HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1483 PCB EDTB 05-04 Qualifed Target Industry/Qualifed Defense Contractors
SPONSOR(S): Economic Development, Trade & Banking Committee, Bilirakis
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	12 Y, 0 N	Carlson	Carlson
1) Finance & Tax Committee	7 Y, 0 N	Diez-Arguelles	Diez-Arguelles
2) Commerce Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill will amend the Qualified Target Industry (QTI) and Qualified Defense Contractor (QDC) programs to:

- Require tax refunds under QTI and QDC be paid in the order they are approved by the Governor's Office of Tourism, Trade and Economic Development (OTTED);

- Require OTTED to pay tax refunds that exceed the appropriation for a given fiscal year from appropriations for the following fiscal year and to report to the Legislature by March 1 of any anticipated shortfall in the amount of funds needed to satisfy tax refunds in any given fiscal year;

- Require OTTED to report to the Legislature its success in amending tax refund agreements to require claims to be submitted by January 31 for the net new full-time equivalent Florida jobs as of December 31 of the previous calendar year and to report the name and tax refund amount for each business that receives a refund under QTI or QDC for the previous fiscal year;

- Clarify that communications services taxes administered under chapter 202 are eligible for refund and authorizing OTTED to make retroactive payments to October 1, 2001 for taxes paid under that chapter after the law was transferred from chapter 212;

- Revise QDC application requirements to show the number of full-time-equivalent Florida jobs to be retained in a project and eliminating an application requirement to show prior taxes paid;

- Allow a QTI or QDC business to seek up to a two year economic stimulus exemption due to the effects of a named hurricane or tropical storm;

- Authorize OTTED to waive the 20 percent local financial support requirement for certain counties through fiscal years 2006-2007 in response to the named hurricanes of 2004; and

- Extend the expiration date for the QTI and QDC programs to June 30, 2010.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill provides for the continued operation of two tax refund programs for qualified businesses.

Empower families – The bill will allow businesses to take advantage of the QTI and QDC tax refund programs, which are designed to provide jobs offering high wages to Florida citizens.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Qualified Target Industry Tax Refund Program (QTI)

The Qualified Target Industry Tax Refund program created under s. 288.106, F.S., is designed to encourage quality job growth in targeted high value-added businesses. A "target industry business" is a corporate headquarters or a business engaged in any one of the listed target industries developed by the Office of Tourism, Trade, and Economic Development (OTTED) in consultation with Enterprise Florida, Inc., (EFI). Target industries must meet the following criteria: be expected to have future growth in employment and output; provide stable employment; provide high wages; be independent of Florida markets and resources; diversify the state's economic base; and benefit the state and regional economies.[1] Current target industries include manufacturing facilities, finance and insurance services, wholesale trade, information services, professional, scientific, and technical services, management services, and administrative support.

To be eligible for tax refunds under the QTI program, a target industry business must apply to 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. The business must then enter into a performance-based contract with OTTED to create a specific number of high-wage jobs. A new business must promise to create a net of at least ten new Florida jobs and pay wages of at least 115 percent of the state or local private sector average wages. An expanding business must increase its employment by ten percent and pay an average annual wage of at least 115 percent of state or local private sector average wages. For a project located in a rural city or county, an enterprise zone or a brownfield area, the average wage requirement may be waived.[2]

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

An eligible business may receive tax refunds of $3,000 per net new full-time equivalent Florida job created at the 115 percent average wage; this refund is increased to $6,000 for net new full-time equivalent jobs created in an enterprise zone or rural county. If the business pays an average wage of

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

at least 150 percent of the average private sector wage, it may receive an increase of $1000 per net new full-time equivalent jobs created. If the business pays a wage of at least 200 percent of the average private sector wage, it may receive an increase of $2,000 per net new full-time equivalent jobs created.[4]

An eligible business may seek tax refunds on corporate income, sales, ad valorem, intangible personal property, insurance premium, emergency excise and excise taxes on documents that the business has paid. The refunds are limited to 25 percent of the total tax refunds specified in the refund agreement in any fiscal year, up to $1.5 million or $2.5 million if the business is located in an enterprise zone. The refunds are capped at $5 million total for all fiscal years or $7.5 million if the business is located in an enterprise zone. The business must apply for a refund by January 31 of each year for refunds to be paid through appropriations for the fiscal year beginning on July 1 following the January 31 claims submission deadline.[5]

