

## CHAPTER 2010-136

### Council Substitute for House Bill No. 7109

An act relating to the tax refund program for qualified target industry businesses; amending s. 288.106, F.S.; providing legislative findings and declarations; revising and providing definitions; establishing a schedule for the Office of Tourism, Trade, and Economic Development to review and revise the list of target industries and submit a report to the Governor and Legislature; revising the criteria for evaluating applications for the program; requiring consideration of the state's return on investment in evaluating applications for participation in the program; requiring the Office of Economic and Demographic Research to submit reports to the Legislature evaluating the calculation of the state's return on investment for the program; requiring that additional provisions be included in tax refund agreements; redesignating the economic-stimulus exemption as the "economic recovery extension"; revising the date by which qualified target industry businesses may request economic recovery extensions; authorizing waiver of a requirement that qualified target industry businesses annually provide proof of taxes paid under certain conditions; requiring the Office of Tourism, Trade, and Economic Development to submit reports to the Governor and Legislature concerning the failure of qualified target industry businesses to complete their tax refund agreements; deleting obsolete provisions; revising the date by which a target industry business may be certified as qualified for the program; conforming cross-references; amending ss. 288.1089 and 290.00677, F.S.; conforming provisions to changes made by the act; amending ss. 159.803, 220.191, and 288.107, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 288.106, Florida Statutes, is amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(1) LEGISLATIVE FINDINGS AND DECLARATIONS.—The Legislature finds that retaining and expanding existing businesses in the state, encouraging the creation of new businesses in the state, attracting new businesses from outside the state, and generally providing conditions favorable for the growth of target industries creates high-quality, high-wage employment opportunities for residents of the state and strengthens the state's economic foundation. The Legislature also finds that incentives narrowly focused in application and scope tend to be more effective in achieving the state's economic development goals. The Legislature further finds that higher-wage jobs reduce the state's share of hidden costs, such as public assistance and subsidized health care associated with low-wage jobs. Therefore, the Legislature declares that it is the policy of the state to encourage the growth of higher-wage jobs and a diverse economic base by

providing state tax refunds to qualified target industry businesses that originate or expand in the state or that relocate to the state.

~~(2)~~(1) DEFINITIONS.—As used in this section:

(a) “Account” means the Economic Development Incentives Account within the Economic Development Trust Fund established under s. 288.095.

~~(b)~~(u) “Authorized local economic development agency” means a any public or private entity, including an entity ~~those~~ defined in s. 288.075, authorized by a county or municipality to promote the general business or industrial interests of that county or municipality.

~~(c)~~(b) “Average private sector wage in the area” means the statewide private sector average wage or the average of all private sector wages and salaries in the county or in the standard metropolitan area in which the business is located.

~~(d)~~(e) “Business” means an employing unit, as defined in s. 443.036, that which is registered for unemployment compensation purposes with the state agency providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316, or a subcategory or division of an employing unit that ~~which~~ is accepted by the state agency providing unemployment tax collection services as a reporting unit.

~~(e)~~(d) “Corporate headquarters business” means an international, national, or regional headquarters office of a multinational or multistate business enterprise or national trade association, whether separate from or connected with other facilities used by such business.

~~(f)~~(n) “Director” means the Director of the Office of Tourism, Trade, and Economic Development.

~~(g)~~(f) “Enterprise zone” means an area designated as an enterprise zone pursuant to s. 290.0065.

~~(h)~~(g) “Expansion of an existing business” means the expansion of an existing Florida business by or through additions to real and personal property, resulting in a net increase in employment of not less than 10 percent at such business.

~~(i)~~(h) “Fiscal year” means the fiscal year of the state.

~~(j)~~(i) “Jobs” means full-time equivalent positions, including, but not limited to, positions obtained from a temporary employment agency or employee leasing company or through a union agreement or coemployment under a professional employer organization agreement, that result as that term is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation, resulting

directly from a project in this state. The term does not include temporary construction jobs involved with the construction of facilities for the project or any jobs previously included in any application for tax refunds under s. 288.1045 or this section.

