

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB TEDAS 15-02 Economic Development

**SPONSOR(S):** Transportation & Economic Development Appropriations Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Economic Development Appropriations Subcommittee		Proctor	Davis

### SUMMARY ANALYSIS

The Proposed Committee Bill (PCB) conforms to the proposed House Budget for Fiscal Year 2015-16 by making appropriations and modifications to the definitions, processes, and administration of economic development incentive tax refund and grant programs. Specifically, the PCB:

- requires “cumulative capital investment” to be considered as part of the evaluation of incentive applications and clarifies that such capital investment does not include state or local government funds;
- clarifies that the model used to determine a project’s “economic benefits” as developed by the Office of Economic and Demographic Research must include all state funds spent to benefit a business;
- requires additional review and evaluation of a project following an incentive agreement amendment or modification and prohibits incentive agreements with terms longer than 10 years;
- provides a limit of no more than \$60 million in total payments for certain tax refund and grant programs each fiscal year, of which no more than \$35 million may be attributed to the Quick Action Closing Fund Program;
- removes the \$35 million limit on applications certified for the Qualified Target Industry Tax Refund Program and the Qualified Defense Contractor and Space Flight Business Tax Refund Program;
- specifies that the average wage used to determine incentive eligibility is the average wage of the county where the project is located;
- modifies the definition of “local financial support” and waiver processes across multiple incentive programs for consistency and uniformity;
- defines waiver processes for performance-based cash incentive programs;
- creates a new approval process for performance-based cash incentive programs;
- defines rural areas as “rural areas of opportunity” across multiple incentive programs;
- establishes a job creation component within the Quick Action Closing Fund program;
- removes expired provisions within the Qualified Target Industry Tax Refund program; and
- reauthorizes Qualified Defense Contractor and Space Flight Business Tax Refund program through June 30, 2017.

The PCB contains a nonrecurring appropriation of \$20 million in the State Economic Enhancement and Development Trust Fund and \$3.8 million in the Economic Development Trust Fund to the Department of Economic Opportunity for making contractual payments and tax refunds for Fiscal Year 2015-16.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **ECONOMIC DEVELOPMENT INCENTIVES**

Enterprise Florida, Inc., (EFI) is the state's point of contact for businesses seeking relocation, expansion, or job retention opportunities. As part of the early project development process, EFI sells the value of doing business in the state. When a business is contemplating an expansion or relocation, EFI evaluates the competitive nature of the project in order to determine if incentives are needed and, if so, the appropriate programs for which the project might qualify. A strong commitment by the local community can also help define the level of commitment on behalf of the state.<sup>1</sup>

During the project evaluation process, the needs of the project are identified and an incentive package is developed. It is during this stage that the Department of Economic Opportunity (DEO) analyzes the risk profile of the company involved, the particular project, and the recommended incentive package prepared by EFI to ensure it is in the best interest of the state. Once the incentive package is finalized, DEO and/or the other appropriate state bodies issue the formal approvals.<sup>2</sup>

The state's economic development incentives utilize tax refunds and performance-based cash awards. To receive an incentive, businesses must first enter into a contract with DEO which outlines performance expectations such as specific job creation goals, a schedule by which new jobs should be created, an average wage to be paid for the new jobs, and a schedule by which new capital investment should be made. After the business has commenced the project and begun hiring, it will submit an annual claim form and documentation of taxes paid. The state verifies the claim data with the company's quarterly reemployment assistance and payroll reports and verifies the tax documentation. If the state confirms the contractual obligations have been met and any required local financial support has been received, a tax refund check is sent to the business. Businesses not filing claims or not meeting the performance obligations of its contract may be terminated from the program.

Businesses receiving economic development incentive grant awards must also enter into performance-based contracts with the state which outline specific milestones for performance and payment. All of the state's incentive grant awards contain penalties for non-performance, and the state may actively pursue the recapture of funds in cases where a business has failed to meet the terms of its contract.

#### **Present Situation**

##### **Qualified Target Industry Tax Refund Program (QTI)**

- The Qualified Target Industry Tax Refund Program was established to serve to attract new high quality, high wage jobs for Floridians.<sup>3</sup>
- Tax refunds are made to qualifying, pre-approved businesses creating new jobs within Florida's target industries.
- All QTI projects include a performance-based contract with the state, which outlines specific milestones that must be achieved and verified by the state prior to payment of refunds.
- Local Financial Support: Twenty percent of the award must come from the local city or county government.<sup>4</sup>

Prior to June 30, 2014, DEO was authorized to reduce this requirement by one-half for a qualified target industry business located in the counties of Bay, Escambia, Franklin, Gadsden, Gulf, Jefferson, Leon, Okaloosa, Santa Rosa, Wakulla or Walton. The reduction in local match

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<sup>1</sup> Florida Department of Economic Opportunity, *2014 Annual Incentives Report*, pg. 3, (Dec. 30, 2014).

