HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 583 w/ CS (PCB COM 04-01) Qualified Target Industry and Qualified Defense Contractor Tax Refund Programs

SPONSOR(S): Committee on Commerce

TIED BILLS: **IDEN./SIM. BILLS:** SB 1494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Commerce	16 Y, 0 N	Sheheane	Billmeier
2) Workforce & Economic Development Sub	6 Y, 0 N	Sheheane	Billmeier
3) Commerce	15 Y, 0 N w/CS	Sheheane	Billmeier
4) Finance & Tax	24 Y, 0 N	Overton	Diez-Arguelles
5) Transportation & Econ. Dev. Apps. (Sub)	15 Y, 0 N	Hawkins	Hawkins
6) Appropriations		Hawkins	Baker

SUMMARY ANALYSIS

The bill extends the authority for the Qualified Target Industry tax refund (QTI) and the Qualified Defense Contractor (QDC) programs for an additional five years and clarifies that tax refund agreements in existence when the statutory authority for the programs expires continue in effect. The bill also clarifies that the qualified defense contractor tax refund program may be used to retain jobs. The bill requires claims for tax refunds for both programs to be paid in the order approved.

Section 288.095, F.S., is amended to require the Office of Tourism, Trade, and Economic Development (OTTED) to pay claims for tax refunds under both programs in the order approved. The bill eliminates the requirements in current law requiring tax refund claims to be prorated if the Legislature does not appropriate sufficient funds to satisfy the amount of tax refund claims that OTTED estimates it will receive. The bill provides that unpaid claims will be paid from the following year's appropriation. By March 1 every year, OTTED must notify the legislative appropriations committees of any anticipated shortfall in the amount of funds needed to satisfy claims for tax refunds from the appropriation for the current fiscal year.

The bill directs OTTED to attempt to amend existing tax refund agreements created under the qualified target industry tax refund program to require tax refund claims to be submitted by January 31 for the net new full time equivalent Florida jobs as of December 31 and requires Enterprise Florida, Inc., to discuss progress toward amending the agreements in its annual report on economic development programs.

The QTI and QDC tax refunds are only available through appropriation. If the QTI program is extended the annual appropriation is expected to be from $20 to 25 million annually but could be as high as the statutory cap of $35 million. If the program is allowed to sunset June 30, 2004, continuing obligations for contracts signed through June 30, 2004 would taper off to $14 million in Fiscal Year 2008-2009 and fall to zero through Fiscal Year 2013-2014. All contract payments are contingent on appropriations. In HB 1835, the House General Appropriations Act, $21 million is provided for the QTI program and $330,000 for the QDC program. These amounts are needed to pay contract obligations regardless of whether the programs are extended.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[X]
2. Lower taxes?	Yes[X]	No[]	N/A[]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Qualified Target Industry Tax Refund (QTI)

The Qualified Target Industry Tax Refund program is created under s. 288.106, F.S., and is available to Florida communities to encourage quality job growth in targeted high value-added businesses. Target industries include manufacturing facilities, finance and insurance services, wholesale trade (business to business electronic marketing), information industries, professional, scientific and technical services, management services, and administrative and support services. Targeted businesses must serve multi-state and/or international markets and must be able to locate in other states. Retail activities, utilities, mining and other extraction or processing businesses, and activities regulated by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation are statutorily excluded from consideration.

In order to participate in QTI, the applicant must indicate among other things that it will create a net of at least 10 new Florida jobs and pay an average annual wage of at least 115% of state, metropolitan statistical area, or local average wages. For a project located in a rural community or an enterprise zone, the net increase for employment may be waived and the wage requirement can also be waived in those areas as well as a designated brownfield area.

Pre-approved applicants who create jobs in Florida receive tax refunds of $3,000 per net new full-time equivalent Florida job created and $6,000 in an enterprise zone or rural county. Additional refunds are available for wages above a certain level. An approved applicant can receive tax refunds on corporate income, sales, ad valorem, intangible personal property, insurance premium, and certain other taxes up to a maximum of $5 million per single qualified applicant in all years, and no more than 25% of the total refund approved may be taken in any single fiscal year.

