HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7031 PCB EDP 09-01 Economic Development
SPONSOR(S): Economic Development & Community Affairs Policy Council, Economic Development Policy Committee & Carroll
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development Policy Committee	20 Y, 0 N	West	Kruse
1) Economic Development & Community Affairs Policy Council	14 Y, 0 N, As CS	West	Tinker
2) Finance & Tax Council		Shaw	Langston
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill amends several sections of Florida Statutes to replace an outdated coding system with the federally-recognized standard coding system used to classify businesses, adjusts provisions relating to boat purchases by nonresidents, and amends several state economic development programs.

SIC and NAICS Codes
The bill removes outdated Standard Industrial Classification (SIC) codes from Florida Statute and replaces them with the North American Industry Classification System (NAICS) codes, the federal standard since 1997.

Boat Purchases by Nonresidents
Current law provides that nonresident boat purchasers are to apply to dealers for decals that authorize 90 tax exempt days after the date of purchase to remove the boat from the state. The bill extends, from 90 days to 180 days, the number of tax exempt days provided by the decals issued by boat dealers to nonresidents.

Economic Development Incentive Programs
The bill creates a standard application timeline for some of the state's economic development incentive programs. The bill also makes programmatic changes to the following programs: the Urban High-Crime Area Jobs Tax Credit, the Capital Investment Tax Credit, the Economic Development Transportation Fund, the Qualified Defense Contractor and Space Flight Business Tax Refund Program, the Qualified Target Industry Program, the Brownfield Redevelopment Bonus Refund Program, the High Impact Performance Incentive Program, the Innovation Incentive Program, and the Florida Opportunity Fund. The bill also makes programmatic changes to the Rural Economic Development Initiative (REDI) and the Rural Infrastructure Fund. In addition, the bill expands the definition of rural in several sections of statute to provide greater economic development incentive opportunities for areas in economic need.

Tax Benefits for Certain Incentive Programs
The bill also provides that, under certain circumstances, any corporate entity entitled to receive an incentive but unable to use it because of its corporate form may transfer all or a portion of that incentive to another corporate entity within the same corporate family. The bill limits the transfer to entities which are subject to the same tax for which the incentive is allowed.

The Revenue Estimating Conference has estimated the bill will have a recurring negative fiscal impact on state revenues of $1.4 million and a recurring negative but insignificant impact on local funds.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

SIC AND NAICS CODES

Present Situation

The Standard Industrial Classification System (SIC) was developed in the 1930's as the standard system used by the federal government to classify business establishments for the purposes of collecting, analyzing, and publishing statistics and other data relevant to the U.S. economy. By the 1990's, it became apparent that the U.S. needed to put in place a system that better suited its role in a growing hemispheric and global economy. The concept of the North American Industry Classification System (NAICS) was advanced under the auspices of the President's Office of Management and Budget (OMB) to replace SIC codes. NAICS was developed jointly by the U.S. Economic Classification Policy Committee (ECPC), Statistics Canada, and Mexico's Instituto Nacional de Estadistica, Geografia e Informatica, to allow for comparison of North American businesses.[1] The NAICS system was adopted and implemented by the federal government in 1997.

The NAICS system uses a 6-digit code to identify industry sectors, in contrast to the 4-digit SIC code. The longer code accommodates a larger number of sectors and allows more flexibility in designating industry subsectors. The international NAICS agreement fixes only the first five digits of the code. The sixth digit, where used, identifies subdivisions of NAICS industries that accommodate user needs in individual countries. Thus, 6-digit U.S. codes may differ from counterparts in Canada or Mexico, but at the 5-digit level they are standardized.[2]

NAICS Coding Structure ("x" = one digit of code)
xx – Industry Sector
xxx – Industry Sub-Sector
xxxx – Industry Group
xxxxx – Industry
xxxxxx – Industry Specific to the U.S., Canada, or Mexico[3]

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[1] The United States Census Bureau, website. http://www.census.gov/eos/www/naics/ (visited 2/17/09)
[2] NAICS Association, website. http://www.naics.com/info.htm (visited 2/18/09)
[3] Id.

Effects of Proposed Changes

SIC codes are still found prominently throughout Florida Statutes. This legislation changes all SIC codes found in Florida Statutes to NAICS codes. The following statutes are affected:

- s. 166.231, F.S., Public Service Tax – The public service tax may be levied by a municipality on the purchase of electricity, natural gas, liquefied petroleum gas, manufactured gas, and water services. (Section 1)

- s. 212.05, F.S., Sales, Storage, Use Tax – This tax is applicable to the sale of tangible personal property at retail. (Section 2)

- s. 212.08, F.S., Sales, Rental, Use, Consumption, Distribution, and Storage Tax Exemptions – The statute provides exemptions from tax liability for certain products. (Section 3)

- s. 212.097, F.S., Urban High-Crime Area Job Tax Credit Program – The Urban High-Crime Area Job Tax Credit Program provides tax credits to businesses that create jobs in high-crime areas. (Section 4)