<sup>2</sup> *Id.*

<sup>3</sup> *See* s. 288.061(1), F.S.

<sup>4</sup> *See* s. 288.106(1)(j), F.S.

was determined by DEO and based on a determination that the project facilitates economic development, growth, or new employment within the previously referenced counties, and was in the best interest of the state.<sup>5</sup>

- Economic Recovery Extension: For the period of January 2, 2009, through June 30, 2012, a qualified target industry business could submit a request to DEO for an economic recovery extension. The request was required to provide quantitative evidence that negative economic conditions in the business's industry, the effects of a named hurricane or tropical storm, or specific acts of terrorism have affected the business and prevented it from complying with the terms and conditions of its incentive agreement with the state. An approved economic recovery extension allowed DEO to prorate a business's tax refund and renegotiate the terms of the incentive agreement. Additionally, DEO was authorized to extend the duration of the incentive agreement up to two years.<sup>6</sup>
- Job and Wage Requirements: A project must propose to create at least 10 new jobs, or in the case of a business expansion, must result in a net increase in employment of at least 10 percent at that business. The jobs proposed to be created or retained must pay an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage.
- The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is \$3,000 per employee, and the maximum amount is \$11,000 per employee over the term of the incentive agreement. Jobs created in rural communities and enterprise zones, as well as those paying higher annual average wages, are eligible for more incentives.

Since the inception of the QTI program, 1,264 applications have been approved, 1,110 contracts have been executed, and 122 agreements have been completed. Of those 1,264 projects, 322 remain active, meaning they are eligible to receive refunds through the QTI program. In Fiscal Year 2013-2014, \$55,324,300 in QTI incentives was awarded.<sup>7</sup>

### **Qualified Defense Contractor and Space Flight Tax Refund**

- The Qualified Defense Contractor and Space Flight tax refund program was established to attract new high quality, high wage jobs for Floridians in the defense and space industries.<sup>8</sup>
- Tax refunds are made to qualifying, pre-approved businesses bidding on new competitive contracts or consolidating existing defense or space contracts.<sup>9</sup>
- Local Community Support: This incentive is a partnership between the state and local community - 20 percent of the award comes from the local city or county government.<sup>10</sup>
- All Qualified Defense Contractor and Space Flight tax refund program projects include a performance-based contract with the state, which outlines specific milestones that must be achieved and verified by DEO prior to payment of refunds.<sup>11</sup>
- Jobs and Wages: The program requires that jobs created by a Qualified Defense Contractor and Space Flight tax refund program project have an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage.
- The amount of the tax refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The

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<sup>5</sup> Section 288.106(4)(f), F.S.

<sup>6</sup> Section 288.106(5)(b), F.S.

<sup>7</sup> *Id.*, pg. 11

<sup>8</sup> *See* s. 288.1045, F.S.

<sup>9</sup> *See* s. 288.1045(2), F.S.

<sup>10</sup> Section 288.1045(1)(j), F.S.

<sup>11</sup> Section 288.1045(4), F.S. *See supra* note 1 at 9.

minimum tax refund is \$3,000 per employee, and the maximum amount is \$8,000 per employee over the term of the incentive agreement.<sup>12</sup>

- Since the Qualified Defense Contractor and Space Flight tax refund program's inception 33 Qualified Defense Contractor and Space Flight tax refund program applications have been approved. Of those 33 approved applications 5 remain active. In Fiscal Year 2013-2014, \$3,208,000 in Qualified Defense Contractor and Space Flight tax refund program incentives were awarded.<sup>13</sup> Approved applicants may receive up to 25 percent of their total tax refund, not to exceed \$2.5 million, in any given fiscal year.<sup>14</sup>
- Applicants may no longer be certified as eligible for the Qualified Defense Contractor and Space Flight tax refund program as of June 30, 2014.<sup>15</sup>