To be eligible for tax refunds under the QTI program, a target industry business must apply to the Office of Tourism, Trade, and Economic Development (OTTED) for certification as a qualified target industry business before it decides to locate a new business in this state or to expand an existing business in this state. Then the business must enter into a performance-based contract with OTTED to create a specific number of high-wage jobs.

A target industry business is a corporate headquarters or a business within a list of target industries developed by OTTED in consultation with Enterprise Florida, Inc., (EFI). OTTED must submit this list to the Legislature with its final agency legislative budget request. Industries selected for the list must meet the following criteria: expected to have future growth in employment and output, provide stable employment not subject to layoffs, provide high wages, be independent of Florida markets and resources, diversify the state's economic base, and benefit the state and regional economies. The industries contained on the target industries list include certain manufacturing facilities, finance and insurance services, wholesale trade, information services, professional, scientific, and technical services, management services, and administrative support. Additionally, defense industry businesses may be target industry businesses.[1]

In its application for certification, a target industry business must describe its proposed new business or expansion of an existing business. The description of proposed operations must provide for the creation of jobs that have an average salary of at least 115 percent of the average private sector wage in the area where the business is to be located or the statewide average private sector wage. OTTED, however, may waive the average wage requirement of the QTI program in limited circumstances. A new or expanding business must propose the creation of at least 10 jobs. An expanding business must also propose to increase its real and personal property resulting in a 10-percent net increase in employment in this state.[2]

The application must also be accompanied by a resolution from the county or municipality in which the business will be located. The resolution must recommend that the business be certified as a qualified target industry business and commit the county or municipality to provide local financial support. The local financial support must equal at least 20 percent of the tax refund available under the program for the business to be eligible for a full refund. This financial support is typically called the 20-percent local match. The business may have to agree to the local government's terms and conditions for eligibility for the local match.[3]

If the business proposes to locate in a brownfield area or in a rural county or certain counties contiguous to a rural county, local financial support is optional.[4] If a local government chooses to exercise the option to be exempt from the local financial support requirements of the program, then the business is not eligible for more than 80 percent of the tax refunds that would otherwise be available to it under the program.[5]

Upon receipt of a completed application, OTTED must review the application based on several criteria including: expected contributions to the state strategic economic development plan adopted by Enterprise Florida, Inc., the economic benefit of the jobs created by the project in this state, the amount of capital investment to be made by the applicant in this state, the local commitment and support for the project, the effect of the project on the local community, the effect of any tax refunds under the QTI program on the viability of the proposed operations and the probability that the proposed operations will be undertaken in this state, the expected long-term commitment to this state, and a review of the business's past activities in this state or other states.[6]

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

QTI Tax Refund Agreements

After a business is certified as a QTI business, it may enter into a tax refund agreement with OTTED. The agreement typically will incorporate the application for certification as a QTI business, and the proposed number of jobs and salary projections will become contract requirements. The contract also

[1] See s. 288.106(1)(o), F.S.
[2] See s. 288.106(3), F.S.
[3] See s. 288.106(3)(f), F.S.
[4] See s. 288.106(3)(b)1., F.S.
[5] See s. 288.106(5)(c), F.S.
[6] See s. 288.106(3)(c), F.S.

will clearly state that the agreement to pay tax refunds is contingent upon appropriations from the Legislature.[7]

A business that was certified as a QTI business after May 30, 2002, must file its claim for a tax refund by January 31 each year. If a business does not timely submit a claim for refunds, it will be terminated from the QTI program.[8]

If a QTI business satisfies the job-creation and wage requirements in its contract with OTTED, pays sufficient taxes, and OTTED receives the necessary local financial support, the business will receive the full tax refund specified in its agreement. If a QTI business fails to fully comply with its job-creation and salary requirements, it may receive a prorated tax refund less a 5-percent penalty. To be eligible for a prorated refund, the business must achieve at least 80 percent of its projected employment, and the average wage paid by the business must be at least 90 percent of the wage specified in its contract. The average wage paid must also be at least 115 percent of the average area wage, or 150 or 200 percent of the average area wage if the business contracted for the additional refund for salaries at those thresholds. The business will also receive a prorated refund if the local financial support received by OTTED is less than 20 percent of the refund authorized under the tax refund agreement.[9]