- s. 212.098, F.S., Rural Job Tax Credit Program – The Rural Job Tax Credit Program provides tax credits to businesses that create jobs in rural areas. (Section 5)

- s. 220.15, F.S., Apportionment of Adjusted Federal Income – The statute provides for the apportionment of federal income for those persons doing business within and without the state of Florida. (Section 6)

- s. 288.106, F.S., Qualified Targeted Industry Tax Refund Program – The statute provides tax refunds to businesses that create jobs in targeted industries. (Section 16)

SALES, STORAGE, & USE TAX

Present Situation

<u>Boat Purchases</u>
Section 212.05, F.S., provides exemptions from the sales and use tax on the purchase of a boat by a non-resident from a registered dealer in the state so long as:

- A boat larger than 5 net tons with a proper decal (qualifying boat) is removed from the state within 90 days of purchase;

- A boat less than 5 net tons without a proper decal (non-qualifying boat) is removed from the state within 10 days of purchase; or

- A boat that is repaired or altered is removed from the state within 20 days or repair or alteration.

A boat purchaser is liable for use tax on the "cost price" of the boat and a penalty equal to the tax payable to the Department of Revenue (DOR) if they do not comply with all of the provisions of s. 212.05, F.S. This penalty shall be in lieu of the penalty imposed by s. 212.12(2), F.S., and is mandatory and cannot be waived by DOR. The use tax and penalty will be assessed on purchasers that:

- Do not remove a qualifying boat from this state within 90 days after purchase or a non-qualifying boat from this state within 10 days after purchase or, when the boat is repaired or altered, within 20 days after completion of such repairs or alterations;

- Permit the boat to return to this state within 6 months from the date of departure; or

- Fail to furnish the department with any of the required documentation within the prescribed time period.

Importation
Section 212.06, F.S., provides that a use tax shall apply and be due on tangible personal property imported or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that, it shall be presumed that tangible personal property used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state.

Exports
Section 212.06(5)(a)1., F.S., provides that boats constructed in Florida for the purpose of being exported outside of the continental U.S. are tax exempt.

To avoid paying use tax on boat purchases in Florida, purchasers must register their vessel out of state and keep that vessel outside of Florida for 180 days.

Effects of Proposed Changes

Current law provides that nonresident boat purchasers are to apply to dealers for decals that authorize 90 tax exempt days after the date of purchase to remove the boat from the state. Nonresident boat purchasers do not need to apply for a decal after the purchase of a boat 5 net tons or larger if the purchaser intends to remove the boat from the state within 10 days or if a boat purchaser intends to have repairs or alterations done after purchase and intends to remove the boat from the state within 20 days after completion of repairs or alterations.

The bill extends, from 90 days to 180 days, the number of tax exempt days provided by the decals issued by boat dealers to nonresidents. The 180-day period following the sale of a boat tax exempt to a nonresident may not be tolled for any reason.

ECONOMIC DEVELOPMENT INCENTIVE PROGRAMS

Present Situation

Incentive Process Timeline
When a business seeks an incentive award, it must submit an application to Enterprise Florida, Inc. (EFI). The application and approval process includes consultation with staff from EFI and the Office of Tourism, Trade, and Economic Development (OTTED). EFI works with the business to evaluate the application for eligibility, ensures application completeness, and prepares an economic analysis for each project. Based on this evaluation, EFI makes an official recommendation to OTTED for project approval. OTTED has the final authority to approve or deny an application, execute performance contracts with business applicants, and oversee claim payments. Currently an application may take from 23 days to 101 days to be approved or denied by OTTED. The Legislature has established timelines for some of the economic development incentive programs. For instance, for the Qualified Targeted Industry Program, OTTED has 45 days to make a recommendation to the director of OTTED, and the director has an additional 30 days to approve or deny the project (after OTTED receives a recommendation from EFI).

Incentives

Urban High-Crime Area Job Tax Credit
The Urban High-Crime Area Job Tax Credit Program was created in 1997 to encourage the creation of jobs in urban areas of Florida. The program provides tax credits to eligible businesses that are located within urban areas designated by OTTED and hire a specific number of employees. The credit ranges from $500 to $1,500 per qualified job and can be taken against either corporate income or sales and

use taxes, but not both. A total of $5 million of tax credits may be approved under the Urban Job Tax Credit Program each calendar year.[4]

Capital Investment Tax Credit

The Capital Investment Tax Credit is used to attract and grow capital-intensive industries in Florida. It is an annual credit, provided for up to twenty years, against corporate income tax liabilities. Eligible projects are those in designated high-impact portions of the following sectors: clean energy, biomedical technology, financial services, information technology, silicon technology, transportation equipment manufacturing, or be a corporate headquarters facility. Projects must also create a minimum of 100 jobs and invest at least $25 million in eligible capital costs. Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations. The level of investment and the project's Florida corporate income tax liability for the 20 years following commencement of operations determines the amount of the annual credit.[5]

