

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 Appropriations

BILL: PCS/SB 1214 (123970)

INTRODUCER: Appropriations Committee (Recommended by Subcommittee on Transportation, Tourism, and Economic Development); and Senators Latvala and Detert

SUBJECT: Economic Development

DATE: April 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	McKay	CM	Favorable
2.	Gusky	Miller	ATD	Recommend: Fav/CS
3.	Gusky	Kynoch	AP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1214 makes a number of changes to the state's economic development programs to provide more flexibility in some programs, and to increase transparency and accountability across those programs. Specifically, the bill:

- Standardizes the economic development application and evaluation processes.
- Specifies incentive project approval based upon the amount of required funding. Projects requiring:
 - Less than \$2 million may be approved by the Governor without legislative consultation.
 - \$2 million up to \$7.5 million require 10-day notice to the Legislative Budget Commission (LBC) before the Governor can give approval.
 - \$7.5 million or more, and projects requiring \$5 million or more with a waiver of program requirements, must receive approval from the LBC before the Governor can give approval.
 - This application approval process applies to the:
 - Quick Action Closing (QAC) Fund;
 - Qualified Target Industry Business (QTI) Tax Refund;
 - High-Impact Business Performance Grants;
 - Qualified Defense Contractor and Space Flight Business Tax Refund Program (QDSC);
 - Innovation Incentive Program;
 - Brownfield Redevelopment Bonus Refund; and
 - Local Government Distressed Area Matching Grant Program.

- Creates the following requirements for contracts for economic development incentives:
 - Capital investment must remain in the state for the duration of the contract.
 - Contract terms cannot be longer than 10 years, except for projects receiving \$20 million or more in total state incentives.
 - The business must use the Employ Florida Marketplace to post new jobs.
 - The average private sector wage must reflect the wages in the local area where the business is located.
- Requires a 3-day advanced notice to the Legislature of any proposed amendment to an economic development contract and a 10-day legislative consultation period for a proposed amendment that reduces the projected economic benefits by 0.50 or more. Amendments that reduce the project's economic benefits must include a proportionate reduction in the award amount.
- Extends the date applicants can be certified under the QDSC Program until June 30, 2020.
- Makes the following changes to the criteria for projects eligible for funding from the QAC Fund:
 - The required economic benefit ratio is lowered from 5 to 1, to 4 to 1, and cannot be waived below 2:1;
 - The contract may not waive the annual wage requirement below 100 percent of the wages in the local area;
 - The contract may only waive two of the five program criteria;
 - The contract may not waive the criteria that the incentive is an inducement to the project's location or expansion in this state; and
 - No payments may be made to a project until contracted performance goals have been achieved.
- Makes the following changes to the QTI Program:
 - Permits businesses in brownfield or rural areas to receive 100 percent of the total tax refunds allowed, if the option to exempt local financial support is exercised; and
 - Permits businesses to receive a prorated award if at least 90 percent of agreed-to higher wage requirements are met.
- Prohibits any state or local funds from being counted toward a business' required capital investment, and clarifies that the state's investment for purposes of determining the project's economic benefits includes all state funds spent or forgone to benefit the business.

The bill requires the president of Enterprise Florida, Inc., (EFI) to be subject to Senate confirmation, and prohibits him or her from engaging in lobbying efforts before the Legislature and Executive branch for two years after vacating the position, similar to the prohibition that applies to other state agency heads. These changes apply to presidents of EFI appointed or reappointed after July 1, 2015.

The bill creates a cap on the amount of funds that can be obligated for payments each fiscal year under economic development incentive contracts for the same programs to which the application approval process applies as discussed above. The total amount of actual or projected payments in any fiscal year cannot exceed \$50 million. This limitation may be waived in the General Appropriations Act (GAA). Annually, the Department of Economic Opportunity (DEO) must provide the Legislature with the amount of estimated payments, and the Legislature must annually appropriate in the GAA the amount estimated to be sufficient to satisfy scheduled payments.

As to the funds presently held in escrow by EFI for current Quick Action Closing Fund contracts, the bill directs EFI to return any funds held on June 30, 2015, to the state treasury by July 10, 2015. Such funds will be held in a newly created “Quick Action Closing Fund Escrow Account” in the Economic Development Trust Fund within the DEO.