### Quick Action Closing Fund (QAC)

- The Legislature created the Quick Action Closing Fund (QAC) in 1999 as a discretionary "deal closing" tool in highly competitive negotiations where the state's traditional incentives are not enough to win the deal. The program was created in reaction to the announcement that the space shuttle program was being discontinued by NASA with expected job losses that would negatively impact families, companies, the state and regional economies.<sup>16</sup>
- Jobs and Wages: To be eligible to receive a QAC award, an applicant must be a business that operates within a targeted industry,<sup>17</sup> must propose a project that has a positive return on investment (ROI) of at least five to one,<sup>18</sup> must be induced by the award to locate or expand within the state<sup>19</sup> and must pay an average annual wage of at least 125 percent of the average private sector average.<sup>20</sup>
- Local Community Support: The project must be supported by the local community in which the project will be located.<sup>21</sup>
- DEO and EFI jointly review applications<sup>22</sup> and determine the eligibility of each project. Waivers of eligibility criteria may be granted based on extraordinary circumstances,<sup>23</sup> in order to mitigate the impact of the conclusion of the space shuttle program,<sup>24</sup> or if the project would significantly benefit the local or regional economy in a rural area of opportunity.<sup>25</sup>
- DEO is required to evaluate proposals for high-impact business facilities based on the following criteria:<sup>26</sup>
  - a description of the type of facility or infrastructure, its operations, and the product or service associated with the facility;<sup>27</sup>
  - the number of full-time equivalent jobs that will be created by the facility and the total estimated average annual wages of those jobs;<sup>28</sup>
  - the cumulative amount of capital investment to be made in the facility;<sup>29</sup>

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<sup>12</sup> Section 288.1045(2)(b), F.S.

<sup>13</sup> See *supra* note 1 at 11.

<sup>14</sup> Section 288.1045(2)(b), F.S.

<sup>15</sup> Section 288.1045(7), F.S.

<sup>16</sup> See s. 288.1088(1)(b), F.S.

<sup>17</sup> As identified by s. 288.106(2)(q), F.S.

<sup>18</sup> Section 288.1088(2)(b), F.S.

<sup>19</sup> Section 288.1088(2)(c), F.S.

<sup>20</sup> Section 288.1088(2)(d), F.S.

<sup>21</sup> Section 288.1088(2)(e), F.S.

<sup>22</sup> See s. 288.061, F.S.

<sup>23</sup> Section 288.1088(3)(a)1., F.S.

<sup>24</sup> Section 288.1088(3)(a)2., F.S.

<sup>25</sup> Section 288.1088(3)(a)3., F.S.

<sup>26</sup> Privately developed rural infrastructure projects are evaluated on the types of business activities and jobs stimulated by the state's investment, not for the number of jobs created or average annual wages. S. 288.1088(3)(b)2., F.S.

<sup>27</sup> Section 288.1088(3)(b)1., F.S.

<sup>28</sup> Section 288.1088(3)(b)2., F.S.

- a statement of any special impacts the facility is expected to stimulate in a particular business sector in the state or region or in the state's universities or colleges;<sup>30</sup>
- a statement of the role the award will play in the decision of the company to locate or expand in the state; and<sup>31</sup>
- a report evaluating the quality and value of the company submitting the proposal.<sup>32</sup>
- Performance-Based Approval Process
  - Within seven business days of evaluating a project, DEO must recommend to the Governor that a project be approved or disapproved for an award. Approved projects may be awarded as follows:<sup>33</sup>
    - The Governor is authorized to award projects less than \$2 million without Legislative approval.
    - For project awards between \$2 million and \$5 million, the Governor must provide a written description and evaluation of a project award to the chair and vice chair of the Legislative Budget Commission (LBC) at least 10 days prior to giving final approval for a project award.
    - Project awards over \$5 million must be approved by the LBC prior to funds being released.
  - Following approval, DEO is required to enter into a contract with the business which specifies the conditions for payment of funds.<sup>34</sup>
  - The contract must include the total amount of funds awarded, the performance conditions for the project,<sup>35</sup> a baseline of current service with a measure of enhanced capability following the project, methodology for measuring performance, the schedule of payments, and sanctions for failure to meet performance conditions.<sup>36</sup>

### Innovation Incentive Program

- The Innovation Incentive Program was established to provide financial resources so that the state can “respond expeditiously to extraordinary economic opportunities and to compete effectively for high-value research and development, innovation business, and alternative and renewal energy projects.”<sup>37</sup>
- To be eligible for consideration to receive an Innovation Incentive Program award, an innovation business, a research and development entity, or an alternative and renewable energy company must submit a written application to DEO before making a decision to locate new operations in the state or expand an existing operation in the state.<sup>38</sup>
- Jobs and Wages: To qualify for review by DEO, the applicant must establish that the jobs created by the project must pay an estimated annual wage of at least 130 percent of the average private sector wage.<sup>39</sup>
- Waiver of Wage Requirement: DEO is authorized to waive the average wage requirement at the request of Enterprise Florida, Inc., for a project located in a rural area, a brownfield area, or an

<sup>29</sup> Section 288.1088(3)(b)3., F.S.