Economic Development Transportation Fund

The Economic Development Transportation Fund (EDTF or Road Fund) is used to help businesses that want to relocate to Florida overcome obstacles related to infrastructure. The local government with jurisdiction over the area where the project will commence receives the grant to build and/or maintain the new infrastructure project. The grant amount depends on factors such as cost of infrastructure improvements, number of jobs created or retained, and the location of a project in an area of economic need.[6]

Qualified Defense Contractor and Space Flight Business Tax Refund Program

In 1993, Florida made a commitment to expand its high technology employment base by creating the Qualified Defense Contractor Program (QDC). This incentive includes refunds on corporate income, sales, ad valorem, intangible personal property, and certain other taxes. This program gives Florida contractors specializing in national defense and homeland security an advantage in acquiring new contracts and converting contracts to commercial production. Qualified defense contractors may be eligible for tax refunds of $3,000 per new job created. The tax refund increases to $6,000 per job for businesses that locate in an enterprise zone or rural county. In addition, a business is eligible for a $1,000 per job bonus if it pays over 150 percent of the average wage in the area, and a $2,000 per job bonus if it exceeds 200 percent of the average wage. [7] During the 2008 Legislative Session, space flight businesses were added as entities eligible for this incentive program.

Qualified Target Industry Tax Refund Program

Florida has made targeting specific industries a priority in its efforts to further economic development in the state. The Qualified Target Industry Tax Refund Program (QTI) was created by the Florida Legislature in 1994 to attract businesses that offer high-wage jobs, particularly headquarters, to relocate in Florida. This incentive includes refunds on corporate income, sales, ad valorem, intangible personal property, insurance premium, and certain other taxes. Businesses that locate or expand in Florida are eligible for tax refunds of $3,000 per new job created. The tax refund increases to $6,000 per job for businesses that locate in an enterprise zone or rural county. In addition, a business is eligible for a $1,000 per job bonus if it pays over 150 percent of the average wage in the area, and a $2,000 per job bonus if it exceeds 200 percent of the average wage.[8] To qualify, the business must secure the local government's support. A local government is required to provide at least 20 percent of the amount of the state's award.[9]

Economic Stimulus Exemption

After the 2004 and 2005 hurricane seasons, the Florida Legislature allowed for projects contracted for awards under the QTI program the ability to be forgiven for one year if the business was unable to meet the performance requirements in the contract. This was necessary to ensure businesses were not

[4] s. 212.097, F.S.
[5] Enterprise Florida, Inc., http://eflorida.com/ContentSubpage.aspx?id=472 (visited 2/17/09)
[6] Enterprise Florida, Inc., 2008 Incentives Report: A Progress Report on Programs Funded from the Economic Incentives Account.
[7] s. 288.1045, F.S.
[8] s. 208.106, F.S.
[9] Id.

penalized for the impacts of wide spread economic conditions beyond their control, and ensure that the business had an incentive to continue to grow in Florida after the downturn had passed.

Brownfield Redevelopment Bonus Refunds
In 1997, Florida enacted the Brownfield Redevelopment Act, patterned after federal legislation from 1995 that was initiated by the U.S. Environmental Protection Agency as an "experimental idea for restoring many environmentally challenged sites throughout the United States, without the threat of legal and financial repercussion commonly associated with ownership of contaminated properties."[10] Brownfield sites are defined in Florida law as a site that is "generally abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination."[11] A brownfield site may not have any contamination at all, and is often times designated as a brownfield site prior to a formal environmental investigation.
The Brownfield Redevelopment Bonus Refund provides a tax refund (such as corporate income, sales, ad valorem, intangible personal property, insurance premium, and certain other taxes) to eligible businesses of up to $2,500 (based on taxes paid by the business) for each new job created in a brownfield area. To qualify, a business must demonstrate it will diversify and improve the area economy, create at least 10 full-time jobs, and provide at least $2 million in capital investment.

High Impact Performance Incentive
The High Impact Performance Incentive (HIPI) was created in 1997 and is designed to attract "high impact" sectors of the economy to Florida such as life sciences, financial services, and manufacturing industries such as transportation equipment, aviation and aerospace, automotive, and semiconductors. Businesses that receive HIPI awards must create at least 100 new full-time jobs and make a cumulative investment in Florida of at least $100 million over a three-year period. If the business is a research and development facility, the threshold falls to 75 new full-time jobs and a cumulative investment of at least $75 million in Florida over a three-year period.[12]

Innovation Incentive
Created by the 2006 Legislature, the Innovation Incentive allows Florida to compete with other states for major innovation projects and high-value research and development projects by providing cash incentives to qualified applicants. The 2008 Legislature added alternative and renewable energy projects as a new category of projects eligible for Innovation Incentive awards. Innovation Incentive projects must create significant jobs and make large capital investments.[13]

Florida Opportunity Fund
The Florida Opportunity Fund was created by the legislature in 2007[14] to utilize a "fund-of-funds" model emphasizing investment in seed capital and early stage venture capital funds focusing on opportunities in Florida. The fund is organized as a private, not-for-profit corporation under chapter 617. Enterprise Florida selects a five-person appointment committee, which selects a board of directors for the Florida Opportunity Fund. The board selects a Florida Opportunity Fund investment manager. The fund is "not precluded from investing in funds with a wider geographic spread of portfolio investment," but it must require an investment fund to have a record of successful investment in Florida, be based in Florida, or have an office in Florida. The Opportunity Fund has additional criteria:

- Investments may not be direct investments with individual businesses, but must consist of partnerships with private venture capital funds (the "fund of funds" approach);
- Investments must have received capital from other sources "in an amount greater than the investment of the Florida Opportunity Fund, such that the amount invested in an entity in this state by the receiving venture capital fund is at least twice the amount invested by the fund"; and
- Investments must be made in Florida-based businesses.

