

CHAPTER 2011-223

Committee Substitute for Committee Substitute for House Bill No. 879

An act relating to targeted economic development; amending s. 220.191, F.S.; providing that a capital investment tax credit may be carried forward for use against the corporate income tax in specified years after the commencement of operations of a project; amending s. 288.106, F.S.; redefining the term “target industry business” to revise the eligibility criteria for the tax refund program for target industry businesses; requiring certain local governing boards to notify the Office of Tourism, Trade, and Economic Development and Enterprise Florida, Inc., of the average private-sector wage calculation to be used for purposes of a business’s wage commitment under the tax refund program; authorizing a reduction in the local financial support requirements for qualified target industry businesses located in specified counties under certain circumstances; providing for future expiration; amending s. 377.809, F.S.; deleting an obsolete provision; revising the date by which the Department of Community Affairs must submit a report to the Governor and Legislature which evaluates the success of the Energy Economic Zone Pilot Program; requiring that all incentives and benefits provided for enterprise zones be made available to energy economic zones by a specified date; assigning duties for the administration of energy economic zones to the local governing bodies that have jurisdiction over such zones; providing for boundaries of the zones, eligibility criteria for the incentives, and benefits provided in the zones; specifying the incentives and benefits available in the zones; requiring that the applicable requirements for employee residency for higher refund or credit thresholds be based on employee residency in the energy economic zone or an enterprise zone; establishing priorities for funding certain projects; limiting the annual amount of such incentives; authorizing the carryforward of any unused amount of incentives for a specified period; providing for the issuance of certificates to eligible businesses; requiring the local governing body to certify to the Department of Revenue or the Office of Tourism, Trade, and Economic Development which businesses or properties are eligible for the incentives; requiring the Department of Revenue to send written instructions to eligible businesses on claiming the credit on a sales and use tax return initiated through an electronic data interchange; authorizing the Office of Tourism, Trade, and Economic Development and the Department of Revenue to adopt emergency rules; providing for renewal of the rules; amending s. 380.06, F.S.; exempting certain developments in an energy economic zone from review as a development of regional impact; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) is added to subsection (2) of section 220.191, Florida Statutes, to read:

220.191 Capital investment tax credit.—

(2)

(d) If the credit granted under subparagraph (a)1. is not fully used in any one year because of insufficient tax liability on the part of the qualifying business, the unused amounts may be used in any one year or years beginning with the 21st year after the commencement of operations of the project and ending the 30th year after the commencement of operations of the project.

Section 2. Paragraph (t) of subsection (2) and paragraph (b) of subsection (4) of section 288.106, Florida Statutes, are amended, present paragraph (f) of subsection (4) is redesignated as paragraph (g), and a new paragraph (f) is added to that subsection, to read:

288.106 Tax refund program for qualified target industry businesses.—

(2) DEFINITIONS.—As used in this section:

(t) “Target industry business” means a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the office in consultation with Enterprise Florida, Inc.:

1. Future growth.—Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to businesses that export goods to, or provide services in, international markets and businesses that replace domestic and international imports of goods or services.

2. Stability.—The industry should not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry should also be relatively resistant to recession, so that the demand for products of this industry is not typically subject to decline during an economic downturn.

3. High wage.—The industry should pay relatively high wages compared to statewide or area averages.

4. Market and resource independent.—The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis, except for businesses in the renewable energy industry.

5. Industrial base diversification and strengthening.—The industry should contribute toward expanding or diversifying the state’s or area’s economic base, as indicated by analysis of employment and output shares

compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis. Special consideration should also be given to the development of strong industrial clusters that include defense and homeland security businesses.

6. Positive economic impact benefits.—The industry is expected to have strong positive impacts on or benefits to the state or regional economies. Special consideration should be given to industries that facilitate the development of the state as a hub for domestic and global trade and logistics.

