

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 Committee on Commerce and Tourism

BILL: SB 572

INTRODUCER: Senator Sobel

SUBJECT: Reporting Requirements for Economic Development Programs

DATE: March 1, 2013

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Smith	Hrdlicka	CM	Pre-meeting
2.		ATD	
3.		AP	
4.			
5.			
6.			

I. Summary:

SB 572 creates a project-based reporting system to be developed by the Department of Economic Opportunity (DEO) to allow the public to view information relating to economic development projects receiving state incentives. DEO is directed to maintain a website that publishes specific information on each state-incentivized project in a format that is easily accessible to the public. Information must be published within 48 hours of the completion of an economic development incentives agreement between the state and a beneficiary business.

The bill substantially amends s. 288.075, F.S., and creates s. 288.076, F.S.

II. Present Situation:

Economic Development Incentives Application and Review

Under Florida's current economic development framework, Enterprise Florida, Inc. (EFI), serves as the state's economic development organization, operating under a contract with the Department of Economic Opportunity (DEO).¹ EFI is a public-private partnership that serves as the state's primary contact for businesses interested in pursuing relocation, expansion, or retention possibilities. EFI works with businesses to match business needs with state and local resources, including developing an economic development incentive proposal for the prospective business in order to "sell the State as a place to do business."²

¹ Section 288.901, F.S.

² Enterprise Florida, Inc., *2012 Annual Incentives Report*, (2012), available at: http://www.floridajobs.org/about%20awi/open_government/2012_IncentivesReport.pdf, (last visited on February 15, 2013).

After EFI has worked with businesses and offered incentives proposals, incentives applications are sent to DEO, who in turn evaluates incentive applications based on statutorily-defined requirements. DEO makes the final determination of incentive eligibility, executes incentives contracts, and is responsible for contract monitoring and compliance.³

EFI performs a prospective impact analysis on each potential project. Presently, the qualified target industry tax refund program,⁴ quick action closing fund,⁵ qualified defense contractor and space flight business tax refund program,⁶ and the brownfield redevelopment bonus refund program⁷ have statutory provisions that require any application for the incentive be evaluated prospectively for “economic benefits.” EFI currently performs a similar prospective impact analysis for the high-impact sector performance grants⁸ and the capital investment tax credit program,⁹ but there is no statutory requirement for such an evaluation.¹⁰

Section 288.005(1), F.S., defines the term “economic benefits” to mean “the direct, indirect, and induced gains in state revenues as a percentage of the state’s investment. The state’s investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives.” Direct economic effects are those resulting directly from the economic event, in this case the state’s expenditure on the incentive to the applicant business. Indirect effects are the secondary effects of the economic event on suppliers, services, labor, and taxes. Induced effects are one step further and measure the effects on the economy as a result of spending from indirect effects as the money spent continues to cycle through the economy.¹¹

According to the Office of Economic and Demographic Research (EDR), EFI prospectively evaluates applications for each of the incentives and programs mentioned above using RIMS II multipliers, a model developed by the U.S. Department of Commerce’s Bureau of Economic Analysis.¹² EDR is required to evaluate the model used by EFI for the prospective impact analysis of all qualified target industry refund projects, and to report such findings every 3 years.¹³ The model evaluated by EDR and used by EFI for the qualified target industry tax refund program is also used across the programs previously mentioned except for the Innovation Incentive Program.¹⁴

³ Section 288.061, F.S.

⁴ Section 288.106, F.S.

⁵ Section 288.1088, F.S.

⁶ Section 288.1045, F.S.

⁷ Section 288.107, F.S.

⁸ Section 288.108, F.S.

⁹ Section 220.191, F.S.

¹⁰ Office of Economic and Demographic Research, *Tax Refund Program for Qualified Target Industry Businesses: A review of the methodology and model used in determining the state’s return on investment*, (9/1/2010), available at: <http://edr.state.fl.us/Content/special-research-projects/economic/ROI.pdf>, (last visited on February 15, 2013).

¹¹ Adapted from “What is IMPLAN?” by MIG. Available at:

http://implan.com/v4/index.php?option=com_content&view=article&id=282:what-is-implan&catid=152:implan-appliance-&Itemid=2, (last visited on February 15, 2013).

¹² For more information on RIMS II multipliers and their application, see U.S. Department of Commerce, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)*, (March, 1997), available at: <http://www.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf>, (last visited on February 15, 2013).

¹³ Section 288.106(4)(c)2., F.S.

¹⁴ *Supra* note 10 at page 20.