<sup>30</sup> Section 288.1088(3)(b)4., F.S.

<sup>31</sup> Section 288.1088(3)(b)5., F.S.

<sup>32</sup> Section 288.1088(3)(b)6., F.S.

<sup>33</sup> Section 288.1088(3)(c), F.S.

<sup>34</sup> Section 288.1088(3)(d), F.S.

<sup>35</sup> Performance conditions include net new employment in the state, average salary, and total capital investment. *See s. 288.1088(3)(d), F.S.*

<sup>36</sup> Section 288.1088(3)(d), F.S.

<sup>37</sup> Section 288.1089(1), F.S.

<sup>38</sup> Section 288.1089(3), F.S.

<sup>39</sup> Section 288.1089(4)(a), F.S.

enterprise zone, when the merits of the individual project or the specific circumstances in the community in relationship to the project warrant such action.<sup>40</sup>

- Research and development projects must provide the state at least a break-even return-on-investment (ROI) within a 20-year period.<sup>41</sup>
- Local Support: A one-to-one match from the local community. The match requirement may be reduced or waived in rural areas of opportunity or reduced in rural areas, brownfield areas, and enterprise zones.<sup>42</sup>
- Performance-Based Approval Process
  - DEO must make a recommendation to the Governor to approve or deny an Innovation Incentive Program award.
  - If the project is recommended, DEO must include in their recommendation proposed performance conditions that the applicant must meet in order to obtain incentive funds and any other conditions that are required to be met before the receipt of any incentive funds.
  - The Governor must:
    - Approve or deny the award based on the valuation and recommendation received from DEO; and
    - Consult with the President of the Senate and the Speaker of the House of Representatives prior to approving an award. The funds may not be released until the award has been reviewed and approved by the LBC.
- Upon approval, DEO and the award recipient must enter into an agreement that specifies the amount of the award, the performance conditions and measures, and a schedule of payments and sanctions for failure to comply with performance conditions, including clawback provisions.<sup>43</sup> Agreements signed on or after July 1, 2009, must also include, among other things, provisions related to job creation, reinvestment of royalty revenues, reporting requirements, and a process for amending the agreement.<sup>44</sup>

### High-Impact Sector Performance Incentive

The High-Impact Sector Performance Incentive<sup>45</sup> is a grant reserved for major facilities operating in designated portions of high-impact sectors including clean energy, life sciences, financial services, information technology, silicon technology, transportation equipment manufacturing, or a corporate headquarters facility.

- This performance-based cash award is paid in two equal installments, one upon commencement of operations and the other upon commencement of full operations.<sup>46</sup>
- An “eligible high-impact business” is a business in one of the high-impact sectors identified by EFI, and certified by DEO, which is making a cumulative investment in the state of at least \$50 million and creating at least 50 new full-time equivalent jobs, or a research and development facility making a cumulative investment of at least \$25 million and creating at least 25 new full-time equivalent jobs. Such investment and employment must be achieved in a period not to exceed 3 years after the date the business is certified as a qualified high-impact business.<sup>47</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> Section 288.1089(4)(b), F.S.

<sup>42</sup> Section 288.1089(4)(b)4., F.S.

<sup>43</sup> Section 288.1089(8)(a), F.S.

<sup>44</sup> Section 288.1089(8)(b), F.S.

<sup>45</sup> Ch. 97-278, L.O.F.

<sup>46</sup> *See supra* note 1 at 10.

<sup>47</sup> Section 288.108(2)(c), F.S.

