The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SB 1434

INTRODUCER: Senator Gibson

SUBJECT: Tax Refund Program for Qualified Target Industry Businesses

DATE: January 24, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Philo	Hrdlicka	CM	**Favorable**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

SB 1434 amends s. 288.106, F.S., to allow for a prorated tax refund to a qualified target industry (QTI) business that fails to comply with its tax refund agreement if (1) the QTI business's project has resulted in the creation of at least 10 jobs, and (2) the average wage paid by the QTI business is at least 90 percent of the wage specified in the agreement, with certain limitations. The bill sets forth a formula for calculating the prorated refund, less a 10 percent penalty.

This bill substantially amends s. 288.106, F.S.

II. Present Situation:

General Overview

The Legislature created the QTI program in 1994 "to encourage the growth of higher-wage jobs and a diverse economic base by providing state tax refunds to qualified target industry businesses that originate or expand in the state or that relocate to the state."[1] The definition of "target industry business" includes consideration of future growth, stability, high wages, market and

[1] Section 288.106(1), F.S. For comprehensive overviews of the QTI program, *see* Office of Economic & Demographic Research, *Tax Refund Program for Qualified Target Industry Business—A review of the methodology and model used in determining the state's return on investment* (Sept. 1, 2010) (available at http://edr.state.fl.us/Content/special-research-projects/economic/ROI.pdf); The Florida Senate, *Sunset Review of the Qualified Target Industry Tax Refund Incentive Program, Section 288.106, F.S.*, Interim Report 2010-211 (Dec. 2009) (available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-211cm.pdf); and Enterprise Florida's website at http://www.eflorida.com/ContentSubpage.aspx?id=472.

resource independence, industrial base diversification and strengthening, and positive economic impact.[2]

The Department of Economic Opportunity (DEO) is authorized to certify a business as a QTI business after an extensive application and review process.[3] Upon certification, the QTI business enters into a tax refund agreement with DEO under which it receives refunds on taxes it pays related to the project at issue.[4] Eligible for refund are the state corporate income tax, insurance premium tax, sales and use tax, intangible personal property tax, excise taxes, and communications taxes, as well as local, non-school ad valorem taxes.[5]

The QTI business must comply with the agreement in order to receive a tax refund each year. If the QTI business fails to comply, it loses its certification and tax refund eligibility, unless DEO grants an economic recovery extension or the QTI business is eligible to receive and elects to accept a prorated refund.[6]

There have been a total of 1,013 QTI approvals and 888 contracts executed since the program's 1994 inception.[7] Of the approvals, 268 are active; 165 are inactive; 371 have been terminated; 114 have been vacated; 2 have been withdrawn; and 93 are complete.[8] Businesses with active QTI agreements have cumulatively committed to create 38,599 new jobs over the life of their agreements, are contractually obligated to have 15,559 of those new jobs in place as of their last reporting period, and have actually created 17,171 new jobs (i.e., 10 percent more than required). Businesses with completed QTI agreements cumulatively committed to create 18,369 new jobs over the life of their agreements and actually created 28,628 of them (i.e., 56 percent more than required).[9]

Criteria and Refund Details

The basic criteria for a certified QTI business to receive a refund payment are to:

- Commit to create at least 10 net-new jobs, as specified in the agreement;
- Commit to pay at least 115 percent of the area average private-sector wage at the time of certification; and
- Meet any other requirements specified in the agreement.[10]

[2] Section 288.106(2)(q), F.S. The most recent target industry list contemplates manufacturing, corporate headquarters, and research and development in clean technology, life sciences, information technology, aviation/aerospace, homeland security/defense, and financial/professional services. Enterprise Florida, *The Target Industry Update* (2010), at 21-22 (available at http://www.eflorida.com/download/Target_Industry_Update.pdf).
[3] Section 288.106(4), F.S. (incorporating s. 288.061, F.S.).
[4] Section 288.106(5), F.S.
[5] Section 288.106(3)(d), F.S.
[6] Section 288.106(5)(b), F.S.
[7] Enterprise Florida's 2011 Annual Incentives Report, at 17 (Table 5) (available at http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf). Enterprise Florida explains that the gap between the number of approvals (1,013) and the number of executed contracts (888) exists because not all businesses approved for incentives decide to commence their projects in Florida. *Id.* at 16.
[8] *Id.*
[9] *Id.*, at 18 (Table 6).
[10] Section 288.106(4)(b), F.S.; DEO Analysis of SB 1434, at 1 (Jan. 9, 2012) (on file with the Committee on Commerce and Tourism).