(k)(j) “Local financial support” means funding from local sources, public or private, ~~that which~~ is paid to the Economic Development Trust Fund and ~~that which~~ is equal to 20 percent of the annual tax refund for a qualified target industry business. A qualified target industry business may not provide, directly or indirectly, more than 5 percent of such funding in any fiscal year. The sources of such funding may not include, directly or indirectly, state funds appropriated from the General Revenue Fund or any state trust fund, excluding tax revenues shared with local governments pursuant to law.

(l)(k) “Local financial support exemption option” means the option to exercise an exemption from the local financial support requirement available to any applicant whose project is located in a brownfield area, a rural city, or a rural community county with a population of 75,000 or fewer or a county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer. Any applicant that exercises this option is shall not be eligible for more than 80 percent of the total tax refunds allowed such applicant under this section.

(m)(l) “New business” means a business that applies for a tax refund under this section before beginning operations which heretofore did not exist in this state, first beginning operations on a site located in this state and that is a legal entity clearly separate from any other commercial or industrial operations owned by the same business.

(n)(e) “Office” means the Office of Tourism, Trade, and Economic Development.

(o)(m) “Project” means the creation of a new business or expansion of an existing business.

(p)(q) “Qualified target industry business” means a target industry business ~~that has been approved by the office director to be eligible for tax refunds under pursuant to~~ this section.

(q) “Return on investment” means the gain in state revenues as a percentage of the state’s investment. The state’s investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives.

(r) “Rural county” means ~~a county with a population of 75,000 or fewer or a county with a population of 100,000 or fewer which is contiguous to a county with a population of 75,000 or fewer.~~

(r)(s) “Rural city” means a city having with a population of 10,000 or fewer less, or a city having with a population of greater than 10,000 but fewer less than 20,000 that which has been determined by the office of Tourism,

~~Trade, and Economic Development~~ to have economic characteristics such as, but not limited to, a significant percentage of residents on public assistance, a significant percentage of residents with income below the poverty level, or a significant percentage of the city's employment base in agriculture-related industries.

(s)(t) "Rural community" means:

1. A county having with a population of 75,000 or fewer.
2. A county having with a population of 125,000 or fewer that which is contiguous to a county having with a population of 75,000 or fewer.
3. A municipality within a county described in subparagraph 1. or subparagraph 2.

For purposes of this paragraph, population shall be determined in accordance with the most recent official estimate pursuant to s. 186.901.

(t)(e) "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 Florida's growing access to, or provide services in, international markets and businesses that replace domestic and international or to replacing 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 necessarily 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. Special consideration should be given to the development of strong industrial clusters which include defense and homeland security businesses.

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. Economic benefits.—The industry is expected to ~~should~~ have strong positive impacts on or benefits to the state or ~~and~~ regional economies.

~~The term does~~ office, in consultation with Enterprise Florida, Inc., shall develop a list of such target industries annually and submit such list as part of the final agency legislative budget request submitted pursuant to s. 216.023(1). ~~A target industry business may not include any business industry 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 firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. 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.~~

~~(u)(p)~~ “Taxable year” means taxable year as defined in s. 220.03(1)(y).

~~(3)(2)~~ TAX REFUND; ELIGIBLE AMOUNTS.—

(a) There shall be allowed, from the account, a refund to a qualified target industry business for the amount of eligible taxes certified by the ~~office that director~~ which were paid by ~~the~~ such business. The total amount of refunds for all fiscal years for each qualified target industry business must be determined pursuant to subsection ~~(4)~~ (3). The annual amount of a refund to a qualified target industry business must be determined pursuant to subsection ~~(6)~~ (5).

~~(b)1.~~ Upon approval by the ~~office director~~, a qualified target industry business shall be allowed tax refund payments equal to \$3,000 multiplied by ~~times~~ the number of jobs specified in the tax refund agreement under subparagraph ~~(5)(4)(a)1.~~, or equal to \$6,000 multiplied by ~~times~~ the number of jobs if the project is located in a rural community county or an enterprise zone.