- DEO reviews an application<sup>48</sup> received from an eligible business for consideration as a qualified high-impact business before the business has made a decision to locate or expand a facility in this state. The business must provide the following information:
  - A complete description of the type of facility, business operations, and product or service associated with the project.
  - The number of full-time equivalent jobs that will be created by the project and the average annual wage of those jobs.
  - The cumulative amount of investment to be dedicated to this project within 3 years.
  - A statement concerning any special impacts the facility is expected to stimulate in the sector, the state, or regional economy and in state universities and community colleges.
  - A statement concerning the role the grant will play in the decision of the applicant business to locate or expand in this state.
  - Any additional information requested by the department.<sup>49</sup>
- In negotiating the amount of a High-Impact Sector Performance Incentive award, DEO must consider the following guidelines in conjunction with other relevant applicant impact and cost information and analysis.<sup>50</sup>
  - A qualified high-impact business making a cumulative investment of \$50 million and creating 50 jobs may be eligible for a total grant between \$500,000 and \$1 million.
  - A qualified high-impact business making a cumulative investment of \$100 million and creating 100 jobs may be eligible for a total grant between \$1 million and \$2 million.
  - A qualified high-impact business making a cumulative investment of \$800 million and creating 800 jobs may be eligible for a total grant between \$10 million and \$12 million.
  - A qualified high-impact business engaged in research and development making a cumulative investment of \$25 million and creating 25 jobs may be eligible for a total grant between \$700,000 and \$1 million.
  - A qualified high-impact business engaged in research and development making a cumulative investment of \$75 million and creating 75 jobs may be eligible for a total grant between \$2 million and \$3 million.
  - A qualified high-impact business engaged in research and development making a cumulative investment of \$150 million and creating 150 jobs may be eligible for a total grant between \$3.5 million and \$4.5 million.
- The total amount of active performance grants scheduled for payment by DEO in any single fiscal year may not exceed the lesser of \$30 million or the amount appropriated by the Legislature for that fiscal year for qualified high-impact business performance grants.<sup>51</sup>
- Within 10 business days after DEO receives the submitted High-Impact Sector Performance Incentive application, the executive director of DEO must approve or disapprove the application and issue a letter of certification which includes a justification of that decision, unless the business requests an extension of that time.<sup>52</sup>
- DEO has the authority to grant awards to qualifying High-Impact Sector Performance Incentive projects without approval by the Governor or LBC.<sup>53</sup>
- Performance-Based Award

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<sup>48</sup> In accordance with Section 288.061, F.S.

<sup>49</sup> Section 288.108(5), F.S.

<sup>50</sup> Section 288.108(3)(b), F.S.

<sup>51</sup> Section 288.108(4)(a), F.S.

<sup>52</sup> See s. 288.108(5), F.S.; and s.288.061(3), F.S.

<sup>53</sup> See s. 288.108(3-5), F.S.

- Upon approval, DEO and the award recipient must enter into an agreement which specifies the conditions for payment of the qualified high-impact business performance grant.
- The agreement includes the total amount of the qualified high-impact business facility performance grant award, the performance conditions that must be met to obtain the award, including the employment, average salary, investment, the methodology for determining if the conditions have been met, and the schedule of performance grant payments.<sup>54</sup>

## **Incentive Application Process**

### Economic Benefits and Cumulative Capital Investment

Current law requires DEO to review and evaluate each economic development incentive application for the economic benefits of the proposed award of state incentives. The Office of Economic and Demographic Research (EDR) is required to establish the methodology and model used to calculate those economic benefits.<sup>55</sup>

Economic benefits mean the direct, indirect, and induced gains in state revenues as a percentage of the state's investment.<sup>56</sup> State investment means any state grants, tax exemptions, tax refunds, tax credits, or other state incentives provided to a business under a program administered by DEO, including the capital investment tax credit.<sup>57</sup> The cumulative capital investment means the total capital investment in land, buildings, and equipment made in connection with a qualifying project from the beginning of construction of the project to the commencement of operations.<sup>58</sup>

The current methodology and model developed by EDR, which only represents state investments directly under the control of EFI or DEO<sup>59</sup>, is used across all economic development incentive programs required by law to be evaluated for economic benefits.<sup>60</sup>

### **Employ Florida Marketplace**

The Employ Florida Marketplace<sup>61</sup> is an automated job-matching or job bank system, implemented by CareerSource Florida, Inc., (formerly Workforce Florida, Inc.), which is accessible to employers, job seekers, and others via the Internet.

Receiving more than 9 million hits per day, EmployFlorida.com also offers labor market statistics, access to training grant information and contact information for any of the state's Regional Workforce Boards and CareerSource Centers. Throughout the life cycle of the Employ Florida Marketplace, nearly 6.5 million individuals have registered in the system, posting more than 4 million resumes and receiving more than 181 million services to assist them with either re-entering the workforce or finding better employment opportunities. In addition, over 200,000 employers have registered in the Employ Florida Marketplace, posting over 2.1 million job openings and receiving nearly 9.7 million employer services.<sup>62</sup>

### **Terms of Incentive Agreement**

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<sup>54</sup> Section 288.108(5)(c), F.S.

<sup>55</sup> Section 288.061(2), F.S.

<sup>56</sup> Section 200.005(1), F.S.

<sup>57</sup> Section 288.076(1)(e), F.S.

<sup>58</sup> Section 220.191(1)(b), F.S.

<sup>59</sup> 2013 Review of the Department of Economic Opportunity's Legacy Economic Impact Model (on file with the House Transportation & Economic Development Appropriations Subcommittee).

<sup>60</sup> See s. 288.0001, F.S. The Innovation Incentive Program is not required to be evaluated for economic benefits. Innovation Incentive Program projects are required to have a cumulative break-even economic benefit within a 20-year period except for certain exceptions. See s. 288.1089(4)(b)(3), F.S.