The term does not include any business engaged in retail industry activities; any electrical utility company; any phosphate or other solid minerals severance, mining, or processing operation; any oil or gas exploration or production operation; or any business subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. Any business within NAICS code 5611 or 5614, office administrative services and business support services, respectively, may be considered a target industry business only after the local governing body and Enterprise Florida, Inc., make a determination that the community where the business may locate has conditions affecting the fiscal and economic viability of the local community or area, including but not limited to, factors such as low per capita income, high unemployment, high underemployment, and a lack of year-round stable employment opportunities, and such conditions may be improved by the location of such a business to the community. By January 1 of every 3rd year, beginning January 1, 2011, the office, in consultation with Enterprise Florida, Inc., economic development organizations, the State University System, local governments, employee and employer organizations, market analysts, and economists, shall review and, as appropriate, revise the list of such target industries and submit the list to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(4) APPLICATION AND APPROVAL PROCESS.—

(b) To qualify for review by the office, the application of a target industry business must, at a minimum, establish the following to the satisfaction of the office:

1.a. The jobs proposed to be created under the application, pursuant to subparagraph (a)4., must pay an estimated annual average wage equaling at least 115 percent of the average private sector wage in the area where the business is to be located or the statewide private sector average wage. The governing board of the local governmental entity providing the local financial support county where the qualified target industry business is to be located shall notify the office and Enterprise Florida, Inc., which calculation of the average private sector wage in the area must be used as the basis for the business's wage commitment. In determining the average annual wage, the

office shall include only new proposed jobs, and wages for existing jobs shall be excluded from this calculation.

b. The office may waive the average wage requirement at the request of the local governing body recommending the project and Enterprise Florida, Inc. The office may waive the wage requirement for a project located in a brownfield area designated under s. 376.80, in a rural city, in a rural community, in an enterprise zone, or for a manufacturing project at any location in the state if the jobs proposed to be created pay an estimated annual average wage equaling at least 100 percent of the average private sector wage in the area where the business is to be located, only if the merits of the individual project or the specific circumstances in the community in relationship to the project warrant such action. If the local governing body and Enterprise Florida, Inc., make such a recommendation, it must be transmitted in writing, and the specific justification for the waiver recommendation must be explained. If the office elects to waive the wage requirement, the waiver must be stated in writing, and the reasons for granting the waiver must be explained.

2. The target industry business's project must result in the creation of at least 10 jobs at the project and, in the case of an expansion of an existing business, must result in a net increase in employment of at least 10 percent at the business. At the request of the local governing body recommending the project and Enterprise Florida, Inc., the office may waive this requirement for a business in a rural community or enterprise zone if the merits of the individual project or the specific circumstances in the community in relationship to the project warrant such action. If the local governing body and Enterprise Florida, Inc., make such a request, the request must be transmitted in writing, and the specific justification for the request must be explained. If the office elects to grant the request, the grant must be stated in writing, and the reason for granting the request must be explained.

3. The business activity or product for the applicant's project must be within an industry identified by the office as a target industry business that contributes to the economic growth of the state and the area in which the business is located, that produces a higher standard of living for residents of this state in the new global economy, or that can be shown to make an equivalent contribution to the area's and state's economic progress.

(f) Effective July 1, 2011, notwithstanding paragraph (2)(k), the office may reduce the local financial support requirements of this section by one-half for a qualified target industry business located in Bay, Escambia, Franklin, Gadsden, Gulf, Jefferson, Leon, Okaloosa, Santa Rosa, Wakulla, or Walton County, if the office determines that such reduction of the local financial support requirements is in the best interest of the state and facilitates economic development, growth, or new employment opportunities in such county. This paragraph expires June 30, 2014.

Section 3. Subsection (4) of section 377.809, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

377.809 Energy Economic Zone Pilot Program.—

(4) ~~If the pilot project is ongoing,~~ The Department of Community Affairs, with the assistance of the Office of Tourism, Trade, and Economic Development, shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15, ~~2015~~ 2012, evaluating whether the pilot program has demonstrated success. The report shall contain recommendations with regard to whether the program should be expanded for use by other local governments and whether state policies should be revised to encourage the goals of the program.