2. ~~Further,~~ A qualified target industry business shall be allowed additional tax refund payments equal to \$1,000 multiplied by ~~times~~ the number of jobs specified in the tax refund agreement under subparagraph ~~(5)(4)(a)1.~~, if such jobs pay an annual average wage of at least 150 percent of the average private sector wage in the area, or equal to \$2,000 multiplied by

times the number of jobs if such jobs pay an annual average wage of at least 200 percent of the average private sector wage in the area.

(c) A qualified target industry business may not receive refund payments of more than 25 percent of the total tax refunds specified in the tax refund agreement under subparagraph (5)(4)(a)1. in any fiscal year. Further, a qualified target industry business may not receive more than \$1.5 million in refunds under this section in any single fiscal year, or more than \$2.5 million in any single fiscal year if the project is located in an enterprise zone. A qualified target industry business may not receive more than \$5 million in refund payments under this section in all fiscal years, or more than \$7.5 million if the project is located in an enterprise zone. ~~Funds made available pursuant to this section may not be expended in connection with the relocation of a business from one community to another community in this state unless the Office of Tourism, Trade, and Economic Development determines that without such relocation the business will move outside this state or determines that the business has a compelling economic rationale for the relocation and that the relocation will create additional jobs.~~

(d)(e) After entering into a tax refund agreement under subsection (5) (4), a qualified target industry business may:

1. Receive refunds from the account for the following taxes due and paid by that business beginning with the first taxable year of the business that ~~which~~ begins after entering into the agreement:

- a. Corporate income taxes under chapter 220.
- b. Insurance premium tax under s. 624.509.

2. Receive refunds from the account for the following taxes due and paid by that business after entering into the agreement:

- a. Taxes on sales, use, and other transactions under chapter 212.
- b. Intangible personal property taxes under chapter 199.
- c. Emergency excise taxes under chapter 221.
- d. Excise taxes on documents under chapter 201.
- e. Ad valorem taxes paid, as defined in s. 220.03(1).

f. State communications services taxes administered under chapter 202. This provision does not apply to the gross receipts tax imposed under chapter 203 and administered under chapter 202 or the local communications services tax authorized under s. 202.19.

~~The addition of state communications services taxes administered under chapter 202 is remedial in nature and retroactive to October 1, 2001. The office may make supplemental tax refund payments to allow for tax refunds~~

~~for communications services taxes paid by an eligible qualified target industry business after October 1, 2001.~~

~~(e)(d)~~ However, a qualified target industry business may not receive a refund under this section for any amount of credit, refund, or exemption previously granted to that business for any of the such taxes listed in paragraph (d). If a refund for such taxes is provided by the office, which taxes are subsequently adjusted by the application of any credit, refund, or exemption granted to the qualified target industry business other than as provided in this section, the business shall reimburse the account for the amount of that credit, refund, or exemption. A qualified target industry business shall notify and tender payment to the office within 20 days after receiving any credit, refund, or exemption other than one provided in this section.

(f) Refunds made available under this section may not be expended in connection with the relocation of a business from one community to another community in the state unless the office determines that, without such relocation, the business will move outside the state or determines that the business has a compelling economic rationale for relocation and that the relocation will create additional jobs.

~~(g)(e)~~ A qualified target industry business that fraudulently claims a refund under this section:

1. Is liable for repayment of the amount of the refund to the account, plus a mandatory penalty in the amount of 200 percent of the tax refund which shall be deposited into the General Revenue Fund.
2. Commits ~~Is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(4)(3)~~ APPLICATION AND APPROVAL PROCESS.—

(a) To apply for certification as a qualified target industry business under this section, the business must file an application with the office before the business decides ~~has made the decision~~ to locate a new business in this state or before the business decides ~~had made the decision~~ to expand its ~~an~~ existing operations ~~business~~ in this state. The application must ~~shall~~ include, but need ~~is not~~ be limited to, the following information:

1. The applicant’s federal employer identification number and, if applicable, ~~the applicant’s~~ state sales tax registration number.
2. The proposed permanent location of the applicant’s facility in this state at which the project ~~is~~ is to be located.
3. A description of the type of business activity or product covered by the project, including a minimum of a five-digit NAICS code for all activities included in the project. As used in this paragraph, “NAICS” means those classifications contained in the North American Industry Classification

System, as published in 2007 by the Office of Management and Budget, Executive Office of the President, and updated periodically.