The provisions of the bill that eliminate the DEO practice of disbursing funds to Enterprise Florida, Inc. (EFI), upon execution of a Quick Action Closing Fund (QAC) contract or agreement will have a positive impact on state revenues and the state’s economy as a whole. Using a “pay-as-you-go” approach for QAC projects will enable the state to use funds that would be otherwise transferred outside the state treasury for other priorities each fiscal year.

The extension of the Qualified Defense Contractor and Space Flight tax refund program to allow the DEO to certify applications through June 30, 2020, will have a negative impact to state revenues. The Revenue Estimating Impact Conference has not yet reviewed the bill. The DEO has indicated that it has sufficient resources to administratively implement the bill.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Florida Economic Development Incentives

Florida has a number of incentive programs intended to promote economic development in the state. These programs are collectively referred to as the economic development “toolkit” and come in a variety of forms including tax credits, tax refunds, tax exemptions, and cash grants. The toolkit is used to incentivize highly competitive projects to remain, locate, or expand in the state. Enterprise Florida, Inc. (EFI), a public-private partnership between businesses and the state, acts as the principal economic development organization for Florida. The state is responsible for oversight and administration of tax refund claims and performance reviews, and processing incentive and local financial support payments. After EFI has made the initial steps in the economic development incentive process, the Department of Economic Opportunity (DEO) begins its own processes. The DEO is responsible for evaluating project applications and has a role in the approval process. Following final approval by the DEO, the Governor, and in some cases the Legislative Budget Commission, the business enters into an agreement or contract with the DEO concerning the incentives. Most contracts require certain performance measures to be met before any incentive funds are paid out. Two notable exceptions are the Quick Action Closing Fund and the Innovation Incentive Program. Incentive programs that pay out before performance requirements are met have contractual provisions to recapture funds and impose sanctions if performance measures are not met as scheduled. The Office of Economic Development and Research (EDR) and the Office of Public Policy Analysis and Government Accountability (OPPAGA) are required to review and report on the economic development toolkit programs as well as some other programs related to economic development in ch. 288, F.S.

Economic Development Programs with Tax Refunds

Qualified Target Industry Business Tax Refund

The Qualified Target Industry Business Tax Refund (QTI) was established in 1995, in s. 288.106, F.S., with the purpose of attracting high wage jobs to the state. The tax refunds are made to qualified, pre-approved businesses creating jobs in target industries. The target industries are identified by the DEO for criteria including future growth, stability, high wages, market and resource independence, industrial base diversification, and positive economic impact. Approved QTI projects have contractual performance measures with specific milestones to be verified prior to payment of any tax refunds. This incentive requires 20 percent of the award to come from the local government. The program is funded through a specific annual appropriation.¹ The program shares a \$35 million cap, per fiscal year, with the Qualified Defense and Space Contractor Tax Refund. The DEO reported that \$55.3 million in maximum awards was approved in Fiscal Year 2013-14.² Additionally the department reported that of the 1,110 contracts executed from the beginning of the program to June 30, 2014, 322 contracts are active and 122 contracts were successfully completed.³

Qualified Defense Contractor and Space Flight Business Tax Refund

Also known as the Qualified Defense and Space Contractor (QDSC) Tax Refund, the program was established in 1996, in s. 288.1045, F.S., and is designed to attract high wage jobs in the space and defense industries. The QDSC tax refunds are made to qualified and approved businesses bidding on new or securing existing defense or space contracts. As with the QTI refund, 20 percent of the award comes from the local government. As with other programs, the QDSC tax refunds are awarded after contractual performance-based milestones are met and verified by the state. Since June 30, 2014, no new applicants may be certified as eligible under statute. The program is funded through a specific annual appropriation. The program shares a \$35 million cap, per fiscal year with the QTI Tax Refund. The DEO reported that \$3.2 million in maximum rewards was approved in Fiscal Year 2013-2014. Additionally, the DEO reported that of the 28 contracts executed from the beginning of the program to June 30, 2014, five contracts are active and five contracts were successfully completed.⁴

Brownfield Redevelopment Bonus Refund

The Brownfield Redevelopment Bonus Refund was established in 1997, in s. 288.107, F.S., to improve economic activity in designated Brownfield areas. These areas are designated by the respective community for the presence or perceived presence of economic blight or environmental contamination. As with the QTI and QDSC programs, the Brownfield program requires 20 percent of the award to come from the local government. As with other programs, the Brownfield program requires performance-based contracts and specific milestones to be met in order for a project to receive awards. The Brownfield program offers a bonus for any tax refund

¹ Section. 288.095, F.S.