<sup>61</sup> Employ Florida Marketplace; available at: [www.employflorida.com](http://www.employflorida.com) (last visited Feb. 12, 2015).

<sup>62</sup> *Id.*



Following approval of an incentive package, DEO executes an incentive agreement or contract between the business<sup>63</sup> and the state. The contract or agreement with the applicant must specify the total amount of the award, the performance conditions that must be met to obtain the award, the schedule for payment, and sanctions that would apply for failure to meet performance conditions. DEO may enter into one agreement covering all of the state incentives that are being provided to the applicant.<sup>64</sup> The law does not dictate the length of term for incentive agreements between a business and the state, nor does it address the usage of escrow accounts for the holding of funds for future performance payments.

### **Incentive Agreement Amendments**

Under current law, contracts or agreements executed for the Qualified Defense and Space Contractor Refund Program, QTI, and the Innovation Incentive Program may be amended under certain circumstances.

### **Appropriation of Funds**

Under current law, funds to make tax refunds and payments to qualifying businesses under the Qualified Defense Contractor and Space Flight, QTI, High-Impact Sector Performance Incentive, and Brownfield Redevelopment Bonus programs are appropriated in the General Appropriations Act in the year following the year in which a business meets its contractual performance requirements.

In contrast, funds are currently appropriated up front in the General Appropriations Act for use on prospective QAC and Innovation Incentive Program projects. Any funds encumbered under contract for either of these programs may be paid to the business in the same fiscal year, or transferred to an escrow account managed by EFI outside of the state budget system, to be paid to the qualifying business in a later year after meeting its contractual performance requirements. Any funds not encumbered as of June 30 of each year revert.<sup>65</sup> There is currently an estimated \$86.3 million in escrow.

### **Limitation on Application Certification**

Under current law, there is a limitation on applications that may be certified for the QTI and Qualified Defense Contractor and Space Flight tax refund programs. The state share of tax refund payments under these two programs may not exceed \$35 million per fiscal year.<sup>66</sup>

### **Effect of Proposed Changes**

#### **Waivers (QTI, QAC, Innovation Incentive Program)**

The PCB amends QTI, QAC, and Innovation Incentive Program, to prohibit DEO from granting waivers to projects that do not pay an average wage of at least 105 percent of average wage of the county in which the project is located or will be located.

The PCB amends QAC to provide that a QAC project may receive no more than two waivers of eligibility criteria. Additionally, the PCB prohibits DEO from granting a waiver for a QAC project that does not produce an economic benefit ratio of at least two to one. The PCB also prohibits DEO from granting a waiver for inducement and for a QAC project that does not qualify as a target industry project.<sup>67</sup>

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<sup>63</sup> In some instances local governments may enter into a contract with DEO for a project.

<sup>64</sup> Section 288.061(3)(a), F.S.

<sup>65</sup> Section 216.301, F.S.

<sup>66</sup> Section 288.095(3)(a), F.S.

<sup>67</sup> Target industries are defined within s. 288.106, F.S.

## **Average Wage (Qualified Defense Contractor and Space Flight tax refund program, QAC, Innovation Incentive Program)**

The PCB amends the economic development incentive application process for the Qualified Defense Contractor and Space Flight tax refund program, QAC, and Innovation Incentive Program to provide that “average private sector wage in the area” means the average of all private sector wages and salaries in the county in which the project is located or will be located, rather than the state or the standard metropolitan area.

## **Local Financial Support (Qualified Defense Contractor and Space Flight tax refund program, QTI, High-Impact Sector Performance Incentive , QAC, Innovation Incentive Program)**

The PCB amends the Qualified Defense Contractor and Space Flight tax refund program and QTI to create uniform local financial support requirements and waivers across these incentive programs and activities, and provides for a more clear definition of support from local communities for the QAC, and High-Impact Sector Performance Incentive.

### Qualified Defense Contractor and Space Flight tax refund program and QTI program

The PCB authorizes DEO upon the request of a local government to:

- Reduce the required local financial support amount from 20% to 10%; or
- Eliminate the required local financial support amount for a project located within a rural area of opportunity (RAO).

The PCB requires a local government that requests a waiver to provide DEO with a resolution adopted by the governing body of the local government notifying DEO of its request, as well as a statement by a state-certified public accountant that describes the financial constraints preventing the local government from providing the required local financial support amount.

The PCB provides that a qualified applicant may not receive more than 80% of the total tax refunds approved by DEO from state funds.