In 2010, EDR produced its first report on the model used by EFI to evaluate qualified target industry refund projects. In their report, EDR concluded that the model being utilized by EFI was not fully in compliance with statutory requirements that EFI's model evaluate "return on investment" (ROI), defined as the gain in state revenues as a percentage of the state's investment. EDR determined that the model, which EFI terms a "payback ratio," needed changes to move incrementally closer to a true ROI. EFI and EDR worked to redefine certain variables for the impact analysis in the interim period. In the report, EDR noted that recommendations and changes on the model used by EFI "should be viewed as interim measures, pending completion of the new ROI model that will be ultimately required."¹⁵ The next report is due September 1, 2013.

The Innovation Incentive Program is not required by law to be evaluated for "economic benefits," but any potential project is required to have a break-even "return on investment" within a 20-year period, except for certain exceptions.¹⁶ Return on investment as it relates to the Innovation Incentive Program is not defined under current law. EFI evaluates the Innovation Incentive Program using the REMI model.¹⁷ EFI's modeling evaluation of the Innovation Incentive Program is not currently evaluated by EDR.¹⁸

Incentive and Program Reporting

In addition to conducting an up-front impact analysis of each potential economic development project, EFI is also required to produce an Annual Incentives Report¹⁹ that requires, among other things, an analysis of the economic benefits that actually occurred based on actual private investment, jobs created, and wages paid over the previous 3 years. The Annual Incentives Report compares the projected impacts of each incentive program over the previous 3 years to the confirmed, realized results. The Division of Strategic Business Development within DEO is required to assist EFI in the preparation of the Annual Incentives Report.²⁰

The Annual Incentives Report also reports certain information such as the amount of awards given, jobs created, amount of capital investment, and wages paid. This information is organized by incentive program and by project. The Annual Incentives Report also includes information on incentive projects that occurred over the previous fiscal year, including the number of incentive applications received, recommendations from EFI to DEO, the number of final decisions issued by DEO for approval or denial, and the projects which incentive agreements were executed.

Other required information in the Annual Incentives Report includes:

¹⁵ *Supra* note 10 at pages 3 and 4.

¹⁶ Section 288.1089, F.S., requires any potential business qualifying for the Innovation Incentive Program be a high-value research and development, innovation business, or an alternative and renewable energy project. Research and development and alternative and renewable energy projects are required to meet the break-even 20-year return on investment requirement, but applicants qualifying as "innovation business projects" are not required to demonstrate the return on investment requirements.

¹⁷ The REMI model is a proprietary model developed by Regional Economic Models, Inc. The model evaluates linkages in an economy and how economic impacts can impact the larger regional economy. For more information see "The REMI Model," available at: <http://www.remi.com/the-remi-model>, (last visited on February 15, 2013).

¹⁸ *Supra* note 10.

¹⁹ Section 288.907, F.S.

²⁰ Section 288.907(2), F.S.

- A description of federal or local incentives received, organized by project.
- The number of withdrawn or terminated projects that did not receive incentives due to not fulfilling the terms of their incentives agreement.
- An analysis of the economic benefits of incentives made to projects locating in state enterprise zones, rural communities, brownfield areas, or distressed urban communities.
- Identification of target industry businesses and high-impact businesses.
- Trends relating to business interest in and usage of the state's incentives programs, including the number of minority-owned and woman-owned businesses receiving incentives.
- Identification of incentive programs not utilized.

Section 288.095(3)(c), F.S., requires information similar to the Annual Incentives Report to be reported by DEO related to programs funded through the Economic Development Incentives Account in the Economic Development Trust Fund.

DEO also produces an annual report, which is required to include information on the state's business climate and economic development, as well as an identification of problems and recommendations.²¹

Information on local economic development incentives is collected by EDR. EDR is required to collect information relating to each county or municipality that granted local economic development incentives in excess of \$25,000 during a fiscal year.²² Counties and municipalities may complete their reporting requirements by completing a survey either online or by hard copy and returning it to EDR, who compiles the information into a single report.²³

DEO Incentives Portal

On August 2, 2012, DEO launched an online portal for the public to view economic development projects receiving state funds.²⁴ The portal allows the public to view:

- Completed projects approved from January 1996 through May 2012;
- Inactive or terminated projects that were approved from January 1996 through December 1998; and
- Quick Action Closing Fund projects approved from program inception (1999) through December 2011, which are not confidential.

The portal's website states that DEO expects to have all non-confidential projects available on the portal by March of 2013.²⁵ The portal website allows users to view projects by incentive

²¹ Section 20.60(10), F.S.

²² Section 125.045, F.S., requires counties to report economic development incentives of \$25,000 or more that were granted in the fiscal year. Section 166.021, F.S., requires municipalities with revenues and expenditures over \$250,000 to report economic development incentives of \$25,000 or more granted in the fiscal year.

²³ More information on the report and survey can be accessed by visiting <http://edr.state.fl.us/Content/local-government/economic-development-incentives/index.cfm>, (last visited on February 15, 2013).

