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CS/HB 7109

2010 Legislature

1 A bill to be entitled
2 An act relating to the tax refund program for qualified
3 target industry businesses; amending s. 288.106, F.S.;
4 providing legislative findings and declarations; revising
5 and providing definitions; establishing a schedule for the
6 Office of Tourism, Trade, and Economic Development to
7 review and revise the list of target industries and submit
8 a report to the Governor and Legislature; revising the
9 criteria for evaluating applications for the program;
10 requiring consideration of the state's return on
11 investment in evaluating applications for participation in
12 the program; requiring the Office of Economic and
13 Demographic Research to submit reports to the Legislature
14 evaluating the calculation of the state's return on
15 investment for the program; requiring that additional
16 provisions be included in tax refund agreements;
17 redesignating the economic-stimulus exemption as the
18 "economic recovery extension"; revising the date by which
19 qualified target industry businesses may request economic
20 recovery extensions; authorizing waiver of a requirement
21 that qualified target industry businesses annually provide
22 proof of taxes paid under certain conditions; requiring
23 the Office of Tourism, Trade, and Economic Development to
24 submit reports to the Governor and Legislature concerning
25 the failure of qualified target industry businesses to
26 complete their tax refund agreements; deleting obsolete
27 provisions; revising the date by which a target industry
28 business may be certified as qualified for the program;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb7109-02-er

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29 conforming cross-references; amending ss. 288.1089 and
30 290.00677, F.S.; conforming provisions to changes made by
31 the act; amending ss. 159.803, 220.191, and 288.107, F.S.;
32 conforming cross-references; providing an effective date.
33

34 Be It Enacted by the Legislature of the State of Florida:
35

36 Section 1. Section 288.106, Florida Statutes, is amended
37 to read:

38 288.106 Tax refund program for qualified target industry
39 businesses.—

40 (1) LEGISLATIVE FINDINGS AND DECLARATIONS.—The Legislature
41 finds that retaining and expanding existing businesses in the
42 state, encouraging the creation of new businesses in the state,
43 attracting new businesses from outside the state, and generally
44 providing conditions favorable for the growth of target
45 industries creates high-quality, high-wage employment
46 opportunities for residents of the state and strengthens the
47 state's economic foundation. The Legislature also finds that
48 incentives narrowly focused in application and scope tend to be
49 more effective in achieving the state's economic development
50 goals. The Legislature further finds that higher-wage jobs
51 reduce the state's share of hidden costs, such as public
52 assistance and subsidized health care associated with low-wage
53 jobs. Therefore, the Legislature declares that it is the policy
54 of the state to encourage the growth of higher-wage jobs and a
55 diverse economic base by providing state tax refunds to
56 qualified target industry businesses that originate or expand in

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57 | the state or that relocate to the state.

58 | (2)~~(1)~~ DEFINITIONS.—As used in this section:

59 | (a) "Account" means the Economic Development Incentives
60 | Account within the Economic Development Trust Fund established
61 | under s. 288.095.

62 | (b)~~(a)~~ "Authorized local economic development agency"
63 | means a ~~any~~ public or private entity, including an entity ~~those~~
64 | defined in s. 288.075, authorized by a county or municipality to
65 | promote the general business or industrial interests of that
66 | county or municipality.

67 | (c)~~(b)~~ "Average private sector wage in the area" means the
68 | statewide private sector average wage or the average of all
69 | private sector wages and salaries in the county or in the
70 | standard metropolitan area in which the business is located.

71 | (d)~~(e)~~ "Business" means an employing unit, as defined in
72 | s. 443.036, that ~~which~~ is registered for unemployment
73 | compensation purposes with the state agency providing
74 | unemployment tax collection services under contract with the
75 | Agency for Workforce Innovation through an interagency agreement
76 | pursuant to s. 443.1316, or a subcategory or division of an
77 | employing unit that ~~which~~ is accepted by the state agency
78 | providing unemployment tax collection services as a reporting
79 | unit.

80 | (e)~~(d)~~ "Corporate headquarters business" means an
81 | international, national, or regional headquarters office of a
82 | multinational or multistate business enterprise or national
83 | trade association, whether separate from or connected with other
84 | facilities used by such business.

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85 (f) ~~(n)~~ "Director" means the Director of the Office of
86 Tourism, Trade, and Economic Development.

87 (g) ~~(f)~~ "Enterprise zone" means an area designated as an
88 enterprise zone pursuant to s. 290.0065.

89 (h) ~~(g)~~ "Expansion of an existing business" means the
90 expansion of an existing Florida business by or through
91 additions to real and personal property, resulting in a net
92 increase in employment of not less than 10 percent at such
93 business.

94 (i) ~~(h)~~ "Fiscal year" means the fiscal year of the state.

95 (j) ~~(i)~~ "Jobs" means full-time equivalent positions,
96 including, but not limited to, positions obtained from a
97 temporary employment agency or employee leasing company or
98 through a union agreement or coemployment under a professional
99 employer organization agreement, that result as that term is
100 consistent with terms used by the Agency for Workforce
101 Innovation and the United States Department of Labor for
102 purposes of unemployment compensation tax administration and
103 employment estimation, resulting directly from a project in this
104 state. The term does not include temporary construction jobs
105 involved with the construction of facilities for the project or
106 any jobs previously included in any application for tax refunds
107 under s. 288.1045 or this section.

108 (k) ~~(j)~~ "Local financial support" means funding from local
109 sources, public or private, that ~~which~~ is paid to the Economic
110 Development Trust Fund and that ~~which~~ is equal to 20 percent of
111 the annual tax refund for a qualified target industry business.
112 A qualified target industry business may not provide, directly

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113 or indirectly, more than 5 percent of such funding in any fiscal
114 year. The sources of such funding may not include, directly or
115 indirectly, state funds appropriated from the General Revenue
116 Fund or any state trust fund, excluding tax revenues shared with
117 local governments pursuant to law.