4. The proposed number of net new full-time equivalent Florida jobs at the qualified target industry business as of December 31 of each year included in the project and the average wage of those jobs. If more than one type of business activity or product is included in the project, the number of jobs and average wage for those jobs must be separately stated for each type of business activity or product.

5. The total number of full-time equivalent employees employed by the applicant in this state, if applicable.

6. The anticipated commencement date of the project.

7. A brief statement explaining ~~concerning~~ the role that the estimated tax refunds to be requested will play in the decision of the applicant to locate or expand in this state.

8. An estimate of the proportion of the sales resulting from the project that will be made outside this state.

9. A resolution adopted by the governing board of the county or municipality in which the project will be located, which resolution recommends that the project ~~certain types of businesses~~ be approved as a qualified target industry business and specifies ~~states~~ that the commitments of local financial support necessary for the target industry business exist. Before ~~In~~ advance of the passage of such resolution, the office may also accept an official letter from an authorized local economic development agency that endorses the proposed target industry project and pledges that sources of local financial support for such project exist. For the purposes of making pledges of local financial support under this subparagraph ~~subsection~~, the authorized local economic development agency shall be officially designated by the passage of a one-time resolution by the local governing board ~~authority~~.

10. Any additional information requested by the office.

(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 ~~provided~~ 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. 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 may only be waived for a project located in a brownfield area designated under s. 376.80 or in a rural city, rural community, or county or in an enterprise zone and only if when 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 director 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 such project and, in the case of if an expansion of an existing business, must result in a net increase in employment of at least 10 percent at the business. Notwithstanding the definition of the term "expansion of an existing business" in paragraph (1)(g), At the request of the local governing body recommending the project and Enterprise Florida, Inc., the office may waive this requirement for a business define an "expansion of an existing business" in a rural community or an enterprise zone as the expansion of a business resulting in a net increase in employment of less than 10 percent at such business 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 director 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 is within an industry or industries that have been identified by the office as a target industry business to be high-value-added industries that contributes contribute to the area and to the economic growth of the state and the area in which the business is located, that produces produce 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 area and state's economic progress. The director must approve requests to waive the wage requirement for brownfield areas designated under s. 376.80 unless it is demonstrated that such action is not in the public interest.

(c) Each application meeting the requirements of paragraph (b) must be submitted to the office for determination of eligibility. The office shall review and evaluate each application based on, but not limited to, the following criteria:

1. Expected contributions to the state's economy, consistent with the state strategic economic development plan adopted by Enterprise Florida, Inc., taking into account the long-term effects of the project and of the applicant on the state economy.

2. The return on investment of the proposed award of tax refunds under this section and the return on investment for state incentives proposed for the project. The Office of Economic and Demographic Research shall review and evaluate the methodology and model used to calculate the return on investment and report its findings by September 1 of every 3rd year, beginning September 1, 2010, to the President of the Senate and the Speaker of the House of Representatives economic benefit of the jobs created by the project in this state, taking into account the cost and average wage of each job created.

3. The amount of capital investment to be made by the applicant in this state.

4. The local financial commitment and support for the project.

5. ~~The effect of the project on the local community, taking into account the unemployment rate in~~ for the county where the project will be located.

6. ~~The effect of the award any tax refunds granted pursuant to this section on the viability of the project and the probability that the project would will be undertaken in this state if such tax refunds are granted to the applicant, taking into account the expected long-term commitment of the applicant to economic growth and employment in this state.~~

7. The expected long-term commitment of the applicant to economic growth and employment in ~~to~~ this state resulting from the project.

8. A review of the business's past activities in this state or other states, including whether such business has been subjected to criminal or civil fines and penalties. This subparagraph does not require the disclosure of confidential information.