² The amount approved in any fiscal year may exceed the statutory cap, but payments in any fiscal year will not exceed the cap.

³ Florida Department of Economic Opportunity, *2014 Annual Incentives Report*, 11, 15 (Dec. 30, 2014) available at <http://sitefinity.floridajobs.org/docs/default-source/sbd-sports/2014-annual-incentives-report.pdf?status=Temp&sfvrsn=0.028032216409722532> (last visited March 3, 2015).

⁴ *Id.*

awarded to a QTI qualified business for job creation, if that job creation occurred in a Brownfield area. The program is funded through a specific annual appropriation. The DEO reported that \$2.6 million in maximum rewards was approved in Fiscal Year 2013-2014, with an additional \$875,000 in maximum awards for the Brownfield Bonus with QTI. Additionally, the department reported that of the 59 contracts executed from the beginning of the program to June 30, 2014, 33 contracts are active and 9 contracts were successfully completed. For the Brownfield Bonus with QTI, there are 103 contracts executed in the same timeframe with 40 active contracts and 6 completed.⁵

Economic Development Programs with Tax Credits

Capital Investment Tax Credit

The Capital Investment Tax Credit (CITC) became effective in 1998, in s. 220.191, F.S., and its purpose is to attract and grow capital-intensive industries in Florida. Eligible projects must be in designated high-impact portions of certain sectors, determined by the DEO, including clean energy, biomedical technology, financial services, information or silicon technology, or transportation equipment manufacturing. The project could also be a corporate headquarters facility. The DEO reports that the value of credits claimed is often lower than the value of credits approved because the company's tax liability may be lower than the value of the credits, and most often, because the credits can only be used to offset a portion of the incremental new tax liability attributable to a project. There is no cap for this program. The DEO reported that \$7.2 million in tax credits were claimed in 2013. The DEO also reported that there have been 37 approvals or certifications for CITC projects through June 30, 2013 (numbers from 2014 were not reported), with 32 being active and five having been terminated.⁶

Entertainment Industry Financial Incentive Program

The Entertainment Industry Financial Incentive Program was established in 2003, in s. 288.1245, F.S., to develop and sustain the workforce and infrastructure for film, digital media, and entertainment productions. This program offers transferable tax credits for expenditures related to qualified productions on a first-come, first-served basis. Currently the Office of Film and Entertainment has committed all of the state's tax credits (under this program), certifying 351 projects to receive \$296 million.⁷ The Entertainment Industry Sales Tax Exemption Program, in s. 288.1258, F.S., is a related program.

Economic Development Programs with Cash Grants

High-Impact Business Performance Grants

Also known as the High-Impact Performance Incentive (HIPI), the program was established in 1997, in s. 288.108, F.S. HIPI is a grant reserved for projects operating in the same high-impact sectors as in the CITC program. The cash grant is performance based and paid in two installments. First, upon operational commencement, and the second upon full operational

⁵ See *supra* note 3.

⁶ See *supra* note 3, at 12-13, 22.

⁷ Office of Program Policy Analysis and Government Accountability, Florida Legislature, *Florida Economic Development Program Evaluations – Year 2*, Report No. 15-01, 10 (Jan. 1, 2015), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1501rpt.pdf> (last visited Feb. 26, 2015).

commencement as determined in contract. The program has an annual cap of \$30 million. The DEO reports that \$10.6 million in grant incentives was approved in Fiscal Year 2013-14. The DEO also reports that of the 14 contracts executed from the beginning of the program to June 30, 2014, seven contracts are active and three contracts were successfully completed.⁸ This program authorizes the recapture of funds if a business fails to meet its performance measures.