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[10] Florida Brownfields Association. "Brownfields 101", website: http://www.floridabrownfields.org/PDF/Brownfields101.pdf (visited 2/17/09)
[11] s. 288.107(1)(b), F.S.
[12] Enterprise Florida, Inc., http://eflorida.com/ContentSubpage.aspx?id=472 (visited 2/17/09)
[13] Enterprise Florida, Inc., 2008 Incentives Report: A Progress Report on Programs Funded from the Economic Incentives Account.
[14] Ch. 207-189, L.O.F.

The fund may negotiate all terms for investments, but requires one dollar in private match for every one dollar the state invests. When a return on investment is realized, those earnings will be reinvested into the program to further the economic development of the state. The fund's appropriation of $29.5 million is managed by Florida First Partners.[15]

Tax Benefits of Incentives
Some of the incentives described above provide refunds on corporate income taxes,[16] refunds usable by C corporations but not by other corporate forms such as LLCs or Subchapter S corporations.[17] A few other incentives also provide refunds of corporate income taxes.

Rural Job Tax Credit
The Rural Job Tax Credit is an incentive for eligible businesses located in one of Florida's rural counties to create new jobs. The tax credit can be taken against either the corporate income tax or the sales and use tax.

Enterprise Zone
Enterprise zones offer businesses corporate and sales tax credits for locating and hiring residents of enterprise zones and well as incentives offered by the local government.

Effects of Proposed Changes

Incentive Process Timelines
The bill creates s. 288.061, F.S., which sets a standard timeline for economic development programs. It requires Enterprise Florida, Inc. to determine if an application is complete in 10 business days, and once the application is complete, it gives EFI another 10 days to evaluate and make a recommendation to OTTED. Once OTTED receives the application, the office has 10 calendar days to notify EFI if the application is incomplete, and the director has a total 22 calendar days from the time the recommendation was received to approve or deny the application. The bill requires applications for the following programs to be reviewed pursuant to the standard application timelines created in s. 288.061, F.S.:

- Urban High-Crime Area Job Tax Credit (Section 4);
- Capital Investment Tax Credit (Section 7);
- Economic Development Transportation Fund (Section 9);
- Rural Infrastructure Fund (Section 11);
- Qualified Defense Contractor and Space Flight Business Tax Refund Program (Section 15);
- Qualified Target Industry Tax Refund Program (Section 16);
- Brownfield Redevelopment Bonus Refunds (Section 17); and

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[15] Florida Opportunity Fund., http://www.floridaopportunityfund.com/About.asp (visited 3/23/09)
[16] Florida corporate income tax liability is computed using federal taxable income, modified by certain Florida adjustments, to determine adjusted federal income. A corporation doing business within and outside Florida may apportion its total income. Adjusted federal income is apportioned to Florida using a three-factor formula. The formula is a weighted average, designating 25 percent each to factors for property and payroll, and 50 percent to sales. Nonbusiness income allocated to Florida is added to the Florida portion of adjusted federal income. An exemption of up to $5,000 is subtracted to arrive at Florida net income. Tax is computed by multiplying Florida net income by 5.5 percent.
[17] **Subchapter S Corporation**–A form of corporation, allowed by the IRS for most companies with 75 or fewer shareholders, which enables the company to enjoy the benefits of incorporation but be taxed as if it were a partnership; also called S Corporation.
LLC-Limited Liability Company–A type of company whose owners and managers receive the limited liability and (usually) tax benefits of an S Corporation without having to conform to the S corporation restrictions.
C Corporation–A business which is a completely separate entity from its owners, unlike a partnership.
General Partnership–A business partnership featuring two or more partners in which each partner is liable for any debts taken on by the business. Because the partners do not enjoy limited liability, all the partners' assets can be involved in an insolvency case against the company.
Limited Partnership–A business organization with one or more general partners, who manage the business and assume legal debts and obligations, and one or more limited partners, who are liable only to the extent of their investments. Limited partners also enjoy rights to the partnership's cash flow, but are not liable for company obligations.

- High Impact Performance Incentive (Section 18).

In addition, under the Quick Action Closing Fund (Section 19), EFI is directed to follow the standard timelines created in s. 288.061 and OTTED is required to submit its recommendation for approval to the Governor within 22 calendar days.