(d) Applications shall be reviewed and certified pursuant to s. 288.061. The office shall include in its review projections of the tax refunds the business would be eligible to receive in each fiscal year based on the creation and maintenance of the net new Florida jobs specified in subparagraph (a)4. as of December 31 of the preceding state fiscal year. If appropriate, the office director shall enter into a written agreement with the qualified target industry business pursuant to subsection (5) (4).

(e) The office director may not certify any target industry business as a qualified target industry business if the value of tax refunds to be included in that letter of certification exceeds the available amount of authority to certify new businesses as determined in s. 288.095(3). However, if the commitments of local financial support represent less than 20 percent of the eligible tax refund payments, or to otherwise preserve the viability and fiscal integrity of the program, the office director may certify a qualified target industry business to receive tax refund payments of less than the allowable amounts specified in paragraph (3)(2)(b). A letter of certification that approves an application must specify the maximum amount of tax refund that will be

available to the qualified industry business in each fiscal year and the total amount of tax refunds that will be available to the business for all fiscal years.

(f) This section does not create a presumption that an applicant ~~will~~ ~~shall~~ receive any tax refunds under this section. However, the office may issue nonbinding opinion letters, upon the request of prospective applicants, as to the applicants' eligibility and the potential amount of refunds.

~~(5)~~(4) TAX REFUND AGREEMENT.—

(a) Each qualified target industry business must enter into a written agreement with the office ~~that~~ ~~which~~ specifies, at a minimum:

1. The total number of full-time equivalent jobs in this state that will be dedicated to the project, the average wage of those jobs, the definitions that will apply for measuring the achievement of these terms during the pendency of the agreement, and a time schedule or plan for when such jobs will be in place and active in this state.

2. The maximum amount of tax refunds ~~that~~ ~~which~~ the qualified target industry business is eligible to receive on the project and the maximum amount of a tax refund that the qualified target industry business is eligible to receive for each fiscal year, based on the job creation and maintenance schedule specified in subparagraph 1.

3. That the office may review and verify the financial and personnel records of the qualified target industry business to ascertain whether that business is in compliance with this section.

4. The date by which, in each fiscal year, the qualified target industry business may file a claim under subsection ~~(6)~~ ~~(5)~~ to be considered to receive a tax refund in the following fiscal year.

5. That local financial support will be annually available and will be paid to the account. The ~~office~~ ~~director~~ may not enter into a written agreement with a qualified target industry business if the local financial support resolution is not passed by the local governing ~~body~~ ~~authority~~ within 90 days after ~~the office~~ ~~he or she~~ has issued the letter of certification under subsection ~~(4)~~ ~~(3)~~.

~~6. That the office may conduct a review of the business to evaluate whether the business is continuing to contribute to the area's or state's economy.~~

~~7. That in the event the business does not complete the agreement, the business will provide the office with the reasons the business was unable to complete the agreement.~~

(b) Compliance with the terms and conditions of the agreement is a condition precedent for the receipt of a tax refund each year. The failure to

comply with the terms and conditions of the tax refund agreement results in the loss of eligibility for receipt of all tax refunds previously authorized under this section and the revocation by the office director of the certification of the business entity as a qualified target industry business, unless the business is eligible to receive and elects to accept a prorated refund under paragraph (6)(e) (5)(d) or the office grants the business an economic recovery extension economic-stimulus exemption.

1. A qualified target industry business may submit, ~~in writing~~, a request to the office for an economic recovery extension economic-stimulus exemption. The request must provide quantitative evidence demonstrating how negative economic conditions in the business's industry, the effects of ~~the impact of~~ a named hurricane or tropical storm, or specific acts of terrorism affecting the qualified target industry business have prevented the business from complying with the terms and conditions of its tax refund agreement.

2. Upon receipt of a request under subparagraph 1., the office has director shall have 45 days to notify the requesting business, in writing, whether if its extension exemption has been granted or denied. In determining whether if an extension exemption should be granted, the office director shall consider the extent to which negative economic conditions in the requesting business's industry have occurred in the state or the effects of ~~the impact of~~ a named hurricane or tropical storm or specific acts of terrorism affecting the qualified target industry business have prevented the business from complying with the terms and conditions of its tax refund agreement. The office shall consider current employment statistics for this state by industry, including whether the business's industry had substantial job loss during the prior year, when determining whether an extension exemption shall be granted.

3. As a condition for receiving a prorated refund under paragraph (6)(e) (5)(d) or an economic recovery extension economic-stimulus exemption under this paragraph, a qualified target industry business must agree to renegotiate its tax refund agreement with the office to, at a minimum, ensure that the terms of the agreement comply with current law and office procedures governing application for and award of tax refunds. Upon approving the award of a prorated refund or granting an economic recovery extension economic-stimulus exemption, the office shall renegotiate the tax refund agreement with the business as required by this subparagraph. When amending the agreement of a business receiving an economic recovery extension economic-stimulus exemption, the office may extend the duration of the agreement for a period not to exceed 2 years.

4. A qualified target industry business may submit a request for an economic recovery extension economic-stimulus exemption to the office in lieu of any tax refund claim scheduled to be submitted after January 1, 2009, but before July 1, 2012 2011.

5. A qualified target industry business that receives an economic recovery extension ~~economic-stimulus-exemption~~ may not receive a tax refund for the period covered by the extension ~~exemption~~.

(c) The agreement must be signed by the director and by an authorized officer of the qualified target industry business within 120 days after the issuance of the letter of certification under subsection (4) ~~(3)~~, but not before passage and receipt of the resolution of local financial support. The office may grant an extension of this period at the written request of the qualified target industry business.

(d) The agreement must contain the following legend, clearly printed on its face in bold type of not less than 10 points in size: "This agreement is not ~~neither~~ a general obligation of the State of Florida, nor is it backed by the full faith and credit of the State of Florida. Payment of tax refunds is ~~are~~ conditioned on and subject to specific annual appropriations by the Florida Legislature of ~~moneys~~ sufficient to pay amounts authorized in section 288.106, Florida Statutes."

(6)(5) ANNUAL CLAIM FOR REFUND.—

(a) To be eligible to claim any scheduled tax refund, a qualified target industry business that has entered into a tax refund agreement with the office under subsection (5) ~~(4)~~ must apply by January 31 of each fiscal year to the office for the tax refund scheduled to be paid from the appropriation for the fiscal year that begins on July 1 following the January 31 claims-submission date. The office may, upon written request, grant a 30-day extension of the filing date.

(b) The claim for refund by the qualified target industry business must include a copy of all receipts pertaining to the payment of taxes for which the refund is sought and data related to achievement of each performance item specified in the tax refund agreement. The amount requested as a tax refund may not exceed the amount specified for the relevant fiscal year in that agreement.

(c) The office may waive the requirement for proof of taxes paid in future years for a qualified target industry business that provides the office with proof that, in a single year, the business has paid an amount of state taxes from the categories in paragraph (3)(d) that is at least equal to the total amount of tax refunds that the business may receive through successful completion of its tax refund agreement.

(d)(e) A tax refund may not be approved for a qualified target industry business unless the required local financial support has been paid into the account for that refund. If the local financial support provided is less than 20 percent of the approved tax refund, the tax refund must be reduced. In no event may the tax refund exceed an amount that is equal to 5 times the amount of the local financial support received. Further, funding from local sources includes any tax abatement granted to that business under s.

196.1995 or the appraised market value of municipal or county land conveyed or provided at a discount to that business. The amount of any tax refund for such business approved under this section must be reduced by the amount of any such tax abatement granted or the value of the land granted,<sup>;</sup> and the limitations in subsection (3) (2) and paragraph (4)(3)(e) must be reduced by the amount of any such tax abatement or the value of the land granted. A report listing all sources of the local financial support shall be provided to the office when such support is paid to the account.