Quick Action Closing Fund

The Quick Action Closing (QAC) Fund was established in 1999, in s. 288.1088, F.S. The program is designed to be a competitive “deal closing” tool for negotiations where the state’s other incentives are not enough to incentivize a business to remain, locate, or expand in the state. All QAC Fund projects have a performance based contract requiring specific scheduled milestones and annual compliance requirements. The program authorizes sanctions and penalties for failure to perform. The program is funded by a specific annual appropriation, and has no cap. The DEO reports that \$44.7 million in grant incentives was approved in Fiscal Year 2013-14. Additionally, the report stated that 144 contracts have been executed through June 30, 2014, with 106 active contracts and ten successfully completed contracts.⁹

Innovation Incentive Program

The Innovation Incentive Program (IIP) was created in 2006, in s. 288.1089, F.S. The program is designed to empower the state to compete effectively for research and development, innovation business, or alternative and renewable energy projects. The program creates long-term investments, made by the state, in industry clusters critical to the state’s future economic diversification. The projects have contractual performance measures and milestones that must be achieved before grant payment. The contracts also include a reinvestment portion, requiring recipients to reinvest a portion of royalty revenues earned back to the state for investment in existing state trust funds. The DEO reports that as of 2013, nine companies have been awarded funds of \$455.7 million, not including the Scripps Florida Grant (\$310 million).¹⁰

Local Government Distressed Area Matching Grant Program

The Local Government Distressed Area Matching Grant (LGDAMG) Program was established in 2010, in s. 288.0659, F.S. The program goal is to improve economic activity and enhance job creation in distressed communities. The grant is administered as a contract between the state and the local government. The state’s funds, a \$50,000 maximum, are passed through to the business.¹¹

Other Economic Development Programs

Professional Sports Facilities

Florida offers state funding to pay for a facility for a professional sports franchise, under certain circumstances. Local governments, non-profit and for-profit entities may apply to the program. The program is reviewed by the EDR and the OPPAGA on a schedule required by s. 288.001,

⁸ See *supra* note 3, at 12 and 17.

⁹ See *supra* note 3, at 12 and 17.

¹⁰ See *supra* note 3, at 19.

¹¹ See *supra* note 3, at 12.

F.S. The state extends the program for the retention of Major League Baseball spring training baseball franchises in s. 288.11631, F.S.

Microfinance Programs

The state has two separate microfinance programs, the Microfinance Loan Program¹² and the Microfinance Guarantee Program.¹³ The loan program is designed to make short-term, fixed-rate microloans for business management training, business development training, and technical assistance to entrepreneurs and newly established or growing small businesses for startup costs, working capital, and the acquisition of materials, supplies, furniture, fixtures, and equipment. The intent of the program is to enable entrepreneurs and small businesses to access private financing after completing the program. The guarantee program is intended to stimulate access to credit for entrepreneurs and small businesses by providing targeted guarantees to their loans.

The President of Enterprise Florida, Inc.

The president of Enterprise Florida, Inc. (EFI), is appointed by the Board of Directors, serves at the pleasure of the Governor, and is the “chief administrative and operational officer” of the board and EFI. Additionally, the president may be known as the ‘secretary of commerce’ and serves as the Governor’s chief negotiator for business recruitment and business expansion.”¹⁴

III. Effect of Proposed Changes:

The bill makes a number of changes to the state’s economic development programs to provide more flexibility in some programs, and to increase transparency and accountability across those programs.

Economic Development Incentive Application and Evaluation

In section 4, the bill amends s. 288.061, F.S., to create uniform methods for the application, evaluation, and approval of economic development incentives projects.

The bill directs the Department of Economic Opportunity (DEO or department) to create a uniform application form for incentive applications beginning January 1, 2016, which must include, at minimum:

- The applicant’s federal employee identification number, reemployment assistance account number, and state sales tax registration number (if these are unavailable at the time of application, they must be submitted before DEO disburses any incentive payments or grants any tax credits or refunds);
- The applicant’s signature;
- The location in the state where the project will be located;
- The anticipated commencement date of the project;

¹² Section 288.9934, F.S.

¹³ Section 288.9935, F.S.

¹⁴ Section 288.905, F.S.

- A description of the business activity, product, or research and development undertaken by the applicant, and the 6-digit North American Industry Classification System (NAICS) code for all activities included in the project; and
- An attestation verifying that the information in the application is true and accurate.