### High-Impact Sector Performance Incentive and QAC (Performance-Based Grant Incentives)

The PCB defines “support by the local community” (QAC) and “local financial support” (High-Impact Sector Performance Incentive ) as financial, in-kind, or other quantifiable contributions from local sources that, combined, equal 20% or more of the total investment in the project by state and local sources.

### Innovation Incentive Program (Performance-Based Grant Incentive)

A local government that requests a waiver reducing or eliminating the one-to-one match requirement of the program must provide DEO with a written statement, prepared by a state-certified public accountant describing the financial constraints preventing the local government from providing the required local financial support amount.

## **Performance-Based Grant Approval Process (High-Impact Sector Performance Incentive, QAC, Innovation Incentive Program)**

The PCB creates a new, uniform approval process for High-Impact Sector Performance Incentive, QAC, and Innovation Incentive Program as follows:

Within seven business days after evaluating an incentive application, DEO must recommend to the Governor approval or disapproval of a project. The recommendation must include a memorandum of understanding (MOU) between the department and the applicant which provides:

- the total proposed award amount; the award's performance conditions;<sup>68</sup>
- a baseline of current service and a measure of enhanced capability;
- the methodology used for validating performance;
- a schedule of payments; and
- sanctions for failure to meet performance conditions.

For projects less than \$2 million:

- The Governor is authorized to approve the award. However, a written description and evaluation of the project and the MOU must be provided to the chairman and vice chairman of the Legislative Budget Commission (LBC), the President of the Senate (President), and the Speaker of the House of Representatives (Speaker) within one business day after approval.

For projects \$2 million and more:

- The Governor must provide a written description and evaluation of the project and the MOU to the chairman and vice chairman of the LBC, the President, and the Speaker at least 14 days prior to granting approval. Any of those four individuals may advise the Executive Office of the Governor (EOG) in writing that the award exceeds the authority of the EOG or is contrary to legislative policy or intent. If the EOG be so advised, the EOG shall instruct the DEO to change its action on the project.

The PCB eliminates the requirement that projects of \$5 million and more be approved by the LBC.

## **QTI**

The PCB amends QTI to remove provisions related to economic recovery extensions and local financial support reductions for certain counties. These provisions have expired.

## **Quick Action Closing Fund**

The PCB amends QAC to provide that in order for a business to be eligible for a QAC award, the business must create at least 10 new jobs if the business is newly established, or must increase the number of jobs by at least 10% if the business is expanding.

The required economic benefit ratio must be at least 4 to 1, rather than 5 to 1.

The PCB allows DEO to certify QAC eligible applications as long as it does not result in more than \$35 million in payments in any single fiscal year.

## **Qualified Defense Contractor and Space Flight Business Tax Refund Program Reauthorization**

The PCB amends the Qualified Defense Contractor and Space Flight tax refund program to allow DEO to certify eligible applicants under the Qualified Defense Contractor and Space Flight tax refund program until June 30, 2017.

## **Incentive Application Process**

### Economic Benefit

The PCB amends the definition of economic benefits and the incentive application process to specify that all state funds spent or forgone to benefit a business must be considered the state's investment for the purposes of establishing the economic benefits of a project.

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<sup>68</sup> Such performance conditions must include, but are not limited to, net new employment in the state, average salary, and total capital investment incurred by the business.

EDR is directed to establish guidelines for the appropriate use of the economic benefits model used to determine economic benefits. EDR must also develop an amended definition of “economic benefits,” for the purposes of creating the model and methodology used for the economic benefits model that includes all state funds spent or forgone to benefit a business.

### Cumulative Capital Investment

The PCB amends the capital investment tax credit, the incentive application process, and the return on investment reporting requirements to limit the definition of “cumulative capital investment,” to the total capital investment made by or on behalf of a business in conjunction with a qualifying project that does not include appropriated funds from the General Appropriations Act or any funds provided by a state agency or local government. Additionally, “cumulative capital investment” must be considered as part of the evaluation process involving economic development incentive applications.

### Employ Florida Marketplace

The PCB amends the incentive application process to require that all vacant jobs created as a result of an executed state incentive agreement be posted on the state’s job bank system, Employ Florida Marketplace.

### Limitation on Application Certification

The PCB removes the \$35 million limitation on applications that may be certified for the QTI and Qualified Defense Contractor and Space Flight tax refund programs, and provides for an overall limitation on applications that may be certified for the QTI, Qualified Defense Contractor and Space Flight tax refund program, QAC, Innovation Incentive Program, High-Impact Sector Performance Incentive, Brownfield Redevelopment, and Local Government Distressed Area Matching Grant programs. The total of all tax refunds and payments under these programs may not exceed \$60 million per fiscal year.