118 (l) ~~(k)~~ "Local financial support exemption option" means
119 the option to exercise an exemption from the local financial
120 support requirement available to any applicant whose project is
121 located in a brownfield area, a rural city, or a rural community
122 county with a population of 75,000 or fewer or a county with a
123 population of 125,000 or fewer which is contiguous to a county
124 with a population of 75,000 or fewer. Any applicant that
125 exercises this option is ~~shall~~ not ~~be~~ eligible for more than 80
126 percent of the total tax refunds allowed such applicant under
127 this section.

128 (m) ~~(l)~~ "New business" means a business that applies for a
129 tax refund under this section before beginning operations ~~which~~
130 ~~heretofore did not exist~~ in this state, ~~first beginning~~
131 ~~operations on a site located in this state~~ and that is a legal
132 entity ~~clearly~~ separate from any other commercial or industrial
133 operations owned by the same business.

134 (n) ~~(e)~~ "Office" means the Office of Tourism, Trade, and
135 Economic Development.

136 (o) ~~(m)~~ "Project" means the creation of a new business or
137 expansion of an existing business.

138 (p) ~~(q)~~ "Qualified target industry business" means a target
139 industry business ~~that has been~~ approved by the office ~~director~~
140 to be eligible for tax refunds under ~~pursuant to~~ this section.

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141 (q) "Return on investment" means the gain in state
 142 revenues as a percentage of the state's investment. The state's
 143 investment includes state grants, tax exemptions, tax refunds,
 144 tax credits, and other state incentives.

145 ~~(r) "Rural county" means a county with a population of~~
 146 ~~75,000 or fewer or a county with a population of 100,000 or~~
 147 ~~fewer which is contiguous to a county with a population of~~
 148 ~~75,000 or fewer.~~

149 (r)~~(s)~~ "Rural city" means a city having ~~with~~ a population
 150 of 10,000 or fewer ~~less~~, or a city having ~~with~~ a population of
 151 greater than 10,000 but fewer ~~less~~ than 20,000 that ~~which~~ has
 152 been determined by the office ~~of Tourism, Trade, and Economic~~
 153 ~~Development~~ to have economic characteristics such as, but not
 154 limited to, a significant percentage of residents on public
 155 assistance, a significant percentage of residents with income
 156 below the poverty level, or a significant percentage of the
 157 city's employment base in agriculture-related industries.

158 (s)~~(t)~~ "Rural community" means:

- 159 1. A county having ~~with~~ a population of 75,000 or fewer.
- 160 2. A county having ~~with~~ a population of 125,000 or fewer
 161 that ~~which~~ is contiguous to a county having ~~with~~ a population of
 162 75,000 or fewer.
- 163 3. A municipality within a county described in
 164 subparagraph 1. or subparagraph 2.

165
 166 For purposes of this paragraph, population shall be determined
 167 in accordance with the most recent official estimate pursuant to
 168 s. 186.901.

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169 ~~(t) (e)~~ "Target industry business" means a corporate
170 headquarters business or any business that is engaged in one of
171 the target industries identified pursuant to the following
172 criteria developed by the office in consultation with Enterprise
173 Florida, Inc.:

174 1. Future growth.—Industry forecasts should indicate
175 strong expectation for future growth in both employment and
176 output, according to the most recent available data. Special
177 consideration should be given to businesses that export goods
178 ~~Florida's growing access to, or provide services in,~~
179 international markets and businesses that replace domestic and
180 international or to replacing imports of goods or services.

181 2. Stability.—The industry should not be subject to
182 periodic layoffs, whether due to seasonality or sensitivity to
183 volatile economic variables such as weather. The industry should
184 also be relatively resistant to recession, so that the demand
185 for products of this industry is not typically necessarily
186 subject to decline during an economic downturn.

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

189 4. Market and resource independent.—The location of
190 industry businesses should not be dependent on Florida markets
191 or resources as indicated by industry analysis, except for
192 businesses in the renewable energy industry. ~~Special~~
193 ~~consideration should be given to the development of strong~~
194 ~~industrial clusters which include defense and homeland security~~
195 ~~businesses.~~

196 5. Industrial base diversification and strengthening.—The

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197 industry should contribute toward expanding or diversifying the
198 state's or area's economic base, as indicated by analysis of
199 employment and output shares compared to national and regional
200 trends. Special consideration should be given to industries that
201 strengthen regional economies by adding value to basic products
202 or building regional industrial clusters as indicated by
203 industry analysis. Special consideration should also be given to
204 the development of strong industrial clusters that include
205 defense and homeland security businesses.

206 6. Economic benefits.—The industry is expected to ~~should~~
207 have strong positive impacts on or benefits to the state or ~~and~~
208 regional economies.

209
210 ~~The term does office, in consultation with Enterprise Florida,~~
211 ~~Inc., shall develop a list of such target industries annually~~
212 ~~and submit such list as part of the final agency legislative~~
213 ~~budget request submitted pursuant to s. 216.023(1). A target~~
214 ~~industry business may not include any business ~~industry~~ engaged~~
215 ~~in retail industry activities; any electrical utility company;~~
216 ~~any phosphate or other solid minerals severance, mining, or~~
217 ~~processing operation; any oil or gas exploration or production~~
218 ~~operation; or any business ~~firm~~ subject to regulation by the~~
219 ~~Division of Hotels and Restaurants of the Department of Business~~
220 ~~and Professional Regulation. By January 1 of every 3rd year,~~
221 ~~beginning January 1, 2011, the office, in consultation with~~
222 ~~Enterprise Florida, Inc., economic development organizations,~~
223 ~~the State University System, local governments, employee and~~
224 ~~employer organizations, market analysts, and economists, shall~~

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225 review and, as appropriate, revise the list of such target
 226 industries and submit the list to the Governor, the President of
 227 the Senate, and the Speaker of the House of Representatives.

228 (u) ~~(p)~~ "Taxable year" means taxable year as defined in s.
 229 220.03(1)(y).