The bill creates a uniform evaluation process for the DEO to review and evaluate each incentive application. The department's evaluation of an application must include the following:

- A financial analysis of the company including information on liens, pending or ongoing litigation, credit ratings, and regulatory filings;
- A review of any independent evaluations of the company;
- A review of the historical market performance of the company;
- A review of the latest audit of the company's financial statement and related auditor management letter;
- A review of any other audits related to the internal controls or management of the company;
- A review of performance in connection with past incentives; and
- Any other review deemed necessary by the department.

The bill creates a uniform approval process for economic development incentive applications for the following programs:

- The Local Government Distressed Area Matching Grant Program;
- The Qualified Defense Contractor and Space Flight Business Tax Refund Program;
- The Qualified Target Industry Business Tax Refund;
- The Brownfield Redevelopment Bonus Refund;
- The High-Impact Business Performance Grants;
- The Quick Action Closing Fund; and
- The Innovation Incentive Program.

Within 10 days of receiving a complete application, the DEO must recommend a project for approval or disapproval to the Governor. Recommendations must include a justification for the recommendation and the proposed performance conditions the project must meet to receive incentive funds. The approval process for a project is dependent upon the total amount of funds that the project is awarded. Projects requiring:

- Less than \$2 million may be approved by the Governor without Legislative consultation.
- \$2 million and up to \$7.5 million require the Governor to provide a written description and evaluation to the Legislative Budget Commission (LBC) at least 10 days before final approval of the project. If the chair or vice chair of the LBC, the President of the Senate, or the Speaker of the House of Representatives advises the Governor in writing that the action exceeds executive authority or is contrary to legislative intent, the Governor and the DEO shall suspend all actions until the LBC or the Legislature makes a determination on the project.
- \$7.5 million or more must be approved by the LBC before final approval by the Governor.
- \$5 million or more that also waive program requirements also must be approved by the LBC before final approval by the Governor.

Current law provides that the executive director of the DEO may approve applications under these programs, except for the Innovation Incentive Program (IIP) and the Quick Action Closing

Fund (QAC). The IIP requires that projects must be approved by the LBC. The QAC Fund allows projects receiving under \$2 million in funding to be approved by the Governor; projects receiving between \$2 million and \$5 million require legislative consultation; and projects exceeding \$5 million in funding are subject to approval by the LBC. Sections 11 and 12 of the bill amend ss. 288.1088 and 288.1089, F.S., respectively, to conform to the changes in the approval process for incentives.

Economic Benefits

The DEO is required to calculate the economic benefits of the potential award of state incentives proposed for each project. Under current law, the Office of Economic and Demographic Research (EDR) establishes the methodology and model used to calculate the economic benefits. Section 4 of the bill directs the EDR to include guidelines for the appropriate application of the DEO's internal model.

Current law also allows the EDR to use an amended version of the term "economic benefits" for the DEO's internal model. The bill requires that, for the amended definition of "economic benefits," the state's investment must include all state funds spent or forgone to benefit the business, including state funds appropriated to public and private entities, to the extent that such funds are "reasonably known to the department at the time of approval."

Section 3 amends s. 288.005, F.S., and revises the definition of "economic benefits" to specify that the state's investment includes "all state funds spent or forgone to benefit the business, including state funds appropriated to public and private entities." The current definition includes state grants, tax exemptions, tax refunds, tax grants, and other state incentives. The term "economic benefits" means "the direct, indirect, and induced gains in state revenue as a percentage of the state's investment."

The economic benefits calculation takes into account capital investment associated with a project. When evaluating an application for economic development incentives, the DEO is prohibited from attributing to a business any investment by the business made using state funds. The bill makes similar amendments to the definition of "cumulative capital investment" in s. 288.191, F.S., related to the Capital Investment Tax Credit (section 1); the term "fixed capital investment" in s. 288.107, F.S., related to the Brownfield Redevelopment Bonus Refund (section 9); and requires Quick Action Closing Fund contracts to specify capital investment to be made "by the business" (section 11).

Economic Development Incentives Contracts

Approved projects must be certified by the DEO as qualified for award of funds under the programs. The bill amends s. 288.061, F.S., in section 4 and clarifies that, upon certification, an applicant and the DEO will enter into contract. The duration of a contract may not exceed 10 years. The bill provides that the DEO may enter into successive agreements for a project to extend the first 10-year term, providing that each successive contract is contingent upon the successful completion of the previous contract. Contracts that have a total of \$20 million or more of combined state incentives are not subject to the restriction on the duration.