<u>Qualified Defense Contractor and Space Flight Contractor Tax Refund Program</u>
The bill amends s. 288.1045, F.S., to require applications be reviewed and certified pursuant to the standard timeline outlined in the newly-created s. 288.061, F.S. The bill also lowers the cap on the amount of tax refunds a single applicant may receive to match the award system used by QTI. A business is limited to $5 million in refunds in all fiscal years, a reduction from the previous cap of $7.5 million in refunds.

<u>Qualified Target Industry Tax Refund Program</u>
The bill amends s. 288.106, F.S., to require applications be reviewed and certified pursuant to the standard timeline outlined in the newly-created s. 288.061, F.S. The bill also requires that wages for expansion projects are based solely on new jobs being created, rather than an average of all jobs (current and new).

OTTED and EFI are seeing indications that the dramatic downturn in the economy has caused many QTI, QDC, and Brownfield incentive recipients to temporarily halt or cut back on their expansion plans. As a result they have been unable to meet the employment levels to which they had previously agreed. The bill provides OTTED the ability to approve applications for the Economic-Stimulus Exemption for tax refund claims scheduled to be submitted after January 1, 2009, but before July 1, 2011 to ensure that businesses are not penalized for the impacts of wide spread economic conditions beyond their control, and ensure that they have an incentive to continue to grow in Florida after the downturn has passed. A business must still meet job creation requirements in the future before receiving tax refunds.

Targeted Industry Zones
The bill creates Targeted Industry Zones (TIZ) within QTI to offer a $6,000 tax refund payment for each job created in a TIZ. To qualify as a TIZ, an area of land must be designated as a catalyst site within a Rural Area of Critical Economic Concern (RACEC) or be an area with a sector plan adopted pursuant to s. 163.3245, F.S. OTTED may waive job wage requirements for jobs created in a TIZ. Tax refund payments would be paid out of the QTI appropriation.

The bill also delays the sunset provision of the QTI program from June 30, 2010 to June 30, 2014.

<u>Brownfield Redevelopment Bonus Refunds</u>
The bill amends s. 288.107, F.S., to lower the capital investment requirement for brownfields from $2 million to $500,000 in areas that do not require site cleanup. Brownfield applications must be reviewed and certified pursuant to the standard timeline outlined in the newly-created s. 288.061, F.S. The bill also requires brownfield projects to have local support through the passage of a local resolution adopted by the governing board of a county or municipality.

<u>Innovation Incentive</u>
The bill makes several changes to the Innovation Incentive Program to improve timing, provide reporting requirements, and make the provisions of the alternative and renewable energy consistent with the rest of the program. The bill:

- Creates a new category of Innovation Incentive projects, “Alternative and Renewable Energy.”

- Promotes consistency in the Innovation Incentive Program process among all three project categories by:

    - Clarifying that the commission will forward energy project proposals to EFI to conduct the economic modeling review required for all Innovation incentive Program applications.

  - Clarifying that EFI will assist OTTED in validating the performance of any energy project grantees, as it already does for awardees in the other two categories of projects.

  - Clarifying that each awardee must comply with the business ethics standards developed by EFI and implemented earlier in the program.

- Makes the matching-funds waiver requirement for the energy projects consistent with that of the other two categories of projects. Currently, the match may be waived if OTTED and an unspecified department determine that the merits of the project or an undefined “specific circumstance” warrant it. Under the provisions of this bill, the match may be waived or reduced in rural areas of critical economic concern, or reduced in rural areas, brownfields, and enterprise zones.

- Retains the minimum requirement that 35 direct, new jobs be created, but combines that provision with the existing requirement that the new jobs’ average annual wage equal at least 130 percent of the average private sector wage.

- Deletes a duplicative wage requirement waiver.

- Deletes other criteria that were part of the program eligibility requirements, and relocates them to the part of the statute that governs the evaluation of a project application. These relocated criteria also are redrafted to improve their grammatical clarity and to conform them more closely to the requirements for funds under ch. 377, F.S., the renewable energy and energy-efficient technologies grant program. Among the relocated criteria are:

  - Availability of matching funds or in-kind contributions;

  - The degree to which the project will stimulate in-state capital investment and economic development;

  - The degree to which the project uses innovative technologies; and

  - The degree to which the project demonstrates efficient use of energy and material resources.

- Adds definitions for the “Florida Energy and Climate Commission,” “industry wage,” “naming opportunities,” and amends the definition for “project” to include alternative and renewable energy projects.

- Makes the local-match and average wage waiver provisions for the alternative and renewable energy projects identical to those available for the R&D and innovation business projects.

- Clarifies that EFI shall evaluate all three categories of projects based on their economic and business data and impact, rather than having the commission evaluate those factors for the energy projects. However, EFI is directed to solicit comments from the commission before it makes its recommendations to OTTED on the energy projects.

- Clarifies the application approval process by specifying that the Executive Office of the Governor can release Innovation Incentive Program grant funds upon review and approval by the Legislative Budget Commission.

- Specifies that the provisions currently in law pertaining to what must be included in the Innovation Incentive Program agreement are simply the minimum requirements.