²⁴ DEO press release, "DEO Launches Public Economic Development Incentives Portal, (August 02, 2012), available at <http://www.floridajobs.org/news-center/news-feed/2012/08/02/deo-launches-public-economic-development-incentives-portal>, (last visited on February 15, 2013).

²⁵ DEO Economic Development Incentives Portal website, available at: <http://www.floridajobs.org/office-directory/division-of-strategic-business-development/economic-development-incentives-portal>, (last visited on February 15, 2013).

program, by the county of the project's location, by the date of the project, and by the recipient business's name. Information provided includes the total state incentive awarded, payments to date, job requirements, and capital investment requirements.

Economic Development Confidentiality Requirements

Section 288.075, F.S., specifies confidentiality of records requirements relating to a business's plans to locate, relocate, or expand business activities in Florida. Currently, certain business records are confidential and exempt²⁶ from Florida's public records requirements when held by an economic development agency and requested to be exempt by the affected business.

Examples of economic development agencies include the Department of Economic Opportunity (DEO), Enterprise Florida, Inc. (EFI), and public economic development agencies of local governments.

The following information is confidential and exempt from public records requirements for the duration specified:

- Upon written request, information relating to a business's plans, intentions, and interests to locate, relocate, or expand its business activities in Florida. This information remains confidential and exempt for 12 months and may be extended an additional 12 months. If a final project order is issued, the information becomes public the earlier of: 180 days after the final project order for a signed economic development incentive award agreement is issued, a date specified in the final project order, or when the information is otherwise disclosed.
- Proprietary confidential business information and trade secrets are always confidential and exempt.
- Information on a business's federal employer identification number, reemployment assistance account number, or Florida sales tax registration number is always confidential and exempt.
- Certain information pertaining to economic development incentive agreements. Specific sales, employee wage, and tax information remains confidential and exempt for the duration of the incentive agreement. Information including a business's name, expected number of jobs created or retained, total jobs, the amount of incentives awarded, and the committed total annual wages remain confidential and exempt until the earlier of: 180 days after a final project order is issued for a signed economic development incentives agreement, a date specified in the final project order, or when the information is otherwise disclosed.

III. Effect of Proposed Changes:

The bill establishes an economic development incentive review and online publication process to be implemented by DEO.

²⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

Section 1 creates s. 288.076, F.S., relating to reporting for economic development programs.

The bill requires DEO to maintain a website that publishes information on economic development incentive awards to businesses. Information must be made available in an easy to use format that allows users to view and retrieve all required information at once. DEO must assign each project a unique code to enable the public to easily track project and business information, until the business's name is no longer protected under confidentiality requirements. Once an individual project award has been issued, DEO has 48 hours to publish the following information on the website:

General Information

- The program or programs through which state investment is being made. "State investment" is defined by the bill as any state grants, tax exemptions, tax refunds, tax credits, or other state incentives awarded to a business under a program administered by DEO, including the capital investment tax credit.
- The maximum potential value of the state investment in a project.
- The target industries²⁷ or high-impact sectors²⁸ that the project may fall under.
- The county or counties that may substantially be affected by the project.
- The total value of any local financial commitment and support for the project.

Beneficiary Business Information

- The location of the beneficiary business's headquarters or the headquarters of the parent company if it is a subsidiary. "Beneficiary business" is defined by the bill to mean any corporation, partnership, or person participating in a program administered by DEO and that has entered into an economic development agreement to receive state investment.
- The number of permanent, full-time employees employed by the beneficiary business, including the number of permanent, full-time employees employed by the parent company if it is a subsidiary, and whether the beneficiary business qualifies as a small business under s. 288.703, F.S. Under s. 288.703, F.S., "small business" means an independently owned and operated business that employs 200 or fewer persons and has a net worth of \$5 million or less, or that holds U.S. Small Business Administration 8(a) certification.
- The North American Industry Classification System (NAICS) classification code of the type of business activities or products directly generated by the project.
- The date of the project award.
- The expected duration of the project.
- The anticipated date when the beneficiary business will claim its last state investment.

Project Performance Goals

- The incremental direct jobs attributable to the project, identifying the number of jobs to be generated and the number of jobs to be retained by the project, and the lowest, highest, and median annual wage of persons holding such jobs. "Project" is defined by the bill to mean any business undertaking by a beneficiary business.

²⁷ Section 288.106(2)(q), F.S.

²⁸ Section 288.108(6)(a), F.S.

