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LEGISLATIVE ACTION

Senate

House

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Floor: 1b/00/2R
03/09/2012 11:00 AM

Senator Gibson moved the following:

1 **Senate Amendment to Amendment (401580) (with title**
2 **amendment)**

3
4 Between lines 732 and 733
5 insert:

6 Section 12. Subsections (5) and (6) of section 288.106,
7 Florida Statutes, are amended to read:

8 288.106 Tax refund program for qualified target industry
9 businesses.—

10 (5) TAX REFUND AGREEMENT.—

11 (a) Each qualified target industry business must enter into
12 a written agreement with the department that specifies, at a
13 minimum:



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14 1. The total number of full-time equivalent jobs in this
15 state that will be dedicated to the project, the average wage of
16 those jobs, the definitions that will apply for measuring the
17 achievement of these terms during the pendency of the agreement,
18 and a time schedule or plan for when such jobs will be in place
19 and active in this state.

20 2. The maximum amount of tax refunds that the qualified
21 target industry business is eligible to receive on the project
22 and the maximum amount of a tax refund that the qualified target
23 industry business is eligible to receive for each fiscal year,
24 based on the job creation and maintenance schedule specified in
25 subparagraph 1.

26 3. That the department may review and verify the financial
27 and personnel records of the qualified target industry business
28 to ascertain whether that business is in compliance with this
29 section.

30 4. The date by which, in each fiscal year, the qualified
31 target industry business may file a claim under subsection (6)
32 to be considered to receive a tax refund in the following fiscal
33 year.

34 5. That local financial support will be annually available
35 and will be paid to the account. The department may not enter
36 into a written agreement with a qualified target industry
37 business if the local financial support resolution is not passed
38 by the local governing body within 90 days after the department
39 has issued the letter of certification under subsection (4).

40 6. That the department may conduct a review of the business
41 to evaluate whether the business is continuing to contribute to
42 the area's or state's economy.



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43 7. That in the event the business does not complete the
44 agreement, the business will provide the department with the
45 reasons the business was unable to complete the agreement.

46 (b) Compliance with the terms and conditions of the
47 agreement is a condition precedent for the receipt of a tax
48 refund each year. The failure to comply with the terms and
49 conditions of the tax refund agreement results in the loss of
50 eligibility for receipt of all tax refunds previously authorized
51 under this section and the revocation by the department of the
52 certification of the business entity as a qualified target
53 industry business, unless the business is eligible to receive
54 and elects to accept a prorated refund under paragraph (6) (e),
55 the department grants the business a prorated refund under
56 paragraph (6) (f), or the department grants the business an
57 economic recovery extension.

58 1. A qualified target industry business may submit a
59 request to the department for a prorated refund under paragraph
60 (6) (f) or for an economic recovery extension. The request must
61 provide quantitative evidence demonstrating how negative
62 economic conditions in the business's industry, the effects of a
63 named hurricane or tropical storm, or specific acts of terrorism
64 affecting the qualified target industry business have prevented
65 the business from complying with the terms and conditions of its
66 tax refund agreement.

67 2. Upon receipt of a request under subparagraph 1., the
68 department has 45 days to notify the requesting business, in
69 writing, whether its request ~~extension~~ has been granted or
70 denied. In determining whether a request ~~an extension~~ should be
71 granted, the department shall consider the extent to which



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72 negative economic conditions in the requesting business's
73 industry have occurred in the state or the effects of a named
74 hurricane or tropical storm or specific acts of terrorism
75 affecting the qualified target industry business have prevented
76 the business from complying with the terms and conditions of its
77 tax refund agreement. The department shall consider current
78 employment statistics for this state by industry, including
79 whether the business's industry had substantial job loss during
80 the prior year, when determining whether a request ~~an extension~~
81 shall be granted.

82 3. As a condition for receiving a prorated refund under
83 paragraph (6) (e) or paragraph (6) (f) or an economic recovery
84 extension under this paragraph, a qualified target industry
85 business must agree to renegotiate its tax refund agreement with
86 the department to, at a minimum, ensure that the terms of the
87 agreement comply with current law and the department's
88 procedures governing application for and award of tax refunds.
89 Upon approving the award of a prorated refund or granting an
90 economic recovery extension, the department shall renegotiate
91 the tax refund agreement with the business as required by this
92 subparagraph. When amending the agreement of a business
93 receiving an economic recovery extension, the department may
94 extend the duration of the agreement for a period not to exceed
95 2 years.

96 4. A qualified target industry business may submit a
97 request for an economic recovery extension to the department in
98 lieu of any tax refund claim scheduled to be submitted after
99 January 1, 2009, but before July 1, 2012.

100 5. A qualified target industry business that receives an



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101 economic recovery extension may not receive a tax refund for the
102 period covered by the extension.

103 (c) The agreement must be signed by the executive director
104 and by an authorized officer of the qualified target industry
105 business within 120 days after the issuance of the letter of
106 certification under subsection (4), but not before passage and
107 receipt of the resolution of local financial support. The
108 department may grant an extension of this period at the written
109 request of the qualified target industry business.

110 (d) The agreement must contain the following legend,
111 clearly printed on its face in bold type of not less than 10
112 points in size: "This agreement is not a general obligation of
113 the State of Florida, nor is it backed by the full faith and
114 credit of the State of Florida. Payment of tax refunds is
115 conditioned on and subject to specific annual appropriations by
116 the Florida Legislature sufficient to pay amounts authorized in
117 section 288.106, Florida Statutes."

