

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: CS/SB 922

INTRODUCER: Commerce and Tourism Committee and Senator Gruters

SUBJECT: Economic Development

DATE: February 26, 2020 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Reeves</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Howard</u>	<u>Kidd</u>	<u>AHS</u>	Recommend: Favorable
3.	<u>Hrdlicka</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 922 provides that certain businesses that relocate to, or expand into, a county affected by Hurricane Michael are eligible to receive an increased tax refund under the Qualified Target Industry Tax Refund Program, and authorizes certain businesses located in a county affected by Hurricane Michael to apply for an economic recovery extension. The bill removes the scheduled repeal date for the tax refund program.

The bill also exempts specified surf pools from supervision by the Department of Health if the surf pool meets certain investment requirements and is permitted by a local government pursuant to a special use permit process.

The bill has a significant yet indeterminate fiscal impact on state expenditures.

The bill takes effect on July 1, 2020.

II. Present Situation:

Qualified Target Industry Tax Refund Program

The Qualified Target Industry (QTI) Tax Refund Program was created by the Legislature in 1994¹ to encourage the creation and retention of high-quality, high-wage jobs by providing state

¹ Ch. 94-136, s. 76, Laws of Fla.

tax refunds² to eligible businesses creating jobs in certain target industries.³ Tax refunds awarded through the program are determined by the number of jobs created by, the average annual wages paid by, and the location of the eligible business. Under current law, the tax refund program will expire on June 30, 2020.⁴

In order to be eligible to receive a tax refund, a business must apply to be certified as a qualified target industry business with the Department of Economic Opportunity (DEO).⁵ Businesses must be engaged in one of Florida's target industries as identified by the DEO and Enterprise Florida, Inc. (EFI).⁶ The current qualified target industries are aviation and aerospace; life sciences; manufacturing; defense and homeland security; information technology; financial and professional services; logistics and distribution; research and development; cleantech; and corporate headquarters.⁷

Qualified target industry businesses are eligible to receive a tax refund equal to \$3,000 per newly created job. If a business is located in a rural community or an enterprise zone, the refund amount is increased to \$6,000 per created job.⁸ Qualified target industry businesses may also be eligible for the following additional tax refund payments:⁹

- \$1,000 per created job if such jobs pay an average annual wage of at least 150 percent of the average private sector wage in a business's area;
- \$2,000 per created job if such jobs pay an average annual wage of at least 200 percent of the average private sector wage in a business's area;
- \$1,000 per created job if a business's local financial support is equal to the state's incentive award; and
- \$2,000 per created jobs if a business falls within one of the designated high-impact sectors¹⁰ or increases exports of its goods through a seaport¹¹ or airport in the state by at least 10 percent by value or tonnage in each of the years the business receives a tax refund.

² Tax refunds may be claimed for the following taxes paid: sales and use taxes, corporate income taxes, insurance premium taxes, intangible personal property taxes, excise taxes, ad valorem taxes, certain state communication services taxes, excise taxes on documents. *See* s. 288.106(3)(9), F.S.

³ Section 288.106(1), F.S.

⁴ Section 288.106(9), F.S.

⁵ Section 288.106(4), F.S.

⁶ Section 288.106(2)(q), F.S. Every three years, beginning January 1, 2011, DEO must consult with EFI, economic development organizations, the State University System, local governments, employee and employer organizations, market analysts, and economists to review and revise the list of target industries. Target industries are determined according to criteria found in statute.

⁷ Enterprise Florida, Inc., *Qualified Targeted Industries for Incentives*, available at https://www.enterpriseflorida.com/wp-content/uploads/SI_Targeted_Industries.pdf (last visited Jan. 22, 2020).

⁸ Section 288.106(3)(b)1., F.S.

⁹ Section 288.106(3)(b), F.S.

¹⁰ Pursuant to s. 288.108(6), F.S., EFI must consult with the DEO, economic development organizations, the State University System, local governments, employee and employer organizations, market analysts, and economists every three years, beginning January 1, 2011, to review the designated high-impact sectors. The sectors currently designated as high impact are transportation equipment (including aviation and aerospace), information technology, life sciences, financial services, corporate headquarters, and clean energy. *See* Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 7*, 17 (2019), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1916rpt.pdf> (last visited Jan. 22, 2020).

¹¹ Section 288.106(3)(b)4.b., F.S., limits seaports to the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.

A qualified target industry business cannot receive more than \$1.5 million in tax refunds in any fiscal year, or more than \$2.5 million in any fiscal year if the business is located in an enterprise zone.¹² The total state share of tax refund payments may not exceed \$35 million.¹³

To date, 1,360 businesses have been approved to participate in the QTI program and over \$260 million has been awarded in tax refunds. In Fiscal Year 2018-2019, 7,462 jobs were created by 321 businesses actively participating in the program. The total number of jobs created exceeded the number of total new jobs expected to be created by 3,184.¹⁴

Tax Refund Agreement

Each qualified target industry business must enter into a written agreement with the DEO that specifies certain criteria that must be met in order to be eligible for the tax refund.¹⁵ Compliance with the terms and conditions of the agreement is a condition precedent for the receipt of a tax refund each year unless the department grants the business an economic recovery extension.¹⁶

In the event of negative economic conditions in a business's industry, a named hurricane or tropical storm, or specific acts of terrorism, a qualified target industry business may request an economic recovery extension. The request must provide evidence detailing how the aforementioned conditions have prevented a business from carrying out the terms of its tax refund agreement.¹⁷ Upon approval, the DEO will renegotiate a business's tax refund agreement. Agreements may not be extended for more than 2 years, and a business that receives an extension may not receive a tax refund for the period covered by the extension.¹⁸ Requests for an economic recovery extension were permitted in lieu of any tax refund claim scheduled between January 1, 2009, and July 1, 2012.¹⁹

Disproportionally Affected Counties

In response to the Deepwater Horizon oil spill, the Legislature enacted a special incentive within the QTI program to encourage business investment in the counties disproportionately affected by the oil spill.²⁰ The DEO was authorized to waive any or all wage or local financial support requirements between July 1, 2011, and June 30, 2014, for a business located in a Disproportionally Affected County Bay. Disproportionally Affected Counties are currently defined as Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, Walton County, or Wakulla County. During this period, a qualified target industry business that relocated all or part of its business to one of such counties from another state was eligible for a tax refund of \$6,000 per job created.²¹

¹² Section 288.106(3)(c), F.S.

¹³ Section 288.095(3)(a), F.S.

¹⁴ Florida Department of Economic Opportunity, 2019 Incentives Report, 7-8, available at http://www.floridajobs.org/docs/default-source/reports-and-legislation/2018-2019-annual-incentives-report---final.pdf?sfvrsn=c2a340b0_2 (last visited February 4, 2020).

¹⁵ Section 288.106(5)(a), F.S.

¹⁶ Section 288.106(5)(b), F.S.

¹⁷ Section 288.106(5)(b)1., F.S.

¹⁸ Section 288.106(5)(b)3., F.S.

¹⁹ Section 288.106(5)(b)1., F.S.

²⁰ Ch. 2011-142, s. 150, Laws of Fla.

²¹ Section 288.106(8), F.S.

Hurricane Michael

Hurricane Michael made landfall in the Florida Panhandle as a Category 5 Hurricane on October 10, 2018. The storm, the fourth most powerful hurricane to hit the country, remained at category 3 strength as it traveled into southwest Georgia. Storm surge and 160 mph winds caused destruction and losses of almost \$7 billion along the hurricane's path.²² In the year following the storm, FEMA has provided \$1.9 billion in federal funds for housing assistance, disaster loans, public assistance grants, and hazard mitigation grants.²³ Businesses have been slow to reopen, largely due to a shortage of workers worsened by the lack of affordable housing in the area.²⁴

Regulation of Public Swimming Pools²⁵

The DOH is required to protect the health, safety and welfare of persons by setting sanitation and safety standards for public swimming pools (and bathing places). These standards are limited to matters relating to source of water supply; microbiological, chemical, and physical quality of the water in the pool; method of water purification, treatment, and disinfection; lifesaving apparatus; and measures to ensure safety of bathers.