- The net indirect and induced incremental jobs to be generated in the state by the project, including the lowest, highest, and median annual wage of such jobs, and a description of the methodology used for the calculation. The methodology description must include whether and how multipliers were used.
- The incremental direct capital investment in the state generated by the project.
- The net indirect and induced incremental capital investment in the state generated by the project, and a description of the methodology used for the calculation, including whether and how multipliers were used.
- The incremental direct tax revenue paid to the state by the beneficiary business.
- The net indirect and induced incremental tax revenue paid to the state generated by the project, and a description of the methodology and model used to perform the calculation. The description of the methodology must also include whether and how multipliers were used.

DEO is required to review the information published on the website on June 30 and December 31 each year to ensure that the information on the website accurately reflects any changes in individual projects since the project's award date. DEO must amend and update any information, publish the total value of state investment disbursed to date for each project, and publish verified project results with respect to the project performance goals. Projects are not required to provide information needed for publication until the next scheduled update date occurring at least 60 days after the project award date.

Within 48 hours of the expiration of a project's period of confidentiality provided under s. 288.075, F.S., DEO must publish a beneficiary business's name and a copy of the incentive contract or award document entered into by DEO and the beneficiary business. The award agreement may be redacted to protect the beneficiary business from any information that may remain confidential or exempt under law.

The bill requires DEO to publish all information required above for all projects completed prior to July 1, 2013. DEO has until July 1, 2014 to compile and publish the information.

DEO may provide a beneficiary business the opportunity to request a delay in the publication of some, but in no case all, of the required information to be published on the website. A beneficiary business must specify the information requested to be delayed, the length of the delay requested, and the reason why such a delay in the publication of such information is needed. The bill specifies that circumstances requiring a delay in publication of certain information may include instances where premature revelation of a beneficiary business's business activities may threaten the beneficiary business's ability to purchase real property at market rates. If DEO finds that disclosure of such information would impede the beneficiary business's ability to locate, relocate, expand, or begin its business activities in the state, it must delay publication of only the information justified by the finding, and only for a length of time justified by the finding.

The bill specifies that any provisions restricting DEO's publication of information to the website is limited to that purpose, and is not to be construed as creating a public records exemption.

The bill creates a second degree misdemeanor for any employee of DEO who violates the provisions of the bill.

Qualified Target Industry Tax Refund Reports

DEO must publish on the website any reports of findings and recommendations concerning a business's failure to complete its qualified target industry tax refund program agreement within 48 hours after submitting the report to the Governor, President of the Senate, and Speaker of the House of Representatives on December 1 of each year.

Quick Action Closing Fund Timeline

The bill requires DEO to publish a timeline on the website detailing the progress of each project funded under the Quick Action Closing Fund incentive program on June 30 and December 31 of each year. DEO must publish the date(s) on which each of the following actions occurred:

- DEO received a completed application;
- DEO's application recommendation was transmitted to the Governor for approval or disapproval;
- The Legislature acted to approve or change the project;
- DEO and the beneficiary business entered into a contract for payment through the program;
- EFI validated a beneficiary business's performance; and
- Funds were released to the beneficiary business.

Return on Investment Methodology

The bill requires the Office of Economic and Demographic Research (EDR) to establish a methodology for calculating the state's return on investment each year. The methodology must include formulas for indirect and induced job creation, incremental capital investment, and increased tax revenue. DEO is directed to publish and use the methodology and formulas as soon as they are made available by EDR.

Section 2 amends s. 288.075, F.S., relating to confidentiality of records. The bill allows a business's incremental amount of taxes paid to be disclosed by an economic development agency for the purposes of reporting the state's per project return on investment as required above.

Section 3 provides an effective date of July 1, 2013.

Other Potential Implications:

The bill may present conflicts with current confidentiality of records requirements under s. 288.075, F.S. As discussed above in the Present Situation, s. 288.075, F.S., provides that certain information remains confidential and exempt from public records until the earlier of 180 days after a final project order is issued by DEO, a date specified in the order, or until the information is otherwise disclosed. Certain provisions of the bill require information to be published within 48 hours of a project award date, such as wage, award amount, and job data.

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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is expected to increase the resource demands on DEO as it relates to developing and maintaining all information made public by the bill.

VI. Technical Deficiencies:

The bill uses the term “economic development agency” and “department” interchangeably. To clarify, the term “department” should be used in all instances when the intent is to refer to DEO. On line 151 the term “economic development agency” could be changed to “Enterprise Florida, Inc.,” as EFI is the agency responsible for validating contractor performance under s. 288.1088, F.S., relating to the Quick Action Closing Fund program.

It is unclear what the term “incremental” means as it refers to taxes, jobs, and capital investment.

VII. Related Issues:

The bill is unclear under what circumstances the misdemeanor penalty would apply.

The term “return on investment” is not defined and may conflict with the term “economic benefits,” as defined by s. 288.005, F.S.

Local financial commitment may not be in place within 48 hours after a project award date.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