The bill also requires that:

- Any contract that requires capital investment to be made by the applicant must also require that capital investment remain in this state for the duration of the contract.
- If the contract has any performance conditions related to job creation, the contract must require the applicant to use the Employ Florida Marketplace.¹⁵

Most economic development incentive programs also require the contract to specify a required average annual wage that the applicant agrees to meet. The bill requires that the average annual wage must reflect the wages in the local area where the business is or will be located (county or standard metropolitan area). The bill makes conforming changes in sections 7, 8, 11, and 12, which amend ss. 288.107, 288.106, 288.1088, and 288.1089, F.S., respectively, and does not permit contracts to be based on the statewide average wage.

The DEO must provide the Legislature with notice, including an updated description and evaluation, of each executed and finalized contract.

The bill requires a 3-day advanced notice to the Legislature of any proposed changes to the contract by the DEO. Amendments that result in a reduction of the projected economic benefits require a 10-day Legislative consultation. This requirement applies when the projected economic benefit ratio is reduced by:

- 0.50 or more, or
- Below any statutorily required level for receipt of funds.

An amendment that reduces the economic benefits as described above must also include a proportionate reduction in the award amount. As with the original contract approval process, the chair or vice-chair of the LBC, the Senate President, or the Speaker of the House of Representatives may object to the changes in writing. If there is an objection, the Governor and the DEO must suspend all action until the LBC or the Legislature makes a determination on the project.

Cap on Contract Obligations

Section 4 of the bill amends s. 288.061, F.S., to create a cap on the amount of funds that can be obligated each fiscal year under contracts for the economic development programs to which the new application approval process applies. The total amount of actual or projected payments in any fiscal year cannot exceed \$50 million. This limitation may be waived in the General Appropriations Act (GAA).

Annually, the DEO must provide the Legislature with the amount of estimated payments for the upcoming fiscal year (due January 2) and then the list of claims filed for payment in the upcoming fiscal year (due March 1). Using this information, the Legislature must annually appropriate in the GAA an amount estimated to be sufficient to satisfy scheduled payments in the upcoming fiscal year. If the amount appropriated is insufficient to make all payments, the DEO must pay the unfunded claims from the next year's appropriation. The DEO is required to notify

¹⁵ The DEO and CareerSource Florida, Inc., (formerly Workforce Florida, Inc.) implement the workforce information systems required under s. 445.011, F.S.

the Legislature of any anticipated shortfalls by March 1 of each year. However, if any funds remain unexpended by June 30, those funds will revert and may not be transferred to an escrow account.

The DEO may not make payments under an economic development incentive contract until it has validated that the contractual performance conditions have been met by the business. The DEO may only make payments to the business under the contract and not to any third party.

As to the funds presently held in escrow by EFI for current Quick Action Closing Fund contracts, the bill (section 6) directs EFI to return any funds held on June 30, 2015, to the state treasury by July 10, 2015. Such funds will be held in a newly created “Quick Action Closing Fund Escrow Account” in the Economic Development Trust Fund within the DEO (see section 5, amending s. 288.095, F.S.). The bill creates a continuing appropriation for this account. Funds may be paid out of the account upon validation that the contractual performance conditions for each project have been satisfied. If a project with funds in the account is terminated, the funds revert to the State Economic Enhancement and Development (SEED) Trust Fund. Any interest earned in this account also reverts to the SEED Trust Fund. This account in the Economic Development Trust Fund expires on June 30, 2029, the estimated time by which all current contracts will have been completed. Section 13 of the bill amends s. 288.1208, F.S., to provide for the reversions into the SEED Trust Fund.

The bill clarifies that the Economic Development Incentives Account in the Economic Development Trust Fund also consists of local financial support required under the QTI, QDSC, and Brownfield Redevelopment Bonus programs. The bill makes conforming changes in sections 7, 8, 9, 10, and 11, amending ss. 288.107, 288.106, 288.107, 288.108, and 288.1088, F.S., respectively, to implement this provision.