### **Term of Incentive Agreements**

The PCB amends the incentive application process to prohibit DEO from entering into incentive agreements with businesses for terms longer than ten years.

### **Incentive Agreement Amendments**

The PCB amends the incentive application process to require DEO to evaluate the projected economic benefits of a project prior to awarding a contract and reevaluate the projected economic benefits of a project each time an amendment or modification is made to a contract. Should a reevaluation result in the reduction of a project’s projected economic benefits, DEO is precluded from executing a contract amendment or modification unless the state incentives outlined in the original contract are reduced by an amount proportionate to the reduction in the projected economic benefits. DEO is required to notify the Legislature any time an incentive contract is amended or modified.

The PCB also amends the High-Impact Sector Performance Incentive, QAC, and the Innovation Incentive Program to provide that if an amended incentive agreement under one of these programs results in a 0.5 or greater reduction in the economic benefit ratio of a project, then the contract or amendment must be reapproved by the new performance-based grant incentive approval process provided for by the PCB. DEO may not amend or modify a contract if the economic benefit ratio would be reduced below 2 to 1.

### **Appropriation of Funds**

The PCB provides a process for the Legislature to make nonrecurring annual appropriations for making payments and tax refunds under the QTI, Qualified Defense Contractor and Space Flight, QAC, Innovation Incentive Program, High-Impact Sector Performance Incentive, Local Government Distressed Area Matching Grant, and Brownfield Redevelopment programs to qualifying businesses after they have met their contractual performance requirements. DEO shall submit a list of scheduled

payments for the next fiscal year on January 2, and a list of actual claims submitted for auditing, to potentially be paid in the next fiscal year, on March 1 of each year. Any funds unexpended by June 30 of each year will revert in accordance with statute.

### **Escrow**

The PCB provides that funds appropriated for the QTI, Qualified Defense Contractor and Space Flight tax refund program, QAC, Innovation Incentive Program, High-Impact Sector Performance Incentive, LGDAMG, and Brownfield Redevelopment programs may not be transferred to an escrow account. It further specifies, however, that funds transferred prior to July 1, 2015, for contract payments may be used to make payments to applicants which have met performance criteria until all such funds are expended. Any funds in escrow whose contract requirements are not met shall be returned to the state within 10 days of notification by DEO.

### **Rural Areas Definition (Qualified Defense Contractor and Space Flight tax refund program, Innovation Incentive Program, and QTI)**

The PCB amends Qualified Defense Contractor and Space Flight tax refund program, QTI, and Innovation Incentive Program to replace various definitions of rural areas with “rural area of opportunity” as defined within s. 288.0656, F.S.<sup>69</sup>

#### **B. SECTION DIRECTORY:**

- Section 1: Amends s. 220.191, F.S., excluding certain funds from the definition of “cumulative capital investment.”
- Section 2: Amends s. 288.005, F.S., revising the definition of “economic benefits” to include all state funds.
- Section 3: Amends s. 288.061, F.S., revising payment, evaluation and contract requirements of the economic development incentive programs.
- Section 4: Amends s. 288.076, F.S., conforming a cross-reference; revising the definition of “state investment” to include all state funds spent or forgone to benefit a business.
- Section 5: Amends s. 288.095, F.S., revising the limit on applications certified.
- Section 6: Amends s. 288.1045, F.S., relating to the Qualified Defense Contractor and Space Flight Business tax refund program.
- Section 7: Amends s. 288.106, F.S., relating to the Qualified Target Industry tax refund program.
- Section 8: Amends s. 288.108, F.S., relating to the High-Impact Performance Incentive.
- Section 9: Amends s. 288.1088, F.S., relating to the Quick Action Closing Fund.
- Section 10: Amends s. 288.1089, F.S., relating to the Innovation Incentive Program.
- Section 11: Amends s. 196.012, F.S. conforming cross reference.
- Section 12: Provides for an appropriation.
- Section 13: Provides an effective date of July 1, 2015

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<sup>69</sup>“Rural area of opportunity” means a rural community, or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact. Section 288.0656(2)(d), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The PCB contains a nonrecurring appropriation of \$20 million in the State Economic Enhancement and Development Trust Fund and \$3.8 million in the Economic Development Trust Fund to provide payments and tax refunds for specified incentive programs.

The PCB contains an extension to the Qualified Defense Contractor and Space Flight tax refund program to allow DEO to certify applications through June 30, 2017. This is estimated to have a \$2.6 million impact per year to the state.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The fiscal impact on local governments depends upon the use of the various economic development incentives and programs addressed in the conforming bill.

#### 2. Expenditures:

The fiscal impact on local governments depends upon the use of the various economic development incentives and programs addressed in the conforming bill.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES