce was abolished. OTTED is responsible for promoting economic development, tourism, and international trade and is also responsible for assisting the Governor in formulating policies and strategies designed to provide economic opportunities for the state.<sup>2</sup>

OTTED oversees the activities of five public-private partnerships intended to increase trade, job creation and retention, and “critical industry” development. These partnerships are Enterprise Florida, Inc., the Black Business Investment Board, Inc., the Florida Commission on Tourism (and its direct support organization, VISIT FLORIDA), the Florida Sports Foundation, Inc., and the Florida Space Authority.

OTTED provides administrative oversight of the Office of Film and Entertainment and the Office of Urban Opportunity (Front Porch Florida). OTTED administers several economic development programs and advocacy programs related to industry sectors such as defense, space, and biotechnology. OTTED approves and certifies business expansion and retention incentive programs as well as manages community development programs, such as enterprise zones, community contribution tax credits, and defense grant programs. OTTED serves as the lead agency for expediting permitting processes on economic development projects. Finally, OTTED is responsible for maintaining relationships and interaction with business, economic development, and community organizations and leaders to advocate on their behalf on issues before the Governor and the Legislature.

### **Capital Investment Tax Credit**

Section 220.191, F.S., provides for the Capital Investment Tax Credit (CITC) Program to allow a “qualifying business” that establishes a “qualifying project” in this state to receive an annual credit against the corporate income tax liability or the premium tax liability generated by the project. The term “qualifying project” is defined as a new or expanding facility in this state which creates at least 100 new jobs in this state and is in one of the high-impact sectors identified by EFI and certified by OTTED pursuant to s. 288.108(6), F.S., including, but not limited to, aviation, aerospace, automotive, and silicon technology industries.

An annual credit is granted to any qualifying business in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the project. The term “eligible capital costs” is defined as all expenses incurred by a qualifying business in connection with the acquisition,

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<sup>2</sup> Section 14.2015, F.S.

construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations. Eligible capital costs do not include the cost of any property previously owned or leased by a qualifying business. The sum of all tax credits provided for a qualifying project cannot exceed 100 percent of the eligible capital costs of the project. Tax credits cannot be carried forward or backward by any qualifying business with respect to a subsequent or prior year.<sup>3</sup>

The annual tax credit granted under the CITC Program shall not exceed the following percentages of the annual corporate income tax liability or the premium tax liability generated by or arising out of a qualifying project:

- One hundred percent for a qualifying project which results in a cumulative capital investment of at least \$100 million.<sup>4</sup>
- Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million.
- Fifty percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.

A qualifying project which results in a cumulative capital investment of less than \$25 million is not eligible for the capital investment tax credit.

### **Tax Refund Program for Qualified Defense Contractors**

Finding that high technology jobs in the state were threatened by downsizing in the national defense budget, the Legislature during a special session in 1993 created a tax refund program designed to facilitate the employment of Florida citizens by defense contractors. The Qualified Defense Contractor Tax Refund Program (QDC Program) authorized tax refunds to a certified contractor that: (1) secured a new Department of Defense (DOD) contract; (2) consolidated an existing DOD contract in Florida; (3) converted defense production jobs to non-defense production jobs; or (4) contracted for the reuse of a defense-related facility.<sup>5</sup> The program was repealed effective December 1, 1994.<sup>6</sup>

In 1996, the QDC Program was re-created and codified in s. 288.1045, F.S.<sup>7</sup> In order to participate in the program and be eligible to receive tax refunds, a business must apply to OTTED for certification. The statute prescribes information that must be submitted by a defense contractor in order to be certified.<sup>8</sup> The QDC Program features a local financial support component, under which an eligible business must secure a resolution adopted by county

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<sup>3</sup> Section 220.191(2), F.S.

<sup>4</sup> The term “cumulative capital investment” is defined as the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations. Section 220.191(1)(b), F.S.

<sup>5</sup> Section 288.104, F.S., (1994 Supp.).

<sup>6</sup> The Legislature had specified that the program would be repealed effective December 1, 1994, if no qualified applicant had entered into a valid new DOD contract or begun consolidation of an existing DOD contract, which was expected to result in the employment of at least 1,000 full-time employees. Because this condition was not satisfied by a single qualified applicant, the statute stood repealed.

<sup>7</sup> See s. 1, ch. 96-348, L.O.F.

<sup>8</sup> Section 288.1045(3), F.S.

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.<sup>9</sup>

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.