118 (6) ANNUAL CLAIM FOR REFUND.—

119 (a) To be eligible to claim any scheduled tax refund, a
120 qualified target industry business that has entered into a tax
121 refund agreement with the department under subsection (5) must
122 apply by January 31 of each fiscal year to the department for
123 the tax refund scheduled to be paid from the appropriation for
124 the fiscal year that begins on July 1 following the January 31
125 claims-submission date. The department may, upon written
126 request, grant a 30-day extension of the filing date.

127 (b) The claim for refund by the qualified target industry
128 business must include a copy of all receipts pertaining to the
129 payment of taxes for which the refund is sought and data related



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130 to achievement of each performance item specified in the tax
131 refund agreement. The amount requested as a tax refund may not
132 exceed the amount specified for the relevant fiscal year in that
133 agreement.

134 (c) The department may waive the requirement for proof of
135 taxes paid in future years for a qualified target industry
136 business that provides the Department of Economic Opportunity
137 ~~office~~ with proof that, in a single year, the business has paid
138 an amount of state taxes from the categories in paragraph (3)(d)
139 which that is at least equal to the total amount of tax refunds
140 that the business may receive through successful completion of
141 its tax refund agreement.

142 (d) A tax refund may not be approved for a qualified target
143 industry business unless the required local financial support
144 has been paid into the account for that refund. If the local
145 financial support provided is less than 20 percent of the
146 approved tax refund, the tax refund must be reduced. In no event
147 may the tax refund exceed an amount that is equal to 5 times the
148 amount of the local financial support received. Further, funding
149 from local sources includes any tax abatement granted to that
150 business under s. 196.1995 or the appraised market value of
151 municipal or county land conveyed or provided at a discount to
152 that business. The amount of any tax refund for such business
153 approved under this section must be reduced by the amount of any
154 such tax abatement granted or the value of the land granted, and
155 the limitations in subsection (3) and paragraph (4)(e) must be
156 reduced by the amount of any such tax abatement or the value of
157 the land granted. A report listing all sources of the local
158 financial support shall be provided to the Department of



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159 Economic Opportunity ~~office~~ when such support is paid to the
160 account.

161 (e) A prorated tax refund, less a 5 percent ~~5-percent~~
162 penalty, shall be approved for a qualified target industry
163 business if all other applicable requirements have been
164 satisfied and the business proves to the satisfaction of the
165 Department of Economic Opportunity ~~office~~ that:

166 1. It has achieved at least 80 percent of its projected
167 employment; and

168 2. The average wage paid by the business is at least 90
169 percent of the average wage specified in the tax refund
170 agreement, but in no case less than 115 percent of the average
171 private sector wage in the area available at the time of
172 certification, or 150 percent or 200 percent of the average
173 private sector wage if the business requested the additional
174 per-job tax refund authorized in paragraph (3)(b) for wages
175 above those levels. The prorated tax refund shall be calculated
176 by multiplying the tax refund amount for which the qualified
177 target industry business would have been eligible, if all
178 applicable requirements had been satisfied, by the percentage of
179 the average employment specified in the tax refund agreement
180 which was achieved, and by the percentage of the average wages
181 specified in the tax refund agreement which was achieved.

182 (f) A prorated tax refund, less a 10 percent penalty, may
183 be approved for a qualified target industry business if all
184 other applicable requirements have been satisfied and the
185 business proves to the satisfaction of the department that:

186 1. The business's project has resulted in the creation of
187 at least 10 jobs; and



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188 2. The average wage paid by the business is at least 90
189 percent of the average wage specified in the tax refund
190 agreement, but in no case less than 115 percent of the average
191 private sector wage in the area available at the time of
192 certification, or 150 percent or 200 percent of the average
193 private sector wage if the business requested the additional
194 per-job tax refund authorized in paragraph (3) (b) for wages
195 above those levels. The prorated tax refund shall be calculated
196 by multiplying the tax refund amount for which the qualified
197 target industry business would have been eligible, if all
198 applicable requirements had been satisfied, by the percentage of
199 the average employment specified in the tax refund agreement
200 which was achieved, and by the percentage of the average wages
201 specified in the tax refund agreement which was achieved.

202 (g)~~(f)~~ The department, with such assistance as may be
203 required from the Department of Revenue, shall, by June 30
204 following the scheduled date for submission of the tax refund
205 claim, specify by written order the approval or disapproval of
206 the tax refund claim and, if approved, the amount of the tax
207 refund that is authorized to be paid to the qualified target
208 industry business for the annual tax refund. The department may
209 grant an extension of this date on the request of the qualified
210 target industry business for the purpose of filing additional
211 information in support of the claim.

212 (h)~~(g)~~ The total amount of tax refund claims approved by
213 the department under this section in any fiscal year must not
214 exceed the amount authorized under s. 288.095(3).

215 (i)~~(h)~~ This section does not create a presumption that a
216 tax refund claim will be approved and paid.



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217 (j)~~(i)~~ Upon approval of the tax refund under paragraphs
218 (d), (e), (f), and (g) ~~(f)~~, the Chief Financial Officer shall
219 issue a warrant for the amount specified in the written order.
220 If the written order is appealed, the Chief Financial Officer
221 may not issue a warrant for a refund to the qualified target
222 industry business until the conclusion of all appeals of that
223 order.

224
225 ===== T I T L E A M E N D M E N T =====

226 And the title is amended as follows:

227 Between lines 1253 and 1254

228 insert:

229 288.106, F.S.; permitting a business that fails to
230 satisfy the terms of its agreement with the Department
231 of Economic Opportunity to apply for a prorated tax
232 refund; amending s.