- Directs OTTED to work with OPPAGA and other entities to develop performance measures that may quantify whether the grant awardees are creating a synergy within their communities that encourages economic development.

- Adds several requirements to the agreement, between the awardee and OTTED. Specifically, awardees must:

    - Establish internship programs or other educational opportunities for students and teachers;

    - Submit to OTTED and EFI quarterly and annual reports related to the awardees' activities and performance;

    - Submit to OTTED an annual accounting of the expenditure of grant funds; and

    - Agree to include in the agreement a process for amending it.

The bill also deletes obsolete language, such as development of a set of business ethics standards by 2006, which already have been completed, and corrects grammatical errors.

Two reporting requirements are added to s. 288.1089, F.S.:

1) OTTED is directed to prepare an annual report summarizing the activities and accomplishments of Innovation Incentive Program grant recipients, and to evaluate whether the recipients are in fact catalysts for additional direct and indirect economic development in Florida. The first report is due January 5, 2010, and must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

2) OPPAGA, with assistance from the Auditor General's Office, must prepare a joint report evaluating the program's progress toward creating clusters of high-wage, high-skilled, complementary industries in Florida, thus gauging whether the grant recipients are acting as catalysts for broad economic development in Florida. This report is due every 3 years, beginning March 1, 2010, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

<u>Florida Opportunity Fund</u>
The bill makes changes to the Florida Opportunity Fund to allow the fund to make direct investments or provide loans to early stage businesses or infrastructure projects in the state. The business or infrastructure project must relate to technology sectors that are strategic to Florida. The fund may not use its original appropriation of $29.5 million to make direct investments but may raise private capital or utilize other public funding sources. The progress of direct investments must be included in the fund's annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

<u>Tax Benefits of Incentives</u>
The bill creates s. 288.10895, F.S., to provide for the transfer of economic development incentives within the same corporate family if the parent entity may not use the incentive because of its corporate form. In the following circumstances, any entity entitled to receive an incentive may transfer that incentive to another entity:

- In the case of a merger or acquisition, the incentive may be transferred to the surviving or acquiring entity.

- A partnership or a disregarded entity may transfer an incentive to its partners, members or parent.

- A corporation may transfer an incentive to other members of its affiliated group of corporations, such as, a parent or subsidiary.

The transferring entity may transfer either all their unused incentives or transfer units of not less than 25 percent of the remaining incentive. However, an entity may not transfer an incentive if the receiving entity is not subject to the tax for which the incentive is allowed.

The receiving entity's use of the incentive is limited to the same use as the transferring entity, and may not exceed the maximum amount of incentive to which the transferring entity would have been entitled. Additionally, the receiving entity is not permitted to transfer the incentive to a third entity unless the transfer is to a surviving or acquiring entity. The following programs are eligible for transfers of incentive awards:

Urban High-Crime Area Job Tax Credit Program
Rural Job Tax Credit Program
Capital Investment Tax Credit
Qualified Defense Contractor and Space Flight Business Tax Refund Program
Qualified Targeted Industry Tax Refund Program
Brownfield Redevelopment Bonus Refunds
State incentives available in enterprise zones

RURAL ECONOMIC DEVELOPMENT

Present Situation

A "rural community" is a county with a population of 75,000 or less; a county with a population of 100,000 or less that is contiguous to a county with a population of 75,000 or less; a municipality within a county with a population of 75,000 or less, or a county with a population of 100,000 or less that is contiguous to a county with a population of 75,000 or less; or a federal enterprise community or an incorporated rural city with a population of 25,000 or less and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified by statute and verified by the Office of Tourism, Trade, and Economic Development.[18]

Based on the most recent population estimates, thirty-two Florida counties are presently categorized as "rural" pursuant to the statutory definition outlined above. Most of these rural counties have been categorized into one of three Rural Areas of Critical Economic Concern (North Central, Northwest, and South Central). The Rural Areas of Critical Economic Concern (RACECs) are defined by OTTED based on measures of economic interdependence among the rural counties in each of the three geographic regions.

The status of a county as rural and its inclusion in a RACEC is not static. Sumter County, which had previously fit the statutory definition of a rural county, exceeded the population threshold of 75,000 residents in 2006 causing the county to lose its status as a rural county. Based on population growth projections, Highlands County is no longer a rural area and Flagler and Putnam Counties will soon exceed the population threshold for rural counties. Being designated as a rural area provides local government access to incentives not offered to non-rural areas.

The Rural Economic Development Initiative (REDI) was created to encourage and align critical state agency participation and investment around important rural issues and opportunities. The Rural Economic Development Catalyst Project (catalyst project) is designed to further goals set forth in REDI by gathering economic intelligence and perspectives for Florida's three Rural Areas of Critical Economic Concern (RACEC). The catalyst project is intended to identify, improve and market regional physical sites to facilitate the location of significant job creation opportunities within the RACECs.