The wage requirement may be waived for projects in rural counties, brownfields, or in enterprise zones, or at the request of a local governing board and Enterprise Florida; and for manufacturing companies under specified circumstances.[11] Typically, the QTI program requires a 20 percent match from the local community where the project is to be located; the local match may be waived for rural counties or reduced (until June 30, 2014) for the eight coastal Northwest Florida counties disproportionately impacted by the 2010 Deepwater Horizon oil spill.[12]

Upon approval by DEO, a QTI business is eligible for refund payments of $3,000 per job created in Florida, or $6,000 per job if the project is located in a rural county or an enterprise zone. There are additional tax refund payments of:

- $1,000 per job if it pays an annual average wage of at least 150 percent of the average private sector wage in the area or $2,000 per job if it pays an annual average wage of at least 200 percent of the average private sector wage in the area;
- $1,000 per job if the local financial support is equal to that of the state's incentive award; and
- $2,000 per job if the business falls within one of the high-impact sectors designated under s. 288.108, F.S., or increases exports of its goods through a seaport or airport in the state by at least 10 percent in value or tonnage in each of the years that the business receives a tax refund.[13]

Currently, a qualified target industry business may not receive more than $1.5 million in refunds in a single fiscal year, or more than $2.5 million if the project is located in an enterprise zone. Additionally, a qualified target industry business may not receive more than $5 million in refund payments in all fiscal years, or more than $7.5 million if the project is located in an enterprise zone.[14]

Non-Compliance

Compliance with the terms and conditions of the agreement is a condition precedent for the receipt of a tax refund each year. If a QTI business fails to comply with the agreement, it loses its certification and tax refund eligibility, unless (A) DEO grants an economic recovery extension, or (B) the QTI business is eligible to receive and elects to accept a prorated refund.[15]

A. Economic Recovery Extension

A QTI business is terminated from the program if it fails to meet the threshold percentages for new job creation and wages, unless it applies for, and DEO approves, an Economic Recovery Extension (ERE). The QTI business must document to DEO the reasons why it was unable to achieve its specified commitments. DEO can grant a 1- or 2-year ERE, during which time a QTI business's agreement is modified to push out the requirements. During the term of an ERE, the QTI business does not receive any refunds

[11] Section 288.106(4)(b)1.b., F.S.; DEO Analysis, at 1.
[12] Sections 288.106(2)(j)-(k), (4)(a)10., & (4)(f), F.S.; DEO Analysis, at 1.
[13] Section 288.106(3)(b), F.S.; DEO Analysis, at 2.
[14] Section 288.106(3)(c), F.S.; DEO Analysis, at 2.
[15] Section 288.106(5)(b), F.S.

from the state. According to DEO, 54 QTI projects have received EREs. The ERE provision expires July 1, 2012.[16]

B. Prorated Refund

A QTI business may receive a prorated refund if it falls short of its commitments under the agreement, as provided in s. 288.106.106(6)(e), F.S. That section provides:

> A prorated tax refund, less a 5-percent penalty, shall be approved for a qualified target industry business if all other applicable requirements have been satisfied and the business proves to the satisfaction of the [DEO] that:
>
> 1. It has achieved at least 80 percent of its projected employment; and
> 2. The average wage paid by the business is at least 90 percent of the average wage specified in the tax refund agreement, but in no case less than 115 percent of the average private sector wage in the area available at the time of certification, or 150 percent or 200 percent of the average private sector wage if the business requested the additional per-job tax refund authorized in paragraph (3)(b) for wages above those levels. The prorated tax refund shall be calculated by multiplying the tax refund amount for which the qualified target industry business would have been eligible, if all applicable requirements had been satisfied, by the percentage of the average employment specified in the tax refund agreement which was achieved, and by the percentage of the average wages specified in the tax refund agreement which was achieved.[[17]]

