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.)

Prepared By: Community Affairs Committee

BILL: SB 2216

SPONSOR: Senator Saunders and others

SUBJECT: Qualified Target Industry, Qualified Defense Contractors

DATE: April 7, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barrett	Cooper	CM	**Favorable**
2.	Vickers	Yeatman	CA	**Favorable**
3.			GE	
4.			TA	
5.				
6.				

I. Summary:

This bill extends the expiration date of the Qualified Target Industry (QTI) and Qualified Defense Contractor (QDC) programs to 2010, and amends these programs to: [1]

- Require tax refunds under QTI and QDC be paid in the order they are approved;
- Require the Office of Tourism, Trade and Economic Development (OTTED) to pay tax refunds that exceed the appropriation for a given fiscal year from appropriations for the following year, and to report anticipated shortfall in funds needed to satisfy the refunds;
- Require OTTED to report its success in amending tax refund agreements to require claims to be submitted by January 31, and report on refund claims for the previous year;
- Clarify that communications services taxes are eligible for refund and authorize OTTED to make retroactive payments to October 1, 2001, for taxes paid;
- Revise QDC application requirements to show the number of jobs to be retained and to eliminate 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; and
- 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.

This bill substantially amends the following sections of the Florida Statutes: 288.095, 288.1045, and 288.106. This bill creates an unnumbered section of the Florida Statutes.

[1] These changes are, to a significant degree, based on recommendations from the Committee on Commerce, Economic Opportunities, and Consumer Services, The Florida Senate, Interim Project Report 2004-115, *Review of Qualified Target Industry and Qualified Defense Contractor Tax Refund Programs*, December 2003.

II. Present Situation:

The qualified target industry (QTI) and qualified defense contractor (QDC) tax refund programs are tools used by the state to encourage businesses to locate or expand in this state and provide high-wage jobs for Floridians. Businesses participating in the programs may receive tax refunds based on the number of qualifying jobs and the average wage of their employees. The QTI and QDC programs are scheduled to expire or close to new activity on June 30, 2005.

A 2004 interim project report by the Senate Committee on Commerce, Economic Opportunities, and Consumer Services, titled *Review of Qualified Target Industry and Qualified Defense Contractor Tax Refund Programs*, recommended that the programs be continued by the Legislature as a relatively low-cost method to compete with other states for jobs. According to the report, Florida faces competition from many states offering economic development incentives for job creation. The report also found that the programs do not perfectly discriminate between businesses that would locate or expand operations in Florida without incentives and those for which an incentive is needed to induce the business to locate or expand operations in Florida. However, the availability of incentives was a deciding factor for the creation of some jobs. Lastly, the report found that the qualified target industry tax refund program has been substantially over-funded over the past few years, to the detriment of other legislative priorities. To minimize over-funding the QTI program, the report recommended that claims for tax refunds be submitted by January 31 for jobs created as of December 31 of the preceding calendar year. If tax refund claims are received by OTTED by January 31, the tax refund claims will be able to be taken into account during the next budgeting process.[2]

Other recommendations in the report included extending the program for an additional five years, allowing tax refund agreements in effect when the authority for the programs expires to continue in effect in accordance with their terms, and clarify that the qualified defense contractor tax refund program may be used to retain jobs.[3]

QTI Program

A qualified target industry (QTI) business may receive a tax refund equal to the tax refund per job times the number of jobs created, pursuant to a tax refund agreement with the Office of Tourism, Trade, and Economic Development (OTTED).[4] The tax refund per job is between $3,000 and $8,000, depending upon the average salary of the jobs created and whether the jobs are located within a rural county or enterprise zone (EZ).[5] (See TABLE 1) Taxes that may be refunded under the program include corporate income taxes; insurance premium taxes; taxes on sales, use, and other transactions; intangible personal property taxes; emergency excise taxes; excise taxes on documents; and certain ad valorem taxes.

[2] *Id.*
[3] *Id.*
[4] Section 288.106(2), F.S.
[5] Section 288.106(2)(b), F.S.