The DOH is not authorized to regulate the design, alteration, modification, or repair of public swimming pools, which has no impact on sanitation and safety of persons using such pools; or regulate the construction, erection, or demolition of such pools. Those functions are preempted to the Florida Building Commission.²⁶

The DOH is required to assign to county health departments that are staffed with qualified engineering personnel the functions of reviewing applications and plans for the construction, development, or modification of public swimming pools; of conducting inspections, and of issuing all permits. The DOH is responsible for such functions if a county health department determines that qualified staff are not available. County health departments are responsible for routine surveillance of water quality in all public swimming pools, including routine inspections, complaint investigations, enforcement procedures, and operating permits.²⁷

²² "A year after Michael, Florida community still in crisis" *Associated Press*, October 9, 2019, available at <https://apnews.com/0d260a9ec44545458ab1f25b6f969a5a> (last visited February 4, 2020).

²³ Federal Emergency Management Agency, *Florida Hurricane Michael*, available at <https://www.fema.gov/disaster/4399> (last visited February 4, 2020).

²⁴ National Public Radio, *Recovery is Slow in the Florida Panhandle a Year after Hurricane Michael* (October 10, 2019), available at: <https://www.npr.org/2019/10/10/768722573/recovery-is-slow-in-the-florida-panhandle-a-year-after-hurricane-michael> (last visited February 4, 2020).

²⁵ Section 514.011, F.S., defines "public swimming pool" or "pool" as a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool shall mean a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.

²⁶ Section 514.021(2), F.S.

²⁷ Section 514.025, F.S.

The DOH is authorized to deny an application for a permit, suspend or revoke a permit, or impose an administrative fine upon the failure to comply with the provisions of ch. 514, F.S.²⁸ The DOH may, at any reasonable time, enter any and all parts of a public swimming pool to examine and investigate the pool's sanitary and safety conditions.²⁹ Any public swimming pool that presents a significant risk to public health by failing to meet sanitation and safety standards is declared a public nuisance. Such nuisances may be abated in an action brought by the DOH or a county health department.³⁰

The DOH is authorized to grant variances from any rules adopted under ch. 514, F.S., and the provisions of the Florida Building Code, for public swimming pools to relieve certain hardship cases. Additionally, s. 514.0115, F.S., exempts certain pools from the supervision and regulation of public swimming pools and bathing facilities.

III. Effect of Proposed Changes:

Qualified Target Industry Tax Refund Program (Sections 1 and 4)

The bill amends s. 288.106(5)(b)4, F.S., to allow a qualified target industry business located in a county affected by Hurricane Michael to request an economic recovery extension in lieu of any tax refund claim scheduled to be submitted after January 1, 2021, but before July 1, 2023.

The bill amends s. 288.106(8), F.S., to replace references to a "Disproportionally Affected County" with a "county affected by Hurricane Michael." The bill defines a "county affected by Hurricane Michael" as Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Wakulla, Walton, or Washington County.

The bill allows the DEO to waive wage and local financial support requirements for businesses that locate or expand in a county affected by Hurricane Michael and updates the period during which the DEO may waive such requirements to between July 1, 2020, and June 30, 2023. The bill requires that DEO's decision to waive such requirements be stated in writing. The bill clarifies that a business that "relocates from another state to, or establishes its business or expands its existing business in, a county affected by Hurricane Michael" is eligible to a tax refund of \$10,000 per job created, rather than \$6,000 per job created.

The bill removes the QTI tax refund program's expiration date of June 30, 2020, and permanently reauthorizes the program.

The bill amends s. 189.033, F.S., to remove a cross-reference and provides that, as used in s. 189.033, F.S., the term "disproportionally affected county" retains its original definition of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton, or Wakulla County.

²⁸ Section 514.05, F.S.

²⁹ Section 514.04, F.S.

³⁰ Section 514.06, F.S.

Swimming and Bathing Facilities (Sections 2 and 3)

The bill amends s. 514.0115, F.S., to create an exemption from the supervision of public swimming and bathing facilities by the Department of Health (DOH) for certain surf pools. Under the bill, a surf pool that is larger than 4 acres and certified by the DEO as part of a new development with an investment value of at least \$100 million is exempt from supervision under ch. 514, F.S., provided that it is permitted by a local government pursuant to a special use permit process in which the local government asserts regulatory authority over the construction of the surf pool, and in consultation with the DOH, establishes the conditions for the surf pool's operation, water quality, and necessary lifesaving equipment. These provisions do not affect the DOH's or a county health department's authority to enter, or to seek an injunction, to restrain the operations of a surf pool if it presents significant public health risk.