230 (3) ~~(2)~~ TAX REFUND; ELIGIBLE AMOUNTS.—

231 (a) There shall be allowed, from the account, a refund to
 232 a qualified target industry business for the amount of eligible
 233 taxes certified by the office that ~~director which~~ were paid by
 234 the ~~such~~ business. The total amount of refunds for all fiscal
 235 years for each qualified target industry business must be
 236 determined pursuant to subsection (4) ~~(3)~~. The annual amount of
 237 a refund to a qualified target industry business must be
 238 determined pursuant to subsection (6) ~~(5)~~.

239 (b)1. Upon approval by the office ~~director~~, a qualified
 240 target industry business shall be allowed tax refund payments
 241 equal to \$3,000 multiplied by ~~times~~ the number of jobs specified
 242 in the tax refund agreement under subparagraph (5) ~~(4)~~(a)1., or
 243 equal to \$6,000 multiplied by ~~times~~ the number of jobs if the
 244 project is located in a rural community ~~county~~ or an enterprise
 245 zone.

246 2. ~~Further,~~ A qualified target industry business shall be
 247 allowed additional tax refund payments equal to \$1,000
 248 multiplied by ~~times~~ the number of jobs specified in the tax
 249 refund agreement under subparagraph (5) ~~(4)~~(a)1., if such jobs
 250 pay an annual average wage of at least 150 percent of the
 251 average private sector wage in the area, or equal to \$2,000
 252 multiplied by ~~times~~ the number of jobs if such jobs pay an

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253 | annual average wage of at least 200 percent of the average
254 | private sector wage in the area.

255 | (c) A qualified target industry business may not receive
256 | refund payments of more than 25 percent of the total tax refunds
257 | specified in the tax refund agreement under subparagraph
258 | (5) ~~(4)~~ (a)1. in any fiscal year. Further, a qualified target
259 | industry business may not receive more than \$1.5 million in
260 | refunds under this section in any single fiscal year, or more
261 | than \$2.5 million in any single fiscal year if the project is
262 | located in an enterprise zone. A qualified target industry
263 | business may not receive more than \$5 million in refund payments
264 | under this section in all fiscal years, or more than \$7.5
265 | million if the project is located in an enterprise zone. ~~Funds~~
266 | ~~made available pursuant to this section may not be expended in~~
267 | ~~connection with the relocation of a business from one community~~
268 | ~~to another community in this state unless the Office of Tourism,~~
269 | ~~Trade, and Economic Development determines that without such~~
270 | ~~relocation the business will move outside this state or~~
271 | ~~determines that the business has a compelling economic rationale~~
272 | ~~for the relocation and that the relocation will create~~
273 | ~~additional jobs.~~

274 | (d) ~~(e)~~ After entering into a tax refund agreement under
275 | subsection (5) ~~(4)~~, a qualified target industry business may:

276 | 1. Receive refunds from the account for the following
277 | taxes due and paid by that business beginning with the first
278 | taxable year of the business that ~~which~~ begins after entering
279 | into the agreement:

280 | a. Corporate income taxes under chapter 220.

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- 281 b. Insurance premium tax under s. 624.509.
- 282 2. Receive refunds from the account for the following
- 283 taxes due and paid by that business after entering into the
- 284 agreement:
- 285 a. Taxes on sales, use, and other transactions under
- 286 chapter 212.
- 287 b. Intangible personal property taxes under chapter 199.
- 288 c. Emergency excise taxes under chapter 221.
- 289 d. Excise taxes on documents under chapter 201.
- 290 e. Ad valorem taxes paid, as defined in s. 220.03(1).
- 291 f. State communications services taxes administered under
- 292 chapter 202. This provision does not apply to the gross receipts
- 293 tax imposed under chapter 203 and administered under chapter 202
- 294 or the local communications services tax authorized under s.
- 295 202.19.

296

297 ~~The addition of state communications services taxes administered~~

298 ~~under chapter 202 is remedial in nature and retroactive to~~

299 ~~October 1, 2001. The office may make supplemental tax refund~~

300 ~~payments to allow for tax refunds for communications services~~

301 ~~taxes paid by an eligible qualified target industry business~~

302 ~~after October 1, 2001.~~

303 (e)-(d) However, a qualified target industry business may

304 not receive a refund under this section for any amount of

305 credit, refund, or exemption previously granted to that business

306 for any of the ~~such~~ taxes listed in paragraph (d). If a refund

307 for such taxes is provided by the office, which taxes are

308 subsequently adjusted by the application of any credit, refund,

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309 or exemption granted to the qualified target industry business
310 other than as provided in this section, the business shall
311 reimburse the account for the amount of that credit, refund, or
312 exemption. A qualified target industry business shall notify and
313 tender payment to the office within 20 days after receiving any
314 credit, refund, or exemption other than one provided in this
315 section.

316 (f) Refunds made available under this section may not be
317 expended in connection with the relocation of a business from
318 one community to another community in the state unless the
319 office determines that, without such relocation, the business
320 will move outside the state or determines that the business has
321 a compelling economic rationale for relocation and that the
322 relocation will create additional jobs.

323 (g)~~(e)~~ A qualified target industry business that
324 fraudulently claims a refund under this section:

325 1. Is liable for repayment of the amount of the refund to
326 the account, plus a mandatory penalty in the amount of 200
327 percent of the tax refund which shall be deposited into the
328 General Revenue Fund.

329 2. Commits ~~is guilty of~~ a felony of the third degree,
330 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

331 (4)~~(3)~~ APPLICATION AND APPROVAL PROCESS.-

332 (a) To apply for certification as a qualified target
333 industry business under this section, the business must file an
334 application with the office before the business decides ~~has made~~
335 ~~the decision~~ to locate a ~~new business~~ in this state or before
336 the business decides ~~had made the decision~~ to expand its ~~an~~

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337 existing operations ~~business~~ in this state. The application must
338 ~~shall~~ include, but need is not be limited to, the following
339 information:

340 1. The applicant's federal employer identification number
341 and, if applicable, ~~the applicant's~~ state sales tax registration
342 number.