TABLE 1: Tax Refund Available Per Job

TAX REFUND PER JOB	LOCATION OF NEW JOBS	PERCENT OF AVERAGE WAGE
$3,000	Statewide	115%
$4,000	Statewide	150%
$5,000	Statewide	200%
$6,000	Rural County or EZ	115%
$7,000	Rural County or EZ	150%
$8,000	Rural County or EZ	200%

The total tax refund must be paid to a business over a 4-year or longer period.[6] The maximum refund that a business may receive in any year is $1.5 million or, if the business is located in an enterprise zone, $2.5 million.[7] The total refund that a business may receive may not exceed $5 million or, if the business is located in an enterprise zone, $7.5 million.[8] The total amount of tax refunds that OTTED may schedule for payment under the QTI and QDC programs may not exceed $35 million in any fiscal year.[9]

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.[10] 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).[11] OTTED must submit this list to the Legislature with its final agency legislative budget request.[12] 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.[13] 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.[14] Additionally, defense industry businesses may be target industry businesses.

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6 *See* s. 288.106(2)(b), F.S.
7 *Id.*
8 *Id.*
9 Section 288.095(3)(a), F.S.
10 Section 288.106(3)(a), F.S. It appears that the purpose of this limitation is to prevent the payment of tax refunds to businesses that had planned to locate a new business or expand an existing business in Florida anyway.
11 Section 288.106(1)(o), F.S.
12 *Id.*
13 *Id.*
14 For the complete list of target industries, see OTTED's annual *Legislative Budget Request*.

In its application for certification, a target industry business must describe its proposed new business or expansion of an existing business.[15] 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.[16] OTTED, however, may waive the average wage requirement of the QTI program in limited circumstances.[17] A new or expanding business must propose the creation of at least 10 jobs.[18] 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.[19]

The application must also be accompanied by a resolution from the county or municipality in which the business will be located.[20] 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.[21] 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.[22] 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.

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.[23] 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.[24]

Upon receipt of a completed application, OTTED must review the application based on, but not limited to, the following criteria:

- 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.

[15] Section 288.106(3), F.S.
[16] Section 288.106(3)(a)4. and (3)(b)1., F.S. OTTED requires that the average salary of jobs created be 115 percent of the lower of the average private sector wage in the area or the statewide private sector wage.
[17] Section 288.106(3)(b)1., F.S. According to OTTED, by 2004, it has waived the minimum average wage requirements of the QTI program fewer than five times.
[18] Section 288.106(3)(b)2., F.S.
[19] Section 288.106(1)(g) and (3)(b)2., F.S.
[20] Section 288.106(3)(a)9., F.S.
[21] *Id.*
[22] Section 288.106(3)(f), F.S.
[23] Section 288.106(1)(k), F.S.
[24] *Id.*

- The expected long-term commitment to this state.
- A review of the business's past activities in this state or other states.[25]

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.[26]

After a business is certified as a QTI business, it may enter into a tax refund agreement with OTTED.[27] 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 will clearly state that the agreement to pay tax refunds is contingent upon appropriations from the Legislature.[28]

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.[29] A business that was certified as a QTI business before May 30, 2002, may file a claim for a tax refund any time prior to June 15.[30] If a business does not timely submit a claim for refunds, it will be terminated from the QTI program.[31]

Sharpton, Brunson and Company (SBC), an outside contractor hired by OTTED, processes the claims for tax refunds under the QTI program.[32] To process refund claims, SBC verifies job creation and average wages through unemployment compensation insurance information, company data, and on-site audits. SBC verifies the amount of taxes paid by a QTI business by examining receipts, tax bills, and copies of checks submitted in payment of tax bills.

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.[33] 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

[25] Section 288.106(3)(c), F.S.
[26] Section 288.106(3)(e)1. and (f), F.S.
[27] Section 288.106(3)(e)2., F.S.
[28] Section 288.106(4)(d), F.S.
[29] Section 288.106(5)(a), F.S.
[30] Auditor General, *Tax Refund Program for Qualified Target Industry Businesses Administered by the Executive Office of the Governor: Operational Audit*, Report No. 01-080, January 2001, at 3.
[31] Section 288.106(4)(b), F.S.
[32] Sharpton, Brunson and Company fulfills certain administrative-support functions for the following programs: Economic Development Transportation Fund, Qualified Target Industry Tax Refund Program, Community Contribution Tax Credit Program, Urban Jobs Tax Credit, and the Rural Jobs Tax Credit. The term of SBC's contract with OTTED is from June 30, 2004 through June 30, 2006.
[33] Section 288.106(5)(d), F.S.

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.

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 Auditor General initially addressed this issue in January 2001.[34] The disparity between appropriations and actual expenditures existed because OTTED did not know when preparing its legislative budget request 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. 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.

One of the Auditor General recommendations was to change the program requirements for newly executed tax agreements to require businesses to submit tax refund requests by January of each fiscal year. In the agency's response to the Auditor General report, OTTED stated that it had already begun to require all new QTI projects to submit their tax refund claims by January 31. OTTED also emphasized that the change could only be applied to new QTI agreements, and, therefore, that it would take several years to realize the full benefit of the change.

In response to these findings and recommendations, the Legislature adopted ch. 2002-392, L.O.F., which modified the timeline for approval of QTI program refunds 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.

QDC Program

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.[35] The order found:

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[34] Auditor General, *Tax Refund Program for Qualified Target Industry Businesses Administered by the Executive Office of the Governor: Operational Audit*, Report No. 01-080, January 2001.
[35] *See* Florida Senate Committee on International Trade, Economic Development, and Tourism, *Staff Analysis and Economic Impact Statement of CS/SB 32-C,* at 2-3 (Nov. 3, 1993).

- 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.[36]

Apparently, the QDC program was designed to help protect Florida defense businesses from cuts in federal defense spending.

The QDC program provides tax refunds for job creation similar to the tax refund program for qualified target industries.[37] 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.[38]
- Participation in the QDC program is limited to certain defense contractors.[39]
- 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.[40]

QTI and QDC Program Statistics

According to the Enterprise Florida, Inc., (EFI) *2004 Incentives Report*, since the inception of the program in 1994 there have been 396 contracts with businesses under the QTI program.[41] Of these contracts, 290 are active contracts requiring QTI businesses to create 59,653 jobs with an average wage of $36,049 per job.[42] These projects have resulted in more that $4.7 billion in private sector capital investments within the state.[43]

Under the QDC program, there are two completed and two active contracts.[44] The active QDC businesses are contractually obligated to retain 350 jobs with an average salary of $53,472.[45]

The state's obligation to pay annual refunds for the QTI and QDC programs are jointly capped at $35 million during each fiscal year.[46]

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[36] Executive Order No. 93-118, Signed by Governor Lawton Chiles on April 13, 1993 (creating the Florida Defense Conversion Transition Commission).
[37] According to OTTED staff, the statute creating the QDC program was used as a model for s. 288.106, F.S., the statute creating the QTI program.
[38] OTTED authorizes the payment of tax refunds to QDC businesses for jobs retained. Section 288.1045, F.S., however, is ambiguous as to whether tax refunds are authorized for both retained and new jobs or only new jobs.
[39] Section 288.1045(3)(e)5., F.S.
[40] Section 288.1045(2)(b) and (3)(f), F.S.
[41] Enterprise Florida, Inc., *2004 Incentives Report: A Progress Report On Incentives Funded From the Economic Development Incentives Account*, November 2004, at 12.
[42] *Id.*
[43] *Id.*
[44] *2004 Incentives Report*, *supra* note 41, at 16.
[45] *Id.*
[46] See s. 288.095, F.S.

Collins Center Analysis of QTI Program

In February 2005, the Collins Center for Public Policy released a report evaluating the QTI program.[47] The report concluded that QTI is a useful competitive tool for Florida to attract high-wage jobs, when combined strategically with larger state and local economic development programs and when administered judiciously.

III. Effect of Proposed Changes:

Section 1 amends s. 288.095, F.S., which relates to the Economic Development Trust Fund, to require 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.

This section also removes a requirement that Enterprise Florida, Inc. (EFI) report as to whether OTTED has managed and expended funds from the Economic Development Incentives Account in “a prudent, fiducially sound manner.”

The section 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, this section requires 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.

Section 2 amends s. 288.1045, F.S., which relates to the QDC Refund Program, to clarify the definition of “jobs” to mean those full-time equivalent positions “created or retained as a direct result” of a QDC project. It also specifies that QDC applications must show the number of full-time equivalent Florida jobs to be retained by a QDC project. This section also removes an application requirement that the business demonstrate past taxes paid, which mirrors the requirements of the QTI program.