III. Effect of Proposed Changes:

Section 1 amends ss. 288.106(5) and (6), F.S., to allow DEO the discretion to approve a prorated tax refund to a QTI business that fails to comply with its tax refund agreement. A similar provision already exists requiring DEO to approve such a refund with a 5 percent penalty when a non-compliant QTI business has achieved at least 80 percent of its projected employment and its average wage is at least 90 percent of the average wage specified in the agreement (the exact language of s. 288.106.106(6)(e), F.S., is block-quoted immediately above in the "Present Situation" portion of this analysis). The present bill adds a new option for a prorated refund that: (1) applies a penalty of 10 percent (as opposed to 5 percent); (2) makes DEO's approval discretionary (as opposed to mandatory); and (3) requires the QTI business's project to have

[16] Section 288.106(5)(b), F.S.; DEO Analysis, at 2.

[17] Section 288.106.106(6)(e), F.S. This provision was added in 1996, but originally required only the condition of 80 percent of projected employment. Ch. 96-320, s. 44, L.O.F. The corresponding 1996 staff analysis notes the change but does not otherwise discuss it. Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, at 16 (Mar. 18, 1996) (on file with the Senate Commerce and Tourism Committee). The 90 percent of average wage condition was added in 2002. Ch. 2002-392, s. 4, L.O.F. The corresponding 2002 staff analysis notes the change and explains that the Office of Tourism, Trade, and Economic Development (now DEO) was "concerned that the recent economic conditions might cause many QTI Program businesses to miss their contractual performance targets, thus eliminating the businesses from the program." Senate Staff Analysis and Economic Impact Statement for SB 40-E, at 4-5 (Apr. 29, 2002) (available at http://archive.flsenate.gov/data/session/2002E/Senate/bills/analysis/pdf/2002s0040E.cm.pdf). The staff analysis concluded that the subject amendment "expands the conditions under which a prorated tax refund shall be approved, thus potentially keeping businesses in the [QTI program] that might normally have dropped out due to non-compliance with their tax refund agreements." *Id.* at 12.

resulted in the creation of at least 10 jobs (as opposed to achieving at least 80 percent of its projected employment).

According to DEO, the practical effect of the bill likely will be to retain QTI businesses that otherwise would be terminated for failing to hire at least 80 percent of its committed employment – particularly since the only current recourse available to such businesses, the ERE, expires July 1, 2012. However, the ERE has, for all intents and purposes, already expired, since most businesses have until February 28, 2012, to request it from DEO—and then only if they were granted a one-month extension from filing their FY 2011-12 claims for calendar year 2010 commitments.[18]

The present bill further amends ss. 288.106(5) and (6) to provide cross-references to the new prorated refund; update references from the Office of Tourism, Trade, and Economic Development to DEO per the 2011 session's governmental reorganization;[19] and make incidental grammatical and numbering changes.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the impact of this bill.

[18] DEO Analysis, at 3

[19] Ch. 2011-142, s. 4, L.O.F., transferred the functions and trust funds of the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor to DEO.

B. Private Sector Impact:

The bill creates an additional opportunity under which a QTI business can fail to meet its jobs commitment during a claim period but still receive a prorated award and stay certified for future QTI refunds (rather than be terminated from the QTI program or stay in the program but receive no refunds for 1 or 2 years, as would occur under the current law).[20]

C. Government Sector Impact:

DEO suggests that the bill could have a substantial impact on its budget to cover the QTI tax refund payments each fiscal year. [21]

VI. Technical Deficiencies:

According to DEO, line 192 of the bill, referring to "at least 10 jobs" could be a source of debate, because it does not track the nomenclature elsewhere in s. 288.106, F.S., for "net-new jobs." This is an important distinction when DEO is evaluating refund claims. "Net-new jobs" are those which are clearly in addition to retained jobs a QTI company is typically required to maintain. Under existing agreements, if a company reduces its retained employee workforce, it must hire enough employees to fill those vacant slots, as well as hire employees to meet the scheduled net-new job creation requirements, in order to qualify for its QTI refund.[22]

VII. Related Issues:

The bill may create policy implications for local governments that provided the 20 percent match or other forms of financial support to companies they believed would create a significant number of jobs, but which are allowed to create only 10 and stay in the QTI program and receive lower prorated refunds.[23]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[20] DEO Analysis, at 1.
[21] DEO Analysis, at 3.
[22] DEO Analysis, at 4.
[23] DEO Analysis, at 1, 3-4.