If the business satisfies its performance agreement with OTTED, pays taxes, and the necessary local financial support is provided, 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 five percent penalty.[6] 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. If the local financial support is less than 20 percent the tax refund must be reduced.[7]

A business may also seek an economic stimulus exemption of up to one year from its refund agreement requirements based on negative economic conditions in the applicant's industry or specific acts of terrorism that have prevented the applicant from complying with the terms and conditions of the refund agreement. The business and OTTED must renegotiate any agreement subject to the exemption to ensure that the terms of the agreement comply with current law and OTTED procedures. During the period of the exemption, the applicant may not receive a tax refund. The exemption must have been requested before June 30, 2004.[8]

QTI Appropriations and Expenditures

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 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. Many QTI businesses, however, 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.

[4] See s. 288.106(2)(b), F.S.
[5] See s. 288.106(5)(a), F.S.
[6] See s. 288.106(5)(d), F.S.
[7] See s. 288.106(5)(c), F.S.
[8] See s. 288.106(4)(b), F.S.

QTI Appropriations and Expenditures

	2001-02	2002-03	2003-04	2004-05
State Appropriations	$20,000,000	$24,000,000	$21,000,000	17,625,000
State Expenditures	$12,919,527	$15,547,303	$1,300,000	2,415,882***

Note -- FY 2004-05 expenditures are paid or in process as of December 31, 2004.
****Most claims for FY 2004-05 will not come in until May or June of 2005.*
Source: Governor's Office of Tourism, Trade and Economic Development

To address the disparity between expenditures and appropriations, section 288.106(5)(a), F.S., modified the timeline for approval of QTI program refunds. 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.

Qualified Defense Contractor Tax Refund Program (QDC)

The Qualified Defense Contractor tax refund program was created in 1993 by Executive Order No. 93-118, signed by Governor Chiles on April 13, 1993. The order found at the time that:

- The federal government was in the midst of major post-Cold War cuts in the nation's defense industry.
- By 1997, the federal defense budget was projected to decline by more than 42 percent, in real terms, from 1985 levels.
- The federal cuts included 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 targets the following types of projects:

- Projects involving the consolidation of a Department of Defense (DOD) contract for manufacturing, assembling, fabricating, research, development or design with a duration of 2 or more years, including homeland security contracts, where one or more of the qualified business's facilities from inside or outside Florida are consolidated into one or more facilities in Florida;
- Projects involving the conversion of defense production jobs to nondefense production jobs; and
- Projects involving the reuse of defense-related facilities for manufacturing, assembling, fabricating, research, development or design with a duration of 2 or more years where the project is located in a port or a facility occupied by a business that had a DOD contract or was occupied by any branch of the Armed Forces within 1 year of the contract for reuse of the facility being executed. [9]

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 DOD 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 nondefense production jobs, the applicant must show a net increase in

[9] See s. 288.1045(3)(b), (c), (d), F.S.

nondefense employment at the facilities in Florida. The reuse of a defense-related facility must result in the creation of at least 100 jobs at the Florida based facility.[10]

The DOD 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 DOD contracts in the last fiscal year, and must have derived an average of at least 60 percent of its gross receipts in Florida from DOD contracts over the five years preceding the date an application is submitted.

After determining that the applicant meets the requirements of the program, 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 commitment and support for the applicant and project; the impact of the project on the local community; the dependence of the local community on the defense industry; the impact of any tax refunds granted as a result of the project; and the length of the project or the long-term commitment to the state resulting from the project.[11]

A qualified applicant may claim refunds from one or more of the taxes they pay, including sales and use, documentary stamp, emergency excise, ad valorem, corporate income, insurance premium, and intangible personal property taxes.

A qualified applicant may receive a refund of up to $5,000 times the number of jobs created or retained under the terms of the refund agreement entered into with OTTED. The state's requirement is to pay 80 percent of that refund amount and the local government must pay 20 percent in order for the business to receive a full refund. [12] A business may only receive 25 percent of the total refunds authorized in the refund agreement in any fiscal year or $2.5 million. The refunds are capped at $7.5 million for any business for all fiscal years.[13] The business must apply for a refund by January 31 of each year for refunds to be paid through appropriations for the fiscal year beginning on July 1 following the January 31 claims submission deadline.[14]

If the business does not meet its job creation objectives, it may still receive a prorated share of the refund minus a five percent penalty if it creates at least 80 percent of the jobs and pays at least 90 percent of the wages and meets the other requirements of its performance agreement.[15]

A business may also seek an economic stimulus exemption of up to one year from its refund agreement requirements based on negative economic conditions in the applicant's industry or specific acts of terrorism that have prevented the applicant from complying with the terms and conditions of the refund agreement. The business and OTTED must renegotiate any agreement subject to the exemption to ensure that the terms of the agreement comply with current law and OTTED procedures. During the period of the exemption, the applicant may not receive a tax refund. The exemption must have been requested before July 1, 2003.[16]

QTI and QDC Program Statistics

According to the 2004 Incentives Report by Enterprise Florida, Inc., since the inception of the QTI program there have been 525 contracts with businesses. Of these, 290 are active contracts requiring

[10] See s. 288.1045(3)(e), F.S.
[11] See s. 288.1045(4)
[12] See s. 288.1045(5)(c), F.S.
[13] See s. 288.1045(2), F.S.
[14] See s. 288.1045(5)(a), F.S.
[15] See s. 288.1045(5)(g), F.S.
[16] See s. 288.1045(4)(b), F.S.

QTI businesses to create 64,116 jobs with an average wage of $36,797. These businesses have pledged to make a total capital investment in this state of $4.7 billion.

The QDC program is far less utilized than the QTI program. According to the Incentives Report, there have been 22 applications since the inception of the program, with two active projects as of June 30, 2004. The projects are expected to create or retain 405 jobs with an average wage of $54,142 and have pledged capital investment of $8.1 million.

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 $12.69 for the QTI program and $17.04 for the QDC program.

The state's obligation to pay annual refunds for the QTI and QDC programs are jointly capped at $35 million during each fiscal year.[17]

<u>Effect of Proposed Changes</u>

<u>Economic Development Trust Fund</u>

The bill requires claims under the QTI and QDC programs to be paid in the order that they are approved by OTTED and for OTTED to cover any shortfalls in refund amounts in a current fiscal year with appropriations for the following fiscal year. It also requires OTTED to report to the Legislature by March 1 of any anticipated shortfall in funds needed to satisfy claims for refunds in a given fiscal year.

It also removes a reporting and evaluation requirement for Enterprise Florida, Inc. (EFI), that currently requires EFI to make an evaluation of its state agency contracted partner, OTTED. The current requirement has EFI opining as to whether OTTED has managed and expended funds from the Economic Development Incentives Account, and EFI states that this is outside their purview.

The bill requires EFI to include in its annual report a discussion of the efforts of OTTED to amend existing tax refund agreements to require claims to be submitted by January 31 for the net new full-time equivalent Florida jobs as of December 31 of the previous year. This follows on a change in the law requiring submission of claims by January 31. There are existing contracts that precede the change and have other submission dates.

Finally, the bill requires the EFI annual report to list the name and refund amount for each business that has received a tax refund under the QTI or QDC programs during the preceding fiscal year.

<u>Qualified Defense Contractor Refund Program</u>

The bill clarifies the definition of "jobs" to mean those full-time equivalent positions created or retained as a direct result of a QDC project, restoring to the law the intent of the program, which is to retain defense-related jobs. It also clarifies that QDC applications show the number of full-time equivalent Florida jobs to be retained by a QDC project. The bill also removes an application requirement that the business demonstrate past taxes paid, bringing the QDC law into line with the QTI law.

[17] See s. 288.095, F.S.

The bill includes state communications services taxes administered under chapter 202 within the group of taxes that may be refunded under the QDC program and makes clear that gross receipts taxes imposed under chapter 203 and administered under chapter 202 or local communications services taxes authorized under s. 202.19, F.S., are not eligible for refund. The bill also authorizes OTTED to make retroactive refunds for state communications services taxes paid on or after October 1, 2001. Prior to 2001, state communications services taxes were administered under chapter 212 and therefore eligible for refund. These taxes were transferred to chapter 202 in 2000 and the QDC law was not updated to reflect this change. [18] [See fiscal comments below]

The bill allows an applicant to request an economic stimulus exemption due to the effects of the impact of a named hurricane or tropical storm, adding these two eligibility requirements to the existing economic downturn and terrorism requirements for the exemption. The bill extends the exemption period from one to two years (during which time the applicant is not eligible to receive any refunds) and places a deadline for applications for the exemption of July 1, 2006.

The bill clarifies that the total amount of tax refunds approved by the director of OTTED in any fiscal year not exceed the amount in s. 288.095(3), aligning the QDC law with the QTI law.