(5)(a) Beginning July 1, 2012, all the incentives and benefits provided for enterprise zones pursuant to state law shall be available to the energy economic zones designated pursuant to this section on or before July 1, 2010. In order to provide incentives, by March 1, 2012, each local governing body that has jurisdiction over an energy economic zone must, by local ordinance, establish the boundary of the energy economic zone, specify applicable energy-efficiency standards, and determine eligibility criteria for the application of state and local incentives and benefits in the energy economic zone. However, in order to receive benefits provided under s. 288.106, a business must be a qualified target industry business under s. 288.106 for state purposes. An energy economic zone's boundary may be revised by local ordinance. Such incentives and benefits include those in ss. 212.08, 212.096, 220.181, 220.182, 220.183, 288.106, and 624.5105 and the public utility discounts provided in s. 290.007(8). The exemption provided in s. 212.08(5)(c) shall be for renewable energy as defined in s. 377.803. For purposes of this section, any applicable requirements for employee residency for higher refund or credit thresholds must be based on employee residency in the energy economic zone or an enterprise zone. A business in an energy economic zone may also be eligible for funding under ss. 288.047 and 445.003, and a transportation project in an energy economic zone shall be provided priority in funding under s. 288.063. Other projects shall be given priority ranking to the extent practicable for grants administered under state energy programs.

(b) Effective July 1, 2012, the total amount of state credits, refunds, and exemptions that may be provided by the governing body of each energy economic zone to eligible businesses for energy-economic-zone incentives pursuant to paragraph (a) is \$300,000 per designated energy economic zone in any state fiscal year. The governing body of an energy economic zone shall disallow a credit or refund for which an application is submitted after the zone's respective \$300,000 limit is reached. If the \$300,000 incentive cap is not fully used in any one state fiscal year by an energy economic zone, the unused amount under the cap may be carried forward for up to 5 years. The local governing body that has jurisdiction over the energy economic zone is responsible for allocating the incentives, for verifying that businesses receiving such incentives are eligible for the incentives provided, and for ensuring that the incentives provided do not exceed the cap for the state fiscal year.

(c) Upon approving an incentive for an eligible business, the governing body that has jurisdiction over the energy economic zone shall provide the taxpayer with a certificate indicating the name and federal identification number of the eligible business, the date the incentive is provided, the name of the energy economic zone, the incentive type, and the incentive amount. The local governing body shall certify to the Department of Revenue or the Office of Tourism, Trade, and Economic Development, whichever is applicable, which businesses or properties are eligible to receive any or all of the state incentives according to their statutory requirements. The governing body that has jurisdiction over the energy economic zone shall provide a copy of the certificate to the Department of Revenue and the Office of Tourism, Trade, and Economic Development as notification that such incentives were approved for the specific eligible business or property. For incentives to be claimed against the sales and use tax under chapter 212, the Department of Revenue shall send, within 14 days after receipt, written instructions to an eligible business on how to claim the credit on a sales and use tax return initiated through an electronic data interchange. Any credit against the sales and use tax shall be deducted from any sales and use tax remitted by the dealer to the Department of Revenue by electronic funds transfer and may be deducted only on a sales and use tax return initiated through an electronic data interchange. The dealer shall separately state the credit on the electronic return. The net amount of tax due and payable must be remitted by electronic funds transfer. If the credit exceeds the amount owed on the sales and use tax return, such excess amount may be carried forward for a period not to exceed 12 months after the date that the credit is initially claimed.

(d) If all conditions are deemed met, the Office of Tourism, Trade, and Economic Development and the Department of Revenue may adopt emergency rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of this subsection. The emergency rules shall remain in effect for 6 months after the rules are adopted, and the rules may be renewed while the procedures to adopt permanent rules addressing the subject of the emergency rules are pending.

Section 4. Paragraph (u) is added to subsection (24) of section 380.06, Florida Statutes, to read:

380.06 Developments of regional impact.—

(24) STATUTORY EXEMPTIONS.—

(u) Any development in an energy economic zone designated pursuant to s. 377.809 is exempt from this section upon approval by its local governing body.

If a use is exempt from review as a development of regional impact under paragraphs (a)-(s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a

development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least \$50 million.

Section 5. This act shall take effect July 1, 2011.

Approved by the Governor June 24, 2011.

Filed in Office Secretary of State June 24, 2011.