The Qualified Defense Contractor and Space Flight Business Tax Refund

The bill, in section 7 amends the Qualified Defense Contractor and Space Flight Business Tax Refund Program¹⁶ to allow the DEO to certify applicants for this program until June 30, 2020 (Section 7). Under current law, the DEO may not certify any applicants after June 30, 2014, but tax refund agreements in existence on that date are continued in accordance with their terms.

Additionally, the bill also increases the period of time that the DEO may grant extensions to applicants applying for a tax refund. The bill authorizes the DEO to allow an extension for submission of refund claims and information for a refund for up to 60 days, rather than the 30 days allowed by current law.

The Qualified Target Industry Tax Refund

The bill in section 8 amends the Tax Refund Program for Qualified Target Industry Businesses (QTI)¹⁷ to allow an applicant exercising the local financial support exemption option to be eligible for 100 percent of the total funds allowed under the program. Under current law, an

¹⁶ Section 288.1045, F.S.

¹⁷ Section 288.106, F.S.

applicant exercising the local financial support exemption option is not eligible for more than 80 percent of the total tax refunds allowed under the program. An applicant that is locating in a brownfield area, a rural city, or a rural community can exercise an option to be exempt from the 20 percent local financial support requirements of the program.

Under current law, additional per-job tax refund payments are available to applicants for each job created if the applicant commits to paying an annual average wage greater than the minimum requirement of 115 percent of the average wage in the area. These “bonuses” are awarded at 150 percent of the average private sector wage (an additional \$1,000 tax refund per job) and at 200 percent of the average private sector wage (an additional \$2,000 tax refund per job), in the area. A prorated tax refund, with a 5 percent penalty, can be awarded if the business paid at least 90 percent of the wage specified in the contract. The bill clarifies when a business that commits to the higher wage it can receive the prorated tax refund:

- A business that commits to pay 150 percent of the average wage must pay an annual average wage of no less than 135 percent of the annual private sector wage.
- A business that commits to pay 200 percent of the average wage must pay an annual average wage of no less than 180 percent of the average private sector wage.

The bill also increases the period of time that the DEO may grant extensions to applicants applying for a tax refund. The bill authorizes the DEO to allow an extension for submission of refund claims and information for a refund for up to 60 days, rather than the 30 days allowed by current law.

The Quick Action Closing Fund

The bill, in section 11, amends the criteria for the Quick Action Closing (QAC) Fund.¹⁸ Under current law, in order to be eligible for QAC funds a project must meet 5 criteria:

- Be in a qualified target industry;
- Have a positive economic benefit ratio of at least 5 to 1;
- Be an inducement to the project’s location or expansion in the state;
- Pay an average annual wage of at least 125 percent of the area-wide or statewide private sector average wage; and
- Be supported by the local community in which the project is to be located.

The DEO is permitted to waive these criteria under certain conditions.

The bill requires that a request for a waiver and the granting of a waiver must be in writing and provide the specific justification for the waiver. Similar to the requirements of other economic development programs, the DEO may not grant a waiver for more than 2 of the 5 criteria. The bill also:

- Lowers the required economic benefit ratio to 4 to 1, and prohibits the ratio from being waived below 2 to 1.
- Requires the average annual wage for a project to reflect the wages in the local area where the business is or will be located (county or standard metropolitan area) and prohibits the

¹⁸ Section 288.1088, F.S.

average annual wage from being waived below 100 percent of the average private sector wage in the area.

- Prohibits waiver of the criteria that the incentive be an inducement to the project's location or expansion in this state.

If a contract contains an option to award additional funds if additional jobs are created above the minimum commitment, the bill clarifies that when the DEO is evaluating QAC proposals, the minimum and maximum number of full-time equivalent jobs created by the facility should be used for evaluation purposes. The bill specifies that the contract should include the minimum and maximum amount of funds that may be awarded and the minimum and maximum number of jobs that will be created.

The bill requires that payment may not be made to a business until the business has satisfied all contracted performance requirements.

The President of Enterprise Florida, Inc.

Section 14 of the bill amends s. 288.905, F.S., to require the EFI president to be subject to Senate confirmation (Section 14). Former presidents of EFI, who are appointed or reappointed on or after July 1, 2015, are prohibited from receiving compensation for representing certain entities before the Legislative or Executive branch of the state's government for a period of 2 years after vacating the office. This prohibition applies if an entity applied for, received, or negotiated with EFI for the receipt of state funds, regardless of whether or not any state funds were received.