QTI Appropriations and Expenditures

The QTI tax refund is only available through appropriation. Since the inception of the QTI program, the tax refunds paid to QTI businesses have been less than the appropriations, resulting in significant reversions of appropriations. The disparity between appropriations and actual expenditures existed because OTTED did not know when preparing its legislative budget requests how many businesses with which it contracted to pay tax refunds for job creation would actually submit claims for refunds. OTTED then requested, and the Legislature appropriated, enough funds to the QTI program to pay all possible tax refund claims. As a result, OTTED did not have to prorate tax refund claims as required by s. 288.095(3)(b), F.S. After the budget request was made, some QTI businesses did not submit claims for tax refunds because they did not meet the requirements of the QTI program, did not follow through with their business plans, or withdrew from participation in the program.

QTI Appropriations and Expenditures provided by OTTED:

	2000-01	**2001-02**	**2002-03**	**2003-04**
Appropriations	$17,750,000	$20,000,000	$24,000,000	$21,000,000
Expenditures	$5,482,128	$12,919,527	$15,547,303	$1,300,000

Note -- FY 2003-04 expenditures are paid or in process as of December 31, 2003.
Most claims for FY 2003-04 will not come in until May or June of 2004.

To address the disparity between expenditures and appropriations, section 288.106(5)(a), F.S., was amended in 2002. ch. 2002-392, L.O.F., The timeline for approval of QTI program refunds was modified in order to improve the budgetary process for this appropriation. Tax refund claims were to be submitted by January 31 of each fiscal year for the jobs created by December 31. Refunds associated with those claims were to be paid out of the appropriation for the following fiscal year, thus providing an accurate estimate of the refund amount needed each fiscal year in time to be addressed during the appropriations process.

Although new contracts executed since this law change reflect the fixed claim date, the majority of pending claims are still based on contracts executed prior to the change.

[7] See s. 288.106(4), F.S.
[8] See s. 288.106(5), F.S.
[9] See s. 288.106(5)(d), F.S.

Qualified Defense Contractor Tax Refund (QDC)
The qualified defense contractor (QDC) tax refund program was created in 1993 after the Cold War ended. The impetus for the program appears to have been Executive Order No. 93-118, signed by Governor Chiles on April 13, 1993. The order found:

- The federal government is in the midst of major post-Cold War cuts in the nation's defense industry.
- By 1997, the federal defense budget is projected to decline by more than 42 percent, in real terms, from 1985 levels.
- The federal cuts include a 30-percent reduction in military personnel, base closures, and elimination of numerous defense contracts for goods and services, with employment losses in Florida of up to 55,000 by 1997.

The QDC program provides tax refunds for job creation similar to the tax refund program for qualified target industries. The programs, however, differ significantly as follows:

- Tax refunds under the QDC program are paid for each job retained in addition to each new job created.[10]
- Participation in the QDC program is limited to certain defense contractors.[11]
- OTTED has the discretion to score applications for certification as a QDC business, and a tax refund of up to $5,000 per job is based on that score.[12]

QDC Qualification Criteria
In order to qualify for certification as a qualified defense contractor, applicants must establish, in a written agreement, that the jobs created will pay an estimated annual average wage of 115 percent of the average wage in the area where the project is located. If the project is the consolidation of a Department of Defense contract, then the project must result in a net increase of at least 25 percent in the number of jobs at the facility in Florida or the addition of at least 80 jobs at the applicant's facilities in Florida. If converting defense production jobs to non-defense production jobs, the applicant must show a net increase in non-defense employment at the facilities in Florida. The Department of Defense contract cannot allow the business to include costs of relocation or retooling in its base as allowable costs under a cost-plus, or similar contract. A business unit of the applicant must have derived at least 60 percent of its gross receipts in Florida from Department of Defense contracts in the last fiscal year, and must have derived at least 60 percent of its gross receipts in Florida from Department of Defense contracts over the 5 years preceding the date an application is submitted. The reuse of a defense-related facility must result in the creation of at least 100 jobs at the Florida based facility.[13]

QDC Tax Refund Agreements
After determining that the applicant meets the requirements described above, OTTED will review each application based on expected contributions to the state by the project, the economic benefits of the jobs created or retained by the project, the amount of capital investment to be made by the applicant in the state, the local support for the project, the impact of the project on the local community, the dependence of the local community on the defense industry, and the impact of any tax refunds granted as a result of the project.[14]

If the applicant qualifies for the qualified defense contractor program, the applicant must enter into a written agreement with OTTED and follow specific requirements set forth is s. 288.1045 (4), F.S.