In May 2007 each RACEC, in conjunction with EFI and OTTED, engaged in the identification and selection of possible sites for their respective catalyst project. Additionally, each RACEC had identified

[18] s. 288.0656, F.S.

industries of catalytic opportunity and has begun to gear site selection and marketing activities central to the identified industries.

The Rural Infrastructure Fund was created within the Office of Tourism, Trade, and Economic Development in 1996 to facilitate the planning, preparation and financing of infrastructure projects in rural communities. Three project grants are available under the program: (1) Total Project Participation Grants; (2) Feasibility Grants; and (3) Preclearance Review Grants. The maximum amount available per grant for each project is limited to 25 percent of total appropriated funds.

Total Participation Grants may fund up to 30 percent of the total infrastructure project costs related to specific job creating opportunities where applicants have applied for the maximum available under other state or federal infrastructure funding programs. Total participation grants are intended to leverage local, state and federal funds.

Effect of Proposed Changes

The bill makes several changes to the Rural Economic Development Initiative (REDI), the Rural Infrastructure Fund, and the definition of rural area. The bill:

- Increases the amount of funding available (from 30% to 40%) for catalyst sites that receive funding from the Rural Infrastructure Fund, and allows for waiver of the local match requirement for catalyst projects. This change will help develop the state's rural economic development sites and allow rural areas a greater ability to attract catalyst projects that will greatly impact the economy within the region. (Section 11)

- Codifies the catalyst project initiative that is currently underway by the state's rural areas of critical economic concern. (Section 12)

- Creates definitions for "catalyst project," "catalyst site," and "rural area of critical economic concern." (Section 12)

- Clarifies that representatives from each agency within REDI must designate a deputy secretary or higher level staff person by August 1 of each year to serve as the REDI representative for that agency. (Section 12)

- Gives REDI the ability to provide technical assistance for comprehensive planning to local governments in rural areas of critical economic concern. In addition, REDI will annually develop a technical assistance manual. (Section 12)

- Expands the definition of "rural community." Currently, a county with a population of 100,000 or less that is contiguous to a county with a population of 75,000 or less qualifies as a rural community. The bill expands this classification to a county with a population of 125,000. This will allow Highlands County to be reclassified as a rural county and allow Flagler and Putnam Counties to remain classified as rural counties. (Sections 5, 10, 12, 14, 16)

- Provides relief for counties in Florida's panhandle. A county may now be classified as a rural area if it is contiguous with either Alabama or Georgia, has a population density of less than 550 persons per square mile, and does not contain the state capitol. These changes would allow for Escambia, Santa Rosa, and Okaloosa Counties to be reclassified as rural areas. (Sections 5, 10, 12, 14, 16)

- Clarifies that the Office of Tourism, Trade, and Economic Development may waive criteria of the Quick Action Closing Fund for projects in rural areas of critical economic concern. (Section 19)

B. SECTION DIRECTORY:

Section 1: Amends s. 166.231, F.S., to replace SIC codes with NAICS codes.

Section 2: Amends s. 212.05, F.S., to replace SIC codes with NAICS codes and extend, from 90 days to 180 days, the number of tax exempt days provided by the decals issued by boat dealers to nonresidents.

Section 3: Amends s. 212.08, F.S., to replace SIC codes with NAICS codes.

Section 4: Amends s. 212.097, F.S., to replace SIC codes with NAICS codes and to establish standard timeline application processes for the Urban High-Crime Area Jobs Tax Credit.

Section 5: Amends s. 212.098, F.S., to replace SIC codes with NAICS codes.

Section 6: Amends s. 220.15, F.S., to replace SIC codes with NAICS codes.

Section 7: Amends s. 220.191, F.S., establishing standard timeline application processes for the Capital Investment Tax Credit.

Section 8: Creates s. 288.061, F.S., establishing a standard timeline application process for economic development programs.

Section 9: Amends s. 288.063, F.S., establishing standard timeline application processes for the Economic Development Transportation Fund.

Section 10: Amends s. 288.065, F.S., amends the definition of rural county relating to the Rural Community Development Revolving Loan Fund.

Section 11: Amends s. 288.0655, F.S., establishing a standard timeline for applications relating to the Rural Infrastructure Fund, providing that awards for catalyst sites may be as high as 40% of the total infrastructure cost, and providing that local matches may be waived for catalyst sites.

Section 12: Amends s. 288.0656, F.S., codifying the catalyst project, providing definitions, and making other adjustments to the Rural Economic Development Initiative.

Section 13: Amends s. 288.06561, F.S., to conform cross-references.

Section 14: Amends s. 288.0657, F.S., relating to rural economic development strategy grants.

Section 15: Amends s. 288.1045, F.S., relating to business incentives approved under the Qualified Defense Contractor Tax Refund Program.

Section 16: Amends s. 288.106, F.S., relating to business incentives approved under the Qualified Target Industry Tax Refund Program.

Section 17: Amends s. 288.107, F.S., relating to business incentives approved under the Brownfield Redevelopment Bonus Refund Program.

Section 18: Amends s. 288.108, F.S., relating to business incentives approved under the High Impact Performance Incentive Program.