The bill provides for a waiver of the local financial support requirement for specific counties in which businesses received emergency loans administered by OTTED in response to the named hurricanes of 2004. Those counties are: Bay, Brevard, Charlotte, Desoto, Escambia, Flagler, Glades, Hardee, Hendry, Highlands, Indian River, Lake, Lee, Martin, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Polk, Putnam, Santa Rosa, Seminole, St. Lucie, Volusia and Walton.

The waiver may only be granted if OTTED determines that the local financial support cannot be provided or that doing so would effect a demonstrable hardship on the unit of local government providing the local financial support. If OTTED grants the waiver, the state will pay 100 percent of the refund due to an eligible business. The bill limits the waiver to fiscal years 2004-05, 2005-06 and 2006-07. [See fiscal comments below].

The bill extends the QDC program to June 30, 2010.

<u>Qualified Target Industry Program</u>

The bill includes state communications services taxes administered under chapter 202 within the group of taxes that may be refunded under the QTI program and makes clear that gross receipts taxes imposed under chapter 203 and administered under chapter 202 or local communications services taxes authorized under s. 202.19, F.S., are not eligible for refund. The bill also authorized OTTED to make retroactive refunds for state communications services taxes paid on or after October 1, 2001. Prior to 2001, state communications services taxes were administered under chapter 212 and therefore eligible for refund. These taxes were transferred to chapter 202 in 2000 and the QTI law was not updated to reflect this change.[19] [See fiscal comments below]

The bill allows an applicant to request an economic stimulus exemption due to the effects of the impact of a named hurricane or tropical storm, adding these two eligibility requirements to the existing economic downturn and terrorism requirements for the exemption. The bill extends the exemption period from one to two years (during which time the applicant is not eligible to receive any refunds) and places a deadline for applications for the exemption of July 1, 2006.

The bill provides for a waiver of the local financial support requirement for specific counties in which businesses received emergency loans administered by OTTED in response to the named hurricanes of 2004. Those counties are: Bay, Brevard, Charlotte, Desoto, Escambia, Flagler, Glades, Hardee,

[18] See ch. 2000-260, L.O.F.
[19] See ch. 2000-260, L.O.F.

Hendry, Highlands, Indian River, Lake, Lee, Martin, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Polk, Putnam, Santa Rosa, Seminole, St. Lucie, Volusia and Walton.

The waiver may only be granted if OTTED determines that the local financial support cannot be provided or that doing so would effect a demonstrable hardship on the unit of local government providing the local financial support. If OTTED grants the waiver, the state will pay 100 percent of the refund due to an eligible business. The bill limits the waiver to fiscal years 2004-05, 2005-06 and 2006-07. [See fiscal comments below].

The bill extends the QTI program to June 30, 2010.

The bill also requires OTTED to attempt to amend existing QTI tax refund agreements to require claims to be submitted by January 31 for the net new full-time equivalent Florida jobs as of December 31 of the preceding calendar year.

C. SECTION DIRECTORY:

Section 1. Amends s. 288.095(3), F.S., relating to the payment of claims for tax refunds from the Economic Development Trust Fund.

Section 2. Amends s. 288.1045, F.S., relating to the qualified defense contractor tax refund program.

Section 3. Amends s. 288.106, F.S., relating to the qualified target industry tax refund program.

Section 4. Creates an unnumbered section of law requiring the Office of Tourism, Trade and Economic Development to attempt to amend existing tax refund agreements under s. 288.106, F.S.

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill has not been reviewed by the Revenue Estimating Conference.

2. Expenditures:

   The bill will increase state expenditures for this program. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill has not been reviewed by the Revenue Estimating Conference.

2. Expenditures:

   The bill may save certain units of local government their 20 percent local financial support requirement for QTI and QDC businesses until fiscal year 2006-07. However, the bill has not been reviewed by the Revenue Estimating Conference.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will retain the QTI and QDC programs and therefore should have a beneficial impact on the private sector by incentivizing the creation or expansion of high-wage businesses in Florida. It may also help alleviate the negative economic effects of the 2004 storm season by offering economic stimulus extensions and providing for waiver of the local financial support requirement to businesses effected by the storms.

D. FISCAL COMMENTS:

OTTED has not estimated the costs of the retroactive payment of communications services taxes paid since October 1, 2001.

FY 2004-05	FY 2005-06	FY 2007-08
$425,411	$595,460	$940,000

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 & COMBINED BILL CHANGES