[10] See s. 288.1045(3)(f), F.S.
[11] See s. 288.1045(3), F.S.
[12] See s. 288.1045(3)(f), F.S.
[13] See s. 288.1045(3)(e), F.S.
[14] See s. 288.1045(4)

<u>QTI and QDC Program Statistics</u>

According to the Enterprise Florida, Inc., (EFI) 2003 Incentives Report, since the inception of the program in 1994 there have been 367 contracts with businesses under the QTI program. Of these contracts, 322 are active contracts requiring QTI businesses to create 69,997 jobs with an average wage of $36,010 per job. These businesses also proposed to make a total capital investment in this state of over $6.1 billion in their applications for certification as QTI businesses, which is an average investment of $23.94 for each dollar of tax refunds. The average incentive per job for active QTI businesses is $3,641, according to EFI staff.

Under the QDC program, there are two completed and two active contracts. The active QDC businesses are contractually obligated to retain 350 jobs with an average salary of $53,472. According to a representative at OTTED, the State paid $270,000 in refunds for the QDC program for fiscal year 2003.

Enterprise Florida, Inc., also conducts an economic impact analysis for the business operations proposed in each application for certification as a QTI or QDC business. To conduct the analysis, EFI uses an economic model based on the Regional Input-Output Modeling System (RIMS II) from the U.S. Department of Commerce. The economic model is used to calculate the payback ratio to the state. The payback ratio is the amount of tax revenue returned to the state over a 10-year period for each dollar of tax refunds under the QTI and QDC programs. According to the model, the payback ratio to the state is $12.59 for the QTI program and $17.04 for the QDC program.

Effect of Proposed Changes

The bill provides that no additional businesses may be qualified to participate in the QTI and the QDC tax refund programs after June 30, 2009, thereby extending the programs for 5 years beyond their current scheduled closure date of June 30, 2004. The bill also clarifies that tax refund agreements existing on June 30, 2009, continue in effect in accordance with their terms.

The bill clarifies s. 288.1045, F.S., which creates the QDC program, to indicate that the program may be used to retain jobs. Applications for certification as a qualified defense contractor must also state the number of jobs to be retained.

Section 288.095, F.S., is amended to require OTTED to pay claims for tax refunds under both programs in the order approved. The bill eliminates the requirements in current law requiring tax refund claims to be prorated if the Legislature does not appropriate sufficient funds to satisfy the amount of tax refund claims that OTTED estimates that it will receive. Instead, the bill provides that unpaid claims will be paid from the following year's appropriations. By March 1 every year, OTTED must notify the legislative appropriations committees of any anticipated shortfall in the amount of funds needed to satisfy claims for tax refunds from the appropriation for the current fiscal year.

OTTED is directed to attempt to amend existing tax refund agreements created under s. 288.106, F.S., the QTI program, to require tax refund claims to be submitted by January 31 for the net new full time equivalent Florida jobs as of December 31. Enterprise Florida, Inc., must report on OTTED's progress toward amending the tax refund agreements in its annual report on economic development programs. The report must also list the name and tax refund amount provided to each QTI and QDC business during the prior fiscal year.

C. SECTION DIRECTORY:

Section 1. Amends s. 288.095, F.S., requiring claims for tax refunds to be paid in the order approved.

Section 2. Amends s. 288.1045, F.S., clarifying that the qualified defense contractor tax refund program may be used to retain jobs and clarifies that tax refund agreements in existence when the statutory authority for the programs expires continue in effect. This section also extends the authority for the QDC program for an additional five years.

Section 3. Amends s. 288.106, F.S., extending the authority for the QTI program for an additional five years and clarifies that tax refund agreements in existence when the statutory authority for the program expires continue in effect.

Section 4. Directs the Office of Tourism, Trade, and Economic Development to attempt to amend existing tax refund agreements created under the qualified target industry tax refund program to require tax refund claims to be submitted by January 31 for the net new full time equivalent Florida jobs as of December 31 and requires Enterprise Florida, Inc., to discuss progress toward amending the agreements in its annual report on economic development programs.