343 2. The proposed permanent location of the applicant's
344 facility in this state at which the project ~~is or~~ is to be
345 located.

346 3. A description of the type of business activity or
347 product covered by the project, including a minimum of a five-
348 digit NAICS code for all activities included in the project. As
349 used in this paragraph, "NAICS" means those classifications
350 contained in the North American Industry Classification System,
351 as published in 2007 by the Office of Management and Budget,
352 Executive Office of the President, and updated periodically.

353 4. The proposed number of net new full-time equivalent
354 Florida jobs at the qualified target industry business as of
355 December 31 of each year included in the project and the average
356 wage of those jobs. If more than one type of business activity
357 or product is included in the project, the number of jobs and
358 average wage for those jobs must be separately stated for each
359 type of business activity or product.

360 5. The total number of full-time equivalent employees
361 employed by the applicant in this state, if applicable.

362 6. The anticipated commencement date of the project.

363 7. A brief statement explaining ~~concerning~~ the role that
364 the estimated tax refunds to be requested will play in the

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365 decision of the applicant to locate or expand in this state.

366 8. An estimate of the proportion of the sales resulting
367 from the project that will be made outside this state.

368 9. A resolution adopted by the governing board of the
369 county or municipality in which the project will be located,
370 which resolution recommends that the project ~~certain types of~~
371 ~~businesses~~ be approved as a qualified target industry business
372 and specifies ~~states~~ that the commitments of local financial
373 support necessary for the target industry business exist. Before
374 ~~In advance of~~ the passage of such resolution, the office may
375 also accept an official letter from an authorized local economic
376 development agency that endorses the proposed target industry
377 project and pledges that sources of local financial support for
378 such project exist. For the purposes of making pledges of local
379 financial support under this subparagraph ~~subsection~~, the
380 authorized local economic development agency shall be officially
381 designated by the passage of a one-time resolution by the local
382 governing board ~~authority~~.

383 10. Any additional information requested by the office.

384 (b) To qualify for review by the office, the application
385 of a target industry business must, at a minimum, establish the
386 following to the satisfaction of the office:

387 1.a. The jobs proposed to be created ~~provided~~ under the
388 application, pursuant to subparagraph (a)4., must pay an
389 estimated annual average wage equaling at least 115 percent of
390 the average private sector wage in the area where the business
391 is to be located or the statewide private sector average wage.
392 In determining the average annual wage, the office shall include

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393 only new proposed jobs, and wages for existing jobs shall be
394 excluded from this calculation.

395 b. The office may waive the average wage requirement at
396 the request of the local governing body recommending the project
397 and Enterprise Florida, Inc. The office may waive the wage
398 requirement ~~may only be waived~~ for a project located in a
399 brownfield area designated under s. 376.80 or in a rural city,
400 rural community, ~~or county~~ or ~~in an~~ enterprise zone ~~and~~ only if
401 ~~when~~ the merits of the individual project or the specific
402 circumstances in the community in relationship to the project
403 warrant such action. If the local governing body and Enterprise
404 Florida, Inc., make such a recommendation, it must be
405 transmitted in writing, and the specific justification for the
406 waiver recommendation must be explained. If the office ~~director~~
407 elects to waive the wage requirement, the waiver must be stated
408 in writing, and the reasons for granting the waiver must be
409 explained.

410 2. The target industry business's project must result in
411 the creation of at least 10 jobs at the ~~such~~ project and, in the
412 case of ~~if~~ an expansion of an existing business, must result in
413 a net increase in employment of at least 10 percent at the
414 business. ~~Notwithstanding the definition of the term "expansion~~
415 ~~of an existing business" in paragraph (1)(g),~~ At the request of
416 the local governing body recommending the project and Enterprise
417 Florida, Inc., the office may waive this requirement for a
418 business ~~define an "expansion of an existing business"~~ in a
419 rural community or ~~an~~ enterprise zone ~~as the expansion of a~~
420 ~~business resulting in a net increase in employment of less than~~

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421 ~~10 percent at such business~~ if the merits of the individual
 422 project or the specific circumstances in the community in
 423 relationship to the project warrant such action. If the local
 424 governing body and Enterprise Florida, Inc., make such a
 425 request, the request must be transmitted in writing, and the
 426 specific justification for the request must be explained. If the
 427 office ~~director~~ elects to grant the request, the grant must be
 428 stated in writing, and the reason for granting the request must
 429 be explained.

430 3. The business activity or product for the applicant's
 431 project must be ~~is~~ within an industry ~~or industries that have~~
 432 ~~been~~ identified by the office as a target industry business ~~to~~
 433 ~~be high-value-added industries~~ that contributes ~~contribute to~~
 434 ~~the area and~~ to the economic growth of the state and the area in
 435 which the business is located, that produces ~~produce~~ a higher
 436 standard of living for residents of this state in the new global
 437 economy, or that can be shown to make an equivalent contribution
 438 to the area's ~~area~~ and state's economic progress. ~~The director~~
 439 ~~must approve requests to waive the wage requirement for~~
 440 ~~brownfield areas designated under s. 376.80 unless it is~~
 441 ~~demonstrated that such action is not in the public interest.~~

442 (c) Each application meeting the requirements of paragraph
 443 (b) must be submitted to the office for determination of
 444 eligibility. The office shall review and evaluate each
 445 application based on, but not limited to, the following
 446 criteria:

447 1. Expected contributions to the state's economy,
 448 consistent with the state strategic economic development plan

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449 adopted by Enterprise Florida, Inc., ~~taking into account the~~
450 ~~long term effects of the project and of the applicant on the~~
451 ~~state economy.~~

452 2. The return on investment of the proposed award of tax
453 refunds under this section and the return on investment for
454 state incentives proposed for the project. The Office of
455 Economic and Demographic Research shall review and evaluate the
456 methodology and model used to calculate the return on investment
457 and report its findings by September 1 of every 3rd year,
458 beginning September 1, 2010, to the President of the Senate and
459 the Speaker of the House of Representatives ~~economic benefit of~~
460 ~~the jobs created by the project in this state, taking into~~
461 ~~account the cost and average wage of each job created.~~

462 3. The amount of capital investment to be made by the
463 applicant in this state.

464 4. The local financial commitment and support for the
465 project.

466 5. The effect of the project on the ~~local community,~~
467 ~~taking into account the~~ unemployment rate in ~~for~~ the county
468 where the project will be located.

469 6. The effect of the award ~~any tax refunds granted~~
470 ~~pursuant to this section~~ on the viability of the project and the
471 probability that the project would ~~will~~ be undertaken in this
472 state if such tax refunds are granted to the applicant, ~~taking~~
473 ~~into account the expected long term commitment of the applicant~~
474 ~~to economic growth and employment in this state.~~

475 7. The expected long-term commitment of the applicant to
476 economic growth and employment in ~~to~~ this state resulting from

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477 the project.

478 8. A review of the business's past activities in this
479 state or other states, including whether such business has been
480 subjected to criminal or civil fines and penalties. This
481 subparagraph does not require the disclosure of confidential
482 information.

483 (d) Applications shall be reviewed and certified pursuant
484 to s. 288.061. The office shall include in its review
485 projections of the tax refunds the business would be eligible to
486 receive in each fiscal year based on the creation and
487 maintenance of the net new Florida jobs specified in
488 subparagraph (a)4. as of December 31 of the preceding state
489 fiscal year. If appropriate, the office ~~director~~ shall enter
490 into a written agreement with the qualified target industry
491 business pursuant to subsection (5) ~~(4)~~.

492 (e) The office ~~director~~ may not certify any target
493 industry business as a qualified target industry business if the
494 value of tax refunds to be included in that letter of
495 certification exceeds the available amount of authority to
496 certify new businesses as determined in s. 288.095(3). However,
497 if the commitments of local financial support represent less
498 than 20 percent of the eligible tax refund payments, or to
499 otherwise preserve the viability and fiscal integrity of the
500 program, the office ~~director~~ may certify a qualified target
501 industry business to receive tax refund payments of less than
502 the allowable amounts specified in paragraph (3) ~~(2)~~(b). A letter
503 of certification that approves an application must specify the
504 maximum amount of tax refund that will be available to the

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505 | qualified industry business in each fiscal year and the total
506 | amount of tax refunds that will be available to the business for
507 | all fiscal years.

508 | (f) This section does not create a presumption that an
509 | applicant will ~~shall~~ receive any tax refunds under this section.
510 | However, the office may issue nonbinding opinion letters, upon
511 | the request of prospective applicants, as to the applicants'
512 | eligibility and the potential amount of refunds.

513 | (5) ~~(4)~~ TAX REFUND AGREEMENT.—

514 | (a) Each qualified target industry business must enter
515 | into a written agreement with the office that ~~which~~ specifies,
516 | at a minimum:

517 | 1. The total number of full-time equivalent jobs in this
518 | state that will be dedicated to the project, the average wage of
519 | those jobs, the definitions that will apply for measuring the
520 | achievement of these terms during the pendency of the agreement,
521 | and a time schedule or plan for when such jobs will be in place
522 | and active in this state.

523 | 2. The maximum amount of tax refunds that ~~which~~ the
524 | qualified target industry business is eligible to receive on the
525 | project and the maximum amount of a tax refund that the
526 | qualified target industry business is eligible to receive for
527 | each fiscal year, based on the job creation and maintenance
528 | schedule specified in subparagraph 1.

529 | 3. That the office may review and verify the financial and
530 | personnel records of the qualified target industry business to
531 | ascertain whether that business is in compliance with this
532 | section.

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533 4. The date by which, in each fiscal year, the qualified
534 target industry business may file a claim under subsection (6)
535 ~~(5)~~ to be considered to receive a tax refund in the following
536 fiscal year.

537 5. That local financial support will be annually available
538 and will be paid to the account. The office ~~director~~ may not
539 enter into a written agreement with a qualified target industry
540 business if the local financial support resolution is not passed
541 by the local governing body ~~authority~~ within 90 days after the
542 office ~~he or she~~ has issued the letter of certification under
543 subsection (4) ~~(3)~~.

544 6. That the office may conduct a review of the business to
545 evaluate whether the business is continuing to contribute to the
546 area's or state's economy.

547 7. That in the event the business does not complete the
548 agreement, the business will provide the office with the reasons
549 the business was unable to complete the agreement.

550 (b) Compliance with the terms and conditions of the
551 agreement is a condition precedent for the receipt of a tax
552 refund each year. The failure to comply with the terms and
553 conditions of the tax refund agreement results in the loss of
554 eligibility for receipt of all tax refunds previously authorized
555 under this section and the revocation by the office ~~director~~ of
556 the certification of the business entity as a qualified target
557 industry business, unless the business is eligible to receive
558 and elects to accept a prorated refund under paragraph (6) (e)
559 ~~(5) (d)~~ or the office grants the business an economic recovery
560 extension ~~economic stimulus exemption~~.

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561 1. A qualified target industry business may submit, ~~in~~
562 ~~writing,~~ a request to the office for an economic recovery
563 extension ~~economic stimulus exemption~~. The request must provide
564 quantitative evidence demonstrating how negative economic
565 conditions in the business's industry, the effects of ~~the impact~~
566 ~~of~~ a named hurricane or tropical storm, or specific acts of
567 terrorism affecting the qualified target industry business have
568 prevented the business from complying with the terms and
569 conditions of its tax refund agreement.