This section includes the state communications services taxes, administered under ch. 202, F.S., within the group of taxes that may be refunded under the QDC program. It also specifies that gross receipts taxes imposed under ch. 203, F.S., and administered under ch. 202, F.S., or local communications services taxes authorized under s. 202.19, F.S., are not eligible for refund. The

[47] *Florida Qualified Target Industry Tax Refund Program: an Independent Analysis*, conducted by Collins Center for Public Policy, Inc. and Global Insight, Inc., February 2005. The report was commissioned by Enterprise Florida, Inc. The report also made specific recommendations as to EFI’s computer model for measuring the state’s return on it’s QTI investment.

bill authorizes OTTED to make retroactive refunds for state communications services taxes paid on or after October 1, 2001.[48]

Currently, subsection (4) allows a QDC program applicant to request an "economic stimulus exemption" from the terms and conditions (job-creation requirements) of their agreement. To qualify for the exemption, the participant must provide "qualitative evidence demonstrating how negative economic conditions …or specific acts of terrorism…have prevented the applicant from complying with the terms of the tax refund agreement." This exemption is expanded to those situations where the "the effects of the impact of a named hurricane or tropical storm" has prevented compliance with the agreement. In addition, the exemption may be extended for 2 years, rather than 1 year, and the exemption sunset is extended to July 1, 2006.

This section 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), F.S., which mirrors the requirements of the QTI program.

This section authorizes OTTED to grant 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. If OTTED grants the waiver, the state must pay 100 percent of the refund due to an eligible business. This section limits the waiver to fiscal years 2004-05, 2005-06, and 2006-07.

Finally, this section extends the QDC program to June 30, 2010.

Section 3 amends s. 288.106, F.S., to include the state communications services taxes, administered under ch. 202, F.S., within the group of taxes that may be refunded under the QTI program. It also specifies that gross receipts taxes imposed under ch. 203, F.S., and administered under ch. 202, F.S., or local communications services taxes authorized under s. 202.19, F.S., are not eligible for refund. The bill authorizes OTTED to make retroactive refunds for state communications services taxes paid on or after October 1, 2001.[49]

Currently, subsection (4) allows a QTI program applicant to request an "economic stimulus exemption" from the terms and conditions (job-creation requirements) of their agreement. To qualify for the exemption, the participant must provide "qualitative evidence demonstrating how negative economic conditions …or specific acts of terrorism…have prevented the applicant from complying with the terms of the tax refund agreement." As for the QDC program, this exemption is expanded to those situations where the "the effects of the impact of a named hurricane or tropical storm" has prevented compliance with the agreement. In addition, the exemption may be extended for 2 years, rather than 1 year, and the exemption sunset is extended to July 1, 2006.

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[48] Prior to 2001, state communications services taxes were administered under ch. 212, F.S., and therefore eligible for refund. These taxes were transferred to ch. 202, F.S, in 2000 and the QDC and QTI laws were not updated to reflect this change. See ch. 2000-260, L.O.F.
[49] *Id*.

As with the QDC program, OTTED is authorized to grant 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. If OTTED grants the waiver, the state must pay 100 percent of the refund due to an eligible business. This section limits the waiver to fiscal years 2004-05, 2005-06, and 2006-07.

Finally, this section extends the QTI program to June 30, 2010.

Section 4 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.

Section 5 provides this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The retroactive payment of the communications services tax credit may result in a negative impact to state revenues; however the Revenue Estimating Conference has not reviewed this issue.

The extension of the QTI and QDC programs and the additional tax credits, local support waivers, and economic stimulus exemptions are all subject to appropriation from the Economic Development Incentives Account within the Economic Development Trust Fund.

B. Private Sector Impact:

Because the bill continues the existence of the QTI and QDC tax refund programs, additional businesses will be able to participate in the programs. In addition, the bill will likely 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 affected by the storms.

Qualified target industry businesses that agree to amend the dates by which a tax refund claim must be submitted may incur costs to re-determine the dates by which jobs will be created.

C. Government Sector Impact:

OTTED is required to attempt to amend tax refund agreements to provide that claims for tax refunds are due before January 31 every year for jobs created as of December 31 of the preceding calendar year. OTTED may incur minimal administrative costs in its attempts to amend tax refund agreements. However, the change in the due date for tax refund claims will enable the Legislature to more accurately estimate the funds needed for tax refunds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.