Section 5. This act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

The bill extends the QTI and QDC programs through Fiscal Year 2008-2009.

There is an ongoing fiscal impact for the QTI program even if allowed to sunset on June 30, 2004. Below is a chart of the expected payments to meet ongoing total contract obligations for contracts signed through the June 30, 2004 sunset date. Most contracts are multi-year contracts with tax refund payments due (for jobs created) from five to seven years from the contract signing. If the QTI program is sunset on June 30, 2004, approximately $139 million in total contract obligations (or $111 million in expected payments) still remain through FY 2013-2014. Under current law, payments for contracts are contingent on appropriations and if less is appropriated than the contact obligation for a given year, the refund amounts will be pro-rated across the contracts. (This bill revises this provision to pay contracts in the order approved rather than in pro-rated amounts.)

Pursuant to section 288.095, Florida Statutes, the total of contracts cannot exceed $35,000,000 annually. If the QTI program is extended through FY 2008-2009, the annual amount appropriated can be expected to be $20,000,000 to $25,000,000 according program staff. If the program is sunset on June 30, 2004, appropriations needed to meet contract obligations would taper off to approximately $14,000,000 in Fiscal Year 2008-2009 and to zero through FY 20013-20014. The fiscal impact of extending the program is the difference between the payment stream for obligations on contracts signed through June 30, 2004 and the amount that could be obligated up to the cap $35,000,000 statutory cap.

HB 1835, the House General Appropriations Act, provides $21,000,000 for payment of QTI contract obligations for Fiscal Year 2004-2005. This amount is needed regardless of the sunset date.

	FY 04/05	FY 05/06	FY 06/07	FY 07-08	FY 08-09
Ongoing Contract Totals if Sunset 6/30/04*	$25,599,878	$27,356,884	$27,438,318	$24,781,822	$17,242,740
Expected payments on	$21,000,000	$23,000,000	$22,000,000	$19,000,000	$14,000,000

contract obligations**					

**The ongoing contract total is based on a total of approximately 380 contracts, including current contracts plus a small estimate of new projects approved before June 30, 2004. The total amount of contracts through 2013-2014 is $139 million.*

***The actual appropriation will be somewhat less than the contract total, as some projects will fall short of the performance requirements and will drop out. Also actual expenditures are also typically less than the amount appropriated since businesses may not create as many jobs as originally estimated and therefore are refunded a smaller amount of taxes paid. Total expected appropriations are $111 million through Fiscal Year 2013-2014. Recent revisions to the standard contract reporting period have resulted in appropriations being based more on actual jobs created. This should result in the amount appropriated being closer to the amount expended for refunds as greater numbers of contracts are written under the revised reporting dates.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill extends the QTI and QDC programs for an additional five years which would require local governments to continue financial support of the program.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Those businesses participating in the QTI and QDC programs will continue to receive significant tax refunds as a result of this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Commerce Committee Meeting on February 16, 2004

The Commerce Committee adopted one strike all amendment and reported the bill favorably with a committee substitute (CS) in the meeting on February 16, 2004. The CS extends the authority for the Qualified Target Industry tax refund (QTI) and the Qualified Defense Contractor (QDC) programs for an additional five years and clarifies that tax refund agreements in existence when the statutory authority for the programs expires continue in effect. The CS also clarifies that the qualified defense contractor tax refund program may be used to retain jobs and requires claims for tax refunds for both programs to be paid in the order approved. The CS directs the Office of Tourism, Trade, and Economic Development to attempt to amend existing tax refund agreements created under the qualified target industry tax refund program to require tax refund claims to be submitted by January 31 for the net new full time equivalent Florida jobs as of December 31, and requires Enterprise Florida, Inc., to discuss progress toward amending the agreements in its annual report on economic development programs.

On April 2, 2004, the Transportation and Economic Development Appropriations Subcommittee recommended the adoption of two amendments. The first changes the sunset date for the Qualified Target Industry (QTI) program to January 1, 2007. The second adds language requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to study both the Qualified Target Industry (QTI) and the Qualified Defense Contractor (QDC) programs to evaluate the benefits that accrue to the state from these programs and to evaluate the programs' administration, including whether the programs could be run more efficiently if administered under a different structure such as a tax credit.