A QDC Program business's compliance with the terms and conditions of its tax refund agreement with OTTED is a condition precedent for the receipt of a tax refund each year.<sup>10</sup> 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 QDC Program business. However, s. 288.1045(5)(g), F.S., provides for a prorated tax refund, less a 5-percent penalty, for a QDC Program business that proves it has achieved at least 80 percent of its projected employment goal and pays at least 90 percent of the average wage specified in its tax refund agreement. Alternatively, a qualified defense contractor that fails to achieve its contractual obligations may remain in the QDC program if it receives an economic-stimulus exemption. A qualified defense contractor is eligible for an economic-stimulus exemption if its failure to comply with its contractual obligations with OTTED is the result of negative economic conditions in the defense industry or the result of terrorism. The qualified defense contractor must also submit a request for an economic-stimulus exemption to OTTED in lieu of any tax refund claim scheduled to be submitted between January 2, 2001, and June 30, 2003.

### **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.

Eligible businesses must be in an industry that meets the following criteria:

1. Future growth.--Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to Florida's growing access to international markets or to replacing imports.
2. Stability.--The industry should not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry should also be relatively resistant to recession, so that the demand

<sup>9</sup> Section 288.1045(1)(o) and (3), F.S.

<sup>10</sup> Section 288.1045(4)(b), F.S.

for products of this industry is not necessarily subject to decline during an economic downturn.

3. High wage.--The industry should pay relatively high wages compared to statewide or area averages.

4. Market and resource independent.--The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis.

5. Industrial base diversification and strengthening.--The industry should contribute toward expanding or diversifying 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.

6. Economic benefits.--The industry should have strong positive impacts on or benefits to the state and regional economies.<sup>11</sup>

Businesses that may qualify as a qualified target industry business and thus be approved to receive tax refunds must be engaged in one of the following activities: manufacturing activities; financial and insurance services; wholesale trade; information industries; professional technical, scientific, and technical services; management services; and administrative and support services.<sup>12</sup>

Section 288.106(4), F.S., requires each QTI Program business to enter into a written agreement with 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 and 90 percent of the average wage specified in its agreement with OTTED. Additionally, the 2002 Legislature amended s. 288.106(4)(b), F.S., to enable certain businesses to remain in the QTI Program after failing to meet their contractual obligations. Such businesses may remain in the QTI Program if they apply for an economic-stimulus exemption from their contractual obligations due to negative economic conditions or terrorism, in lieu of a tax refund claim that was scheduled to be submitted between January 2, 2001, and June 30, 2003.

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

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<sup>11</sup> Section 288.106(1)(o), F.S.

<sup>12</sup> Enterprise Florida, Inc., *Qualified Target Industry (QTI) Tax Refund Target Industries*, revised November 25, 2002.

## Quick Action Closing Fund

The 1999 Legislature created the Quick Action Closing Fund within OTTED for the purpose of helping Florida to compete for high-impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities.<sup>13</sup> EFI evaluates proposals for the use of the quick action closing fund (QACF), makes recommendations to OTTED, and describes the nature of the business and its products or services, the number of jobs created and the annual average wages of the jobs, the cumulative amount of investment, the impacts of the business at the regional or state level or upon the state's universities and community colleges, and what role the incentive is expected to play in the business's decision to locate or expand in the state or for a private investor to provide critical rural infrastructure.<sup>14</sup>

Once EFI makes its evaluation and recommendation to OTTED, the director of OTTED must make a recommendation of approval or disapproval to the Governor. OTTED must also provide the Governor with proposed performance conditions the project must meet to obtain the incentive funds.<sup>15</sup>

The Governor must consult with the President of the Senate and the Speaker of the House of Representatives before giving final approval for using the QACF for the project and must recommend approval of the project and release of moneys from the QACF pursuant to legislative consultation and review requirements of s. 216.177, F.S. Once the Governor decides to seek release of funds, the Governor's Office of Policy and Budget prepares a request for a budget amendment to be made to the Legislative Budget Commission. A request for a budget amendment that provides notice of intent to disburse quick action closing funds must be made at least 3 days before the proposed disbursement.<sup>16</sup> Within that three-day period, the chair or the vice chair of the Legislative Budget Commission or the President of the Senate or the Speaker of the House of Representatives may cancel the proposed disbursement of funds until the Legislative Budget Commission or the Legislature addresses the matter.<sup>17</sup>

Once approved by the Governor, OTTED enters into a contract with the business and establishes the conditions for the payment of moneys from the QACF.<sup>18</sup> Conditions in the contract include those factors identified by EFI in its request to OTTED and also include sanctions for failure to meet performance conditions. EFI is responsible for validating the performance of the contract and reporting to the Governor and the Legislature within 6 months after contract completion.<sup>19</sup>

According to EFI's 2002 Incentives Report, the QACF was recommended and approved for five projects in FY 2002.<sup>20</sup> Four of these projects entered into a contract for QACF moneys (one project selected another state) in exchange for making new capital investments of \$265 million,

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<sup>13</sup> Section 288.1088, F.S.

<sup>14</sup> Section 288.1088(3)(a), F.S.