570 2. Upon receipt of a request under subparagraph 1., the
571 office has ~~director shall have~~ 45 days to notify the requesting
572 business, in writing, whether ~~if~~ its extension ~~exemption~~ has
573 been granted or denied. In determining whether ~~if~~ an extension
574 ~~exemption~~ should be granted, the office ~~director~~ shall consider
575 the extent to which negative economic conditions in the
576 requesting business's industry have occurred in the state or the
577 effects of ~~the impact of~~ a named hurricane or tropical storm or
578 specific acts of terrorism affecting the qualified target
579 industry business have prevented the business from complying
580 with the terms and conditions of its tax refund agreement. The
581 office shall consider current employment statistics for this
582 state by industry, including whether the business's industry had
583 substantial job loss during the prior year, when determining
584 whether an extension ~~exemption~~ shall be granted.

585 3. As a condition for receiving a prorated refund under
586 paragraph (6) (e) ~~(5) (d)~~ or an economic recovery extension
587 ~~economic stimulus exemption~~ under this paragraph, a qualified
588 target industry business must agree to renegotiate its tax

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589 refund agreement with the office to, at a minimum, ensure that
590 the terms of the agreement comply with current law and office
591 procedures governing application for and award of tax refunds.
592 Upon approving the award of a prorated refund or granting an
593 economic recovery extension ~~economic-stimulus exemption~~, the
594 office shall renegotiate the tax refund agreement with the
595 business as required by this subparagraph. When amending the
596 agreement of a business receiving an economic recovery extension
597 ~~economic-stimulus exemption~~, the office may extend the duration
598 of the agreement for a period not to exceed 2 years.

599 4. A qualified target industry business may submit a
600 request for an economic recovery extension ~~economic-stimulus~~
601 ~~exemption~~ to the office in lieu of any tax refund claim
602 scheduled to be submitted after January 1, 2009, but before July
603 1, 2012 ~~2011~~.

604 5. A qualified target industry business that receives an
605 economic recovery extension ~~economic-stimulus exemption~~ may not
606 receive a tax refund for the period covered by the extension
607 ~~exemption~~.

608 (c) The agreement must be signed by the director and by an
609 authorized officer of the qualified target industry business
610 within 120 days after the issuance of the letter of
611 certification under subsection (4) ~~(3)~~, but not before passage
612 and receipt of the resolution of local financial support. The
613 office may grant an extension of this period at the written
614 request of the qualified target industry business.

615 (d) The agreement must contain the following legend,
616 clearly printed on its face in bold type of not less than 10

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617 points in size: "This agreement is not ~~neither~~ a general
618 obligation of the State of Florida, nor is it backed by the full
619 faith and credit of the State of Florida. Payment of tax refunds
620 is ~~are~~ conditioned on and subject to specific annual
621 appropriations by the Florida Legislature ~~of moneys~~ sufficient
622 to pay amounts authorized in section 288.106, Florida Statutes."

623 (6) ~~(5)~~ ANNUAL CLAIM FOR REFUND.—

624 (a) To be eligible to claim any scheduled tax refund, a
625 qualified target industry business that has entered into a tax
626 refund agreement with the office under subsection (5) ~~(4)~~ must
627 apply by January 31 of each fiscal year to the office for the
628 tax refund scheduled to be paid from the appropriation for the
629 fiscal year that begins on July 1 following the January 31
630 claims-submission date. The office may, upon written request,
631 grant a 30-day extension of the filing date.

632 (b) The claim for refund by the qualified target industry
633 business must include a copy of all receipts pertaining to the
634 payment of taxes for which the refund is sought and data related
635 to achievement of each performance item specified in the tax
636 refund agreement. The amount requested as a tax refund may not
637 exceed the amount specified for the relevant fiscal year in that
638 agreement.

639 (c) The office may waive the requirement for proof of
640 taxes paid in future years for a qualified target industry
641 business that provides the office with proof that, in a single
642 year, the business has paid an amount of state taxes from the
643 categories in paragraph (3) (d) that is at least equal to the
644 total amount of tax refunds that the business may receive

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645 through successful completion of its tax refund agreement.

646 (d)~~(e)~~ A tax refund may not be approved for a qualified
647 target industry business unless the required local financial
648 support has been paid into the account for that refund. If the
649 local financial support provided is less than 20 percent of the
650 approved tax refund, the tax refund must be reduced. In no event
651 may the tax refund exceed an amount that is equal to 5 times the
652 amount of the local financial support received. Further, funding
653 from local sources includes any tax abatement granted to that
654 business under s. 196.1995 or the appraised market value of
655 municipal or county land conveyed or provided at a discount to
656 that business. The amount of any tax refund for such business
657 approved under this section must be reduced by the amount of any
658 such tax abatement granted or the value of the land granted,~~+~~
659 and the limitations in subsection (3) ~~(2)~~ and paragraph
660 (4) ~~(3)~~ (e) must be reduced by the amount of any such tax
661 abatement or the value of the land granted. A report listing all
662 sources of the local financial support shall be provided to the
663 office when such support is paid to the account.

664 (e)~~(d)~~ A prorated tax refund, less a 5-percent penalty,
665 shall be approved for a qualified target industry business if
666 ~~provided~~ all other applicable requirements have been satisfied
667 and the business proves to the satisfaction of the office
668 ~~director~~ that:

669 1. It has achieved at least 80 percent of its projected
670 employment; and ~~that~~

671 2. The average wage paid by the business is at least 90
672 percent of the average wage specified in the tax refund

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673 agreement, but in no case less than 115 percent of the average
674 private sector wage in the area available at the time of
675 certification, or 150 percent or 200 percent of the average
676 private sector wage if the business requested the additional
677 per-job tax refund authorized in paragraph (3)~~(2)~~(b) for wages
678 above those levels. The prorated tax refund shall be calculated
679 by multiplying the tax refund amount for which the qualified
680 target industry business would have been eligible, if all
681 applicable requirements had been satisfied, by the percentage of
682 the average employment specified in the tax refund agreement
683 which was achieved, and by the percentage of the average wages
684 specified in the tax refund agreement which was achieved.

685 (f)~~(e)~~ The office director, with such assistance as may be
686 required from ~~the office~~, the Department of Revenue, or the
687 Agency for Workforce Innovation, shall, by June 30 following the
688 scheduled date for submission of the tax refund claim, specify
689 by written order the approval or disapproval of the tax refund
690 claim and, if approved, the amount of the tax refund that is
691 authorized to be paid to the qualified target industry business
692 for the annual tax refund. The office may grant an extension of
693 this date on the request of the qualified target industry
694 business for the purpose of filing additional information in
695 support of the claim.

696 (g)~~(f)~~ The total amount of tax refund claims approved by
697 the office director under this section in any fiscal year must
698 not exceed the amount authorized under s. 288.095(3).

699 (h)~~(g)~~ This section does not create a presumption that a
700 tax refund claim will be approved and paid.

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701 (i) ~~(h)~~ Upon approval of the tax refund under paragraphs
702 ~~(e)~~, (d), ~~and (e)~~, and (f), the Chief Financial Officer shall
703 issue a warrant for the amount specified in the written order.
704 If the written order is appealed, the Chief Financial Officer
705 may not issue a warrant for a refund to the qualified target
706 industry business until the conclusion of all appeals of that
707 order.

708 (7) ~~(6)~~ ADMINISTRATION.—

709 (a) The office may ~~is authorized to~~ verify information
710 provided in any claim submitted for tax credits under this
711 section with regard to employment and wage levels or the payment
712 of the taxes to the appropriate agency or authority, including
713 the Department of Revenue, the Agency for Workforce Innovation,
714 or any local government or authority.

715 (b) To facilitate the process of monitoring and auditing
716 applications made under this section ~~program~~, the office may
717 provide a list of qualified target industry businesses to the
718 Department of Revenue, to the Agency for Workforce Innovation,
719 or to any local government or authority. The office may request
720 the assistance of those entities with respect to monitoring
721 jobs, wages, and the payment of the taxes listed in subsection
722 (3) ~~(2)~~.

723 (c) Funds specifically appropriated for ~~the~~ tax refunds
724 ~~refund program~~ for qualified target industry businesses under
725 this section may not be used by the office for any purpose other
726 than the payment of tax refunds authorized by this section.

727 (d) Beginning with tax refund agreements signed after July
728 1, 2010, the office shall attempt to ascertain the causes for

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729 any business's failure to complete its agreement and shall
730 report its findings and recommendations to the Governor, the
731 President of the Senate, and the Speaker of the House of
732 Representatives. The report shall be submitted by December 1 of
733 each year beginning in 2011.

734 ~~(7) Notwithstanding paragraphs (4) (a) and (5) (c), the~~
735 ~~office may approve a waiver of the local financial support~~
736 ~~requirement for a business located in any of the following~~
737 ~~counties in which businesses received emergency loans~~
738 ~~administered by the office in response to the named hurricanes~~
739 ~~of 2004: Bay, Brevard, Charlotte, DeSoto, Escambia, Flagler,~~
740 ~~Glades, Hardee, Hendry, Highlands, Indian River, Lake, Lee,~~
741 ~~Martin, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Polk,~~
742 ~~Putnam, Santa Rosa, Seminole, St. Lucie, Volusia, and Walton. A~~
743 ~~waiver may be granted only if the office determines that the~~
744 ~~local financial support cannot be provided or that doing so~~
745 ~~would effect a demonstrable hardship on the unit of local~~
746 ~~government providing the local financial support. If the office~~
747 ~~grants a waiver of the local financial support requirement, the~~
748 ~~state shall pay 100 percent of the refund due to an eligible~~
749 ~~business. The waiver shall apply for tax refund applications~~
750 ~~made for fiscal years 2004-2005, 2005-2006, and 2006-2007.~~

751 (8) EXPIRATION.—An applicant may not be certified as
752 qualified under this section after June 30, 2020 ~~2010~~. A tax
753 refund agreement existing on that date shall continue in effect
754 in accordance with its terms.

755 Section 2. Subsection (11) of section 159.803, Florida
756 Statutes, is amended to read:

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757 159.803 Definitions.—As used in this part, the term:
758 (11) "Florida First Business project" means any project
759 which is certified by the Office of Tourism, Trade, and Economic
760 Development as eligible to receive an allocation from the
761 Florida First Business allocation pool established pursuant to
762 s. 159.8083. The Office of Tourism, Trade, and Economic
763 Development may certify those projects meeting the criteria set
764 forth in s. 288.106(4)~~(3)~~(b) or any project providing a
765 substantial economic benefit to this state.

766 Section 3. Paragraph (h) of subsection (1) of section
767 220.191, Florida Statutes, is amended to read:

768 220.191 Capital investment tax credit.—

769 (1) DEFINITIONS.—For purposes of this section:

770 (h) "Qualifying project" means:

771 1. A new or expanding facility in this state which creates
772 at least 100 new jobs in this state and is in one of the high-
773 impact sectors identified by Enterprise Florida, Inc., and
774 certified by the office pursuant to s. 288.108(6), including,
775 but not limited to, aviation, aerospace, automotive, and silicon
776 technology industries;

777 2. A new or expanded facility in this state which is
778 engaged in a target industry designated pursuant to the
779 procedure specified in s. 288.106(2)~~(t)~~~~(1)~~~~(e)~~ and which is
780 induced by this credit to create or retain at least 1,000 jobs
781 in this state, provided that at least 100 of those jobs are new,
782 pay an annual average wage of at least 130 percent of the
783 average private sector wage in the area as defined in s.
784 288.106(2)~~(1)~~, and make a cumulative capital investment of at

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785 least \$100 million after July 1, 2005. Jobs may be considered
786 retained only if there is significant evidence that the loss of
787 jobs is imminent. Notwithstanding subsection (2), annual credits
788 against the tax imposed by this chapter shall not exceed 50
789 percent of the increased annual corporate income tax liability
790 or the premium tax liability generated by or arising out of a
791 project qualifying under this subparagraph. A facility that
792 qualifies under this subparagraph for an annual credit against
793 the tax imposed by this chapter may take the tax credit for a
794 period not to exceed 5 years; or

795 3. A new or expanded headquarters facility in this state
796 which locates in an enterprise zone and brownfield area and is
797 induced by this credit to create at least 1,500 jobs which on
798 average pay at least 200 percent of the statewide average annual
799 private sector wage, as published by the Agency for Workforce
800 Innovation or its successor, and which new or expanded
801 headquarters facility makes a cumulative capital investment in
802 this state of at least \$250 million.

803 Section 4. Paragraph (e) of subsection (1), subsection
804 (2), paragraphs (a) and (d) of subsection (4), and paragraph (b)
805 of subsection (5) of section 288.107, Florida Statutes, are
806 amended to read:

807 288.107 Brownfield redevelopment bonus refunds.—

808 (1) DEFINITIONS.—As used in this section:

809 (e) "Eligible business" means:

810 1. A qualified target industry business as defined in s.

811 288.106(2)(1)(e); or

812 2. A business that can demonstrate a fixed capital

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813 investment of at least \$2 million in mixed-use business
814 activities, including multiunit housing, commercial, retail, and
815 industrial in brownfield areas, or at least \$500,000 in
816 brownfield areas that do not require site cleanup, and that
817 ~~which~~ provides benefits to its employees.

818 (2) BROWNFIELD REDEVELOPMENT BONUS REFUND.—Bonus refunds
819 shall be approved by the office as specified in the final order
820 ~~issued by the director~~ and allowed from the account as follows:

821 (a) A bonus refund of \$2,500 shall be allowed to any
822 qualified target industry business as defined in ~~by~~ s. 288.106
823 for each new Florida job created in a brownfield area that ~~which~~
824 is claimed on the qualified target industry business's annual
825 refund claim authorized in s. 288.106 (6) ~~(5)~~.

826 (b) A bonus refund of up to \$2,500 shall be allowed to any
827 other eligible business as defined in subparagraph (1)(e)2. for
828 each new Florida job created in a brownfield area that ~~which~~ is
829 claimed under an annual claim procedure similar to the annual
830 refund claim authorized in s. 288.106 (6) ~~(5)~~. The amount of the
831 refund shall be equal to 20 percent of the average annual wage
832 for the jobs created.

833 (4) PAYMENT OF BROWNFIELD REDEVELOPMENT BONUS REFUNDS.—

834 (a) To be eligible to receive a bonus refund for new
835 Florida jobs created in a brownfield area, a business must have
836 been certified as a qualified target industry business under s.
837 288.106 or eligible business as defined in paragraph (1)(e) and
838 must have indicated on the qualified target industry business
839 tax refund application form submitted in accordance with s.
840 288.106 (4) ~~(3)~~ or other similar agreement for other eligible

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841 business as defined in paragraph (1)(e) that the project for
842 which the application is submitted is or will be located in a
843 brownfield area and that the business is applying for
844 certification as a qualified brownfield business under this
845 section, and must have signed a qualified target industry
846 business tax refund agreement with the office that ~~which~~
847 indicates that the business has been certified as a qualified
848 target industry business located in a brownfield area and
849 specifies the schedule of brownfield redevelopment bonus refunds
850 that the business may be eligible to receive in each fiscal
851 year.

852 (d) After entering into a tax refund agreement as provided
853 in s. 288.106 or other similar agreement for other eligible
854 businesses as defined in paragraph (1)(e), an eligible business
855 may receive brownfield redevelopment bonus refunds from the
856 account pursuant to s. 288.106(3)(d) ~~(2)(e)~~.

857 (5) ADMINISTRATION.—

858 (b) To facilitate the process of monitoring and auditing
859 applications made under this program, the office may provide a
860 list of qualified target industry businesses to the Department
861 of Revenue, to the Agency for Workforce Innovation, to the
862 Department of Environmental Protection, or to any local
863 government authority. The office may request the assistance of
864 those entities with respect to monitoring the payment of the
865 taxes listed in s. 288.106(3) ~~(2)~~.

866 Section 5. Paragraph (s) of subsection (2) of section
867 288.1089, Florida Statutes, is amended to read:

868 288.1089 Innovation Incentive Program.—

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869 (2) As used in this section, the term:

870 (s) "Rural area" means a rural city or rural community,
871 ~~or rural county~~ as defined in s. 288.106.

872 Section 6. Section 290.00677, Florida Statutes, is amended
873 to read:

874 290.00677 Rural enterprise zones; special qualifications.—

875 (1) Notwithstanding the enterprise zone residency
876 requirements set out in s. 212.096(1)(c), eligible businesses as
877 defined in ~~by~~ s. 212.096(1)(a), located in rural enterprise
878 zones as defined in ~~by~~ s. 290.004, may receive the basic minimum
879 credit provided under s. 212.096 for creating a new job and
880 hiring a person residing within the jurisdiction of a rural
881 community county, as defined in ~~by~~ s. 288.106(2)(1)(~~r~~). All
882 other provisions of s. 212.096, including, but not limited to,
883 those relating to the award of enhanced credits, apply to such
884 businesses.

885 (2) Notwithstanding the enterprise zone residency
886 requirements set out in s. 220.03(1)(q), businesses as defined
887 in ~~by~~ s. 220.03(1)(c), located in rural enterprise zones as
888 defined in s. 290.004, may receive the basic minimum credit
889 provided under s. 220.181 for creating a new job and hiring a
890 person residing within the jurisdiction of a rural community
891 county, as defined in ~~by~~ s. 288.106(2)(1)(~~r~~). All other
892 provisions of s. 220.181, including, but not limited to, those
893 relating to the award of enhanced credits, apply to such
894 businesses.

895 Section 7. This act shall take effect July 1, 2010.