Reporting and Miscellaneous Changes

The bill, in section 2, requires the Economic Development Programs Evaluation required in s. 288.0001, F.S., include an analysis of the state's retention of Major League Baseball spring training franchises program in s. 288.11631, F.S. This evaluation must be completed by January 1, 2018, and every 3 years thereafter.

Section 16 of the bill requires OPPAGA, in addition to EDR, to evaluate the Microfinance Loan Program and Microfinance Guarantee Program. Because multiple reports are due January 1, 2018, (e.g., reports in s. 288.0001, F.S.) these additional reports must be submitted by January 15, 2018.

Section 17 provides an effective date of July 1, 2015.

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:**

Under PCS/SB 1214, the extension of the Qualified Defense Contractor and Space Flight tax refund program to allow the Department of Economic Opportunity (DEO) to certify applications through June 30, 2020, will have a negative impact to state revenues. The Revenue Estimating Impact Conference has not yet reviewed the bill.

B. Private Sector Impact:

The fiscal impact to the private sector is indeterminate.

C. Government Sector Impact:

The provisions of the bill that eliminate the practice of the DEO disbursing funds to Enterprise Florida, Inc. (EFI), upon execution of a Quick Action Closing Fund (QAC) contract or agreement will have a positive impact on state revenues and the state's economy as a whole. Currently, the return on investment (ROI) for a QAC project is calculated from the time that the DEO disburses an award to EFI for deposit into an escrow account. Because the ROI Model accounts for the time value of money, the return on investment will increase for projects when funds are no longer held in escrow. Additionally, using a "pay-as-you-go" approach for QAC projects will enable the state to use funds that would otherwise reside in an escrow account for other priorities each fiscal year.

The provisions of the bill that revise the Qualified Targeted Industry Business Tax Refund Program may increase state tax refunds awarded to businesses. Specifically these provisions permit businesses in brownfield or rural areas to receive 100 percent of the total tax refunds allowed if the local financial support is waived; and permit businesses to receive a prorated award if certain wage requirements are met. The impact is dependent on the use of these incentives and is indeterminate.

The DEO has indicated that it has sufficient resources to administratively implement the bill.¹⁹

VI. Technical Deficiencies:

None.

¹⁹ Conversation with Bill Wilson, Legislative and Cabinet Affairs, Department of Economic Opportunity (DEO) (Mar. 2, 2015).

VII. Related Issues:

The DEO is authorized to adopt rules to prescribe a form for applications for economic development and other changes made in s. 288.061, F.S.; and for the administration of the Quick Action Closing Fund Escrow Account.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 220.191, 288.0001, 288.005, 288.061, 288.095, 288.1045, 288.106, 288.107, 288.108, 288.1088, 288.1089, 288.1201, 288.905, and 288.9937.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on March 19, 2015:

The committee substitute:

- Creates a cap (\$50 million) on the amount of funds that can be obligated for payment each fiscal year for specified economic development incentive programs, which may be waived in the General Appropriations Act (GAA).
- Requires the Department of Economic Opportunity (DEO) to annually provide the Legislature with the amount of estimated and scheduled payments for the upcoming fiscal year. The Legislature will use this information to appropriate in the GAA the amount estimated to be sufficient to satisfy scheduled payments in the upcoming fiscal year.
- Provides for action in the case of shortfall or excess in the appropriation.
- Prohibits the DEO from making payments to a business until the DEO has validated that applicable contractual performance requirements have been satisfied by the business, and prohibits payments to third parties.
- Directs Enterprise Florida, Inc. (EFI) to return any funds held in escrow on June 30, 2015, to the state treasury by July 10, 2015, to be held the “Quick Action Closing Fund Escrow Account” within the Economic Development Trust Fund.
- Creates a continuing appropriation category to make payments from the “Quick Action Closing Escrow Account” and provides an expiration date of June 30, 2029 for both the account and the continuing appropriation category.
- Clarifies that the Economic Development Incentives Account within the Economic Development Trust Fund within the DEO consists of local financial support required under the Qualified Target Industry Business Tax Refund, Qualified Defense and Space Contractor Tax Refund, and Brownfield Redevelopment Bonus programs.
- Makes conforming and clarifying changes.

B. Amendments:

None.

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