<sup>15</sup> Section 288.1088(3)(b), F.S.

<sup>16</sup> See s. 216.177(2)(a), F.S.

<sup>17</sup> Section 216.177(2)(b), F.S.

<sup>18</sup> Section 288.1088(3)(c), F.S.

<sup>19</sup> Section 288.1088(3)(d), F.S.

<sup>20</sup> Enterprise Florida, Inc., *2002 Incentives Report*, pp. 25-26.

creating 1,400 new jobs with an average annual wage of \$40,136, and retaining 3,500 existing jobs.

Since the inception of the QACF, there are a total of eight approved active projects with capital investments of \$416 million and 7,100 created or retained jobs with an average annual wage of \$47,252. State funding since inception of the QACF totals \$24,830,000. No funds were appropriated to the QACF by the Legislature for FY 2002-2003.

### **III. Effect of Proposed Changes:**

The committee substitute revises statutes relating to several of the state's economic development incentive programs.

**Section 1** of the committee substitute adds a provision to the existing definition of a qualifying project eligible to receive a capital investment tax credit. The additional provision provides that a qualifying project also includes:

a new financial services facility in this state which creates at least 2,000 new jobs in this state, pays an average annual wage of at least \$50,000, and makes a capital investment of at least \$30 million.

The committee substitute specifies that this provision expires on June 30, 2004.

**Section 2** of the committee substitute modifies the definition of "Department of Defense contract" in the Qualified Defense Contractor Tax Refund Program to include certain contracts for products or services for homeland security. Under the revised definition, eligible contracts may be made with the Department of Homeland Security.

Section 2 of the committee substitute also extends the period for which qualified defense contractors that fail to comply with their contractual obligations with the Office of Tourism, Trade, and Economic Development (OTTED) may apply for an economic-stimulus exemption. To receive the exemption, the failure to comply with contractual obligations with OTTED must be the result of negative economic conditions in the defense industry or the result of terrorism. A qualified defense contractor must also submit the request for an economic-stimulus exemption to OTTED in lieu of any tax refund claim scheduled to be submitted after January 1, 2001, and before June 30, 2004. Approval of the exemption will enable a business to remain in the defense contractor tax refund program. A qualified defense contractor will be ineligible to apply for an additional exemption if it has received an economic stimulus exemption prior to the effective date of the committee substitute.

**Section 3** of the committee substitute revises the criteria that OTTED and Enterprise Florida, Inc., are directed to use to identify a "target industry business" under the Qualified Target Industry Tax Refund Program, emphasizing certain defense and homeland security industries.

Section 3 of the committee substitute also extends the period for which qualified target industry businesses that fail to comply with their contractual obligations with OTTED may apply for an economic-stimulus exemption. To receive the exemption the failure to comply with contractual

obligations with OTTED must be the result of negative economic conditions in a business's industry or the result of terrorism. A qualified target industry business must also submit the request for an economic-stimulus exemption to OTTED in lieu of any tax refund claim scheduled to be submitted after January 1, 2001, and before June 30, 2004. Approval of the exemption will enable a business to remain in the Qualified Target Industry Tax Refund Program. A qualified target industry business will be ineligible to apply for an additional exemption if it has received an economic stimulus exemption prior to the effective date of the committee substitute.

**Section 4** of the committee substitute eliminates the requirement that the Governor notify the Legislative Budget Commission under s. 216.177, F.S., prior to disbursing funds from the Quick Action Closing Fund.

Section 4 of the committee substitute also authorizes the Governor, with the approval of the President of the Senate and the Speaker of the House of Representatives, to request a budget amendment under s. 216.177, F.S., for authority to reallocate unencumbered funds in the QACF to other economic development programs and operations in an emergency or special circumstance. The committee substitute, however, does not define what would constitute an emergency or special circumstance authorizing the Governor to make the request to reallocate funds.

**Section 5** of the committee substitute provides that the committee substitute takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

##### A. Tax/Fee Issues:

Issue/Fund	<u>Fiscal Year 2003-2004</u>							
	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Capital Investment Tax Credit Program	0.0	\$ (1.0)	0.0	0.0	0.0	0.0	0.0	\$ (1.0)

\* Insignificant (less than \$50,000)

**B. Private Sector Impact:**

Businesses may be more likely to relocate to Florida if quick action closing funds are available more quickly. A financial services facility meeting the criteria under the committee substitute would be eligible for a capital investment tax credit.

Certain businesses participating in the tax refund programs for qualified defense contractors and qualified target industry businesses could remain in the programs during a period in which they are unable to meet program standards due to negative economic conditions or terrorism.

**C. Government Sector Impact:**

The Governor will be able to disburse quick action closing funds more quickly, as well as seek to reallocate unencumbered funds in the quick action closing fund.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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