Section 19: Amends s. 288.1088, F.S., relating to business incentives approved under the Quick Action Closing Fund.

Section 20: Amends s. 288.1089, F.S., relating to business incentives approved under the Innovation Incentive Program.

Section 21: Creates s. 288.10895, F.S., relating to transfers of economic development tax credits or incentives.

Section 22: Amends s. 288.962, F.S., relating to the findings and intent of the Florida Opportunity Fund.

Section 23: Amends s. 288.9624, F.S., relating to the purpose of the Florida Opportunity Fund.

Section 24: Amends s. 257.193, F.S., to conform cross-references.

Section 25: Amends s. 288.019, F.S., to conform cross-references.

Section 26: Amends s. 627.6699, F.S., to conform cross-references.

Section 27: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: (in millions for FY 2009-10)

	General Revenue		State Trust	
	Cash	Recurr	Cash	Recurr
Exemption for SIC industries granted to 5 digit NAICS groups	0.0	0.0	0.0	0.0
Extends 90 day boat decal to 180 days	(0.3)	(0.4)	(*)	(*)
Rural Job Tax Credits	(0.4)	(0.5)	(*)	(*)
Rural Transfer Incentives	(0.1)	(0.1)	(*)	(*)
Urban Transfer Incentives	(0.2)	(0.4)	(*)	(*)
Capital Investment Tax Credit[19]				
	(1.0)	(1.4)	(*)	(*)

(*) = insignificant

2. Expenditures:

OTTED may incur minimal administrative costs implementing the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates the bill will have a recurring negative, but insignificant, impact on local governments.

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[19] The Revenue Estimating Conference had not yet reviewed the provisions of the bill relating to the Capital Investment Tax Credit. Preliminary estimates indicate the measures will have a recurring negative impact of $1.1 million on state revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses seeking incentives under any of the state's economic development incentive programs could expect more prompt response for approval or denial. Businesses wishing to utilize economic development tax credits or incentives but unable to do so because of their corporate form may be able to transfer the benefits of such tax credits or incentives within the corporate family to be used where possible. Rural areas would receive several benefits that may encourage increased economic development.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill will reduce the authority of municipalities and counties to raise revenues. However, since the impact is expected to be insignificant, the bill is exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2009, the Economic Development and Community Affairs Policy Council reported the bill favorably with a strike-all amendment. The amendment:

- Extended, from 90 days to 180 days, the number of tax exempt days provided by Department of Revenue-approved decals issued by boat dealers to non-Florida residents;

- Added the Urban High-Crime Area Job Tax Credit Program to the list of incentive programs that are now subject to the newly-created incentive approval timeline process;

- Added language that requires the Legislative Budget Commission to approve Quick Action Closing Fund projects;

- Added a provision to the new definition of rural area for counties seeking a rural classification that are contiguous to Alabama and Georgia with population densities less than 550 persons per square mile cannot include a county containing the state capitol (Leon County);

- Created a new incentive within the Qualified Targeted Industry Tax Refund Program to allow current and future catalyst sites in a Rural Area of Critical Economic Concern or areas with a sector plan to be designated as a Targeted Industry Zones where a $6,000 tax refund is available for each job created;

- Extended the Economic Stimulus Exemption from July 1, 2010 to July 1, 2011 to provide businesses with applications for a tax refund additional time to meet contractual requirements;

- Requires representatives from each agency within REDI to designate a deputy secretary or higher level staff person by August 1 of each year to serve as the REDI representative for that agency;

- Lowers the capital investment requirement for brownfields from $2 million to $500,000 in areas that do not require site cleanup; and

- Made several programmatic and technical changes to the Innovation Incentive Program:

    - Creates a new category for Innovation Incentive projects, "Alternative and Renewable Energy;"

    - Allows the local match requirement to be reduced or waived in Rural Areas of Critical Economic Concern and reduced in rural areas, brownfields, and enterprise zones;

    - Projects must provide at least 35 new jobs that pay at least 130 percent of the average private sector wage;

    - Enterprise Florida, Inc., must consult with the Florida Energy and Climate Commission before making recommendations to the Office of Tourism, Trade, and Economic Development (OTTED) regarding alternative and renewable energy projects;

    - Added a new reporting requirement that directs OTTED to submit an annual report detailing the Innovation Incentive Program to the Governor, the President of the Senate, and the Speaker of the House of Representatives;

    - Added a new reporting requirement that directs the Office of Program Policy Analysis and Government Accountability to submit a report every three years to the Governor, the President of the Senate, and the Speaker of the House of Representatives to determine whether the program is meeting its statutory requirements; and

    - Deletes certain criteria that were part of the program eligibility requirements, and relocates them to the part of the statute that governs the evaluation of a project application. These relocated criteria also are redrafted to improve their grammatical clarity and to conform them more closely to the requirements for funds under ch. 377, F.S., the renewable energy and energy-efficient technologies grant program.

- Added a new provision to the Florida Opportunity Fund to allow the fund to make direct investments or provide loans to early stage businesses or infrastructure projects in the state.