The bill defines "surf pool" as a pool designed to generate waves dedicated to the activity of surfing on a surfboard or analogous surfing device commonly used in the ocean and intended for sport, as opposed to general play intent for wave pools, other large-scale public swimming pools, or other public bathing places."

The bill corrects a cross-reference in s. 553.77, F.S.

Effective Date (Section 5)

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article III, s. 6 of the State Constitution requires every law to "embrace but one subject and matter properly connected therewith." This single subject requirement is intended to prohibit logrolling, in which multiple unrelated measures are combined in one bill in

order to secure passage of a measure that is unlikely to pass on its own merits.³¹ An act may be as broad as the Legislature chooses, provided the matters included in the act have a natural or logical connection.³² The requirement is violated if an act is written to accomplish separate and disassociated objects of legislative intent.³³ The Florida Supreme Court has opined that the single subject clause contains three requirements. First, each law shall embrace only one subject. Second, the law may include any matter that is properly connected with the subject. The third requirement, related to the first, is that the subject shall be briefly expressed in the title.³⁴

The subject matter which should be considered when determining whether an act embraces a single subject is the subject expressed in the title.³⁵ The test is whether the bill is designed to accomplish separate objectives which have no natural or logical connection to each other.³⁶ An act that contains subjects designed to accomplish separate and disassociated objects of legislative effort violates single subject.³⁷

The bill is entitled “an act relating to economic development.” Section 1 of the bill amends the qualified target industry program in ch. 288, F.S., relating to commercial development and capital improvements. Section 2 of the bill amends ch. 514, F.S., relating to public swimming and bathing facilities, to exempt from DOH supervision the construction of a surf pool certified by the DEO as part of a new development with an investment value of at least \$100 million, if a local government has permitted the surf pool pursuant to a special use permit process.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet met regarding the bill.

The bill increases the amount of tax refunds that certain qualified target industry businesses in specified counties are eligible to receive. However, the annual funding cap of \$35 million, pursuant to s. 288.095(3)(a), F.S., would still apply.

B. Private Sector Impact:

The amount of tax refunds available to a qualified target industry business that relocates to or expands into to a county affected by Hurricane Michael is increased from \$6,000 to \$10,000 per created job, which could incentivize certain businesses to relocate to or expand into those areas.

³¹ *Santos v. State*, 380 So.2d 1284 (Fla. 1980).

³² *Chenoweth v. Kemp*, 396 So.2d 1122 (Fla. 1981).

³³ *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).

³⁴ *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2004).

³⁵ *Ex parte Knight*, 41 So. 786 (Fla. 1906).

³⁶ *Board of Pub. Instruction v. Doran*, 224 So.2d 693 (Fla. 1969).

³⁷ *State ex rel. Landis v. Thompson*, 163 So. 270, 283 (Fla. 1935).

C. Government Sector Impact:

The bill has a significant yet indeterminate fiscal impact on state expenditures due to the provisions that increase tax refunds from \$6,000 to \$10,000 per employee for QTI projects within a county affected by Hurricane Michael.³⁸

The bill is expected to have an indeterminate fiscal impact on the DOH. The bill may increase the number of safety or water quality complaints, which could require a DOH investigation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the DEO to certify a surf pool larger than 4 acres to be part of a new development with an investment value of at least \$100 million. The bill does not specify the certification process or give the DEO rulemaking authority to specify the certification process.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 189.003, 288.106, 514.0115, and 553.77.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Commerce and Tourism on January 21, 2020:

- Deletes a cross-reference to the definition of “disproportionally affected county”;
- Defines “disproportionally affected county” in place of the cross-reference;
- Defines “surf pool”;
- Provides that certain surf pools are exempt from supervision established in ch. 514, F.S., if a local government has permitted such a surf pool through a special use permit process; and
- Updates a reference to a redesignated statute.

B. Amendments:

None.

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

³⁸ Department of Economic Opportunity, *Senate Bill 922 Fiscal Analysis* (November 18, 2019) (on file with the Senate Appropriations Subcommittee on Health and Human Services).