(e)(d) A prorated tax refund, less a 5-percent penalty, shall be approved for a qualified target industry business ~~if provided~~ all other applicable requirements have been satisfied and the business proves to the satisfaction of the ~~office director~~ that:

1. It has achieved at least 80 percent of its projected employment; and ~~that~~

2. The average wage paid by the business is at least 90 percent of the average wage specified in the tax refund agreement, but in no case less than 115 percent of the average private sector wage in the area available at the time of certification, or 150 percent or 200 percent of the average private sector wage if the business requested the additional per-job tax refund authorized in paragraph (3)(2)(b) for wages above those levels. The prorated tax refund shall be calculated by multiplying the tax refund amount for which the qualified target industry business would have been eligible, if all applicable requirements had been satisfied, by the percentage of the average employment specified in the tax refund agreement which was achieved, and by the percentage of the average wages specified in the tax refund agreement which was achieved.

(f)(e) The ~~office director~~, with such assistance as may be required from ~~the office~~, the Department of Revenue, or the Agency for Workforce Innovation, shall, by June 30 following the scheduled date for submission of the tax refund claim, specify by written order the approval or disapproval of the tax refund claim and, if approved, the amount of the tax refund that is authorized to be paid to the qualified target industry business for the annual tax refund. The office may grant an extension of this date on the request of the qualified target industry business for the purpose of filing additional information in support of the claim.

(g)(f) The total amount of tax refund claims approved by the ~~office director~~ under this section in any fiscal year must not exceed the amount authorized under s. 288.095(3).

(h)(g) This section does not create a presumption that a tax refund claim will be approved and paid.

(i)(h) Upon approval of the tax refund under paragraphs (e), (d), ~~and~~ (e), ~~and~~ (f), the Chief Financial Officer shall issue a warrant for the amount specified in the written order. If the written order is appealed, the Chief

Financial Officer may not issue a warrant for a refund to the qualified target industry business until the conclusion of all appeals of that order.

(7)(6) ADMINISTRATION.—

(a) The office may ~~is authorized to~~ verify information provided in any claim submitted for tax credits under this section with regard to employment and wage levels or the payment of the taxes to the appropriate agency or authority, including the Department of Revenue, the Agency for Workforce Innovation, or any local government or authority.

(b) To facilitate the process of monitoring and auditing applications made under this section ~~program~~, the office may provide a list of qualified target industry businesses to the Department of Revenue, to the Agency for Workforce Innovation, or to any local government or authority. The office may request the assistance of those entities with respect to monitoring jobs, wages, and the payment of the taxes listed in subsection (3) ~~(2)~~.

(c) Funds specifically appropriated for the tax refunds ~~refund~~ program for qualified target industry businesses under this section may not be used by the office for any purpose other than the payment of tax refunds authorized by this section.

(d) Beginning with tax refund agreements signed after July 1, 2010, the office shall attempt to ascertain the causes for any business's failure to complete its agreement and shall report its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall be submitted by December 1 of each year beginning in 2011.

~~(7) Notwithstanding paragraphs (4)(a) and (5)(c), the office may approve a waiver of the local financial support requirement for a business located in any of the following counties in which businesses received emergency loans administered by the office in response to the named hurricanes of 2004: Bay, Brevard, Charlotte, DeSoto, Escambia, Flagler, Glades, Hardee, Hendry, Highlands, Indian River, Lake, Lee, Martin, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Polk, Putnam, Santa Rosa, Seminole, St. Lucie, Volusia, and Walton. A waiver may be granted only if the office determines that the local financial support cannot be provided or that doing so would effect a demonstrable hardship on the unit of local government providing the local financial support. If the office grants a waiver of the local financial support requirement, the state shall pay 100 percent of the refund due to an eligible business. The waiver shall apply for tax refund applications made for fiscal years 2004-2005, 2005-2006, and 2006-2007.~~

(8) EXPIRATION.—An applicant may not be certified as qualified under this section after June 30, 2020 2010. A tax refund agreement existing on that date shall continue in effect in accordance with its terms.

Section 2. Subsection (11) of section 159.803, Florida Statutes, is amended to read:

159.803 Definitions.—As used in this part, the term:

(11) “Florida First Business project” means any project which is certified by the Office of Tourism, Trade, and Economic Development as eligible to receive an allocation from the Florida First Business allocation pool established pursuant to s. 159.8083. The Office of Tourism, Trade, and Economic Development may certify those projects meeting the criteria set forth in s. 288.106(4)(3)(b) or any project providing a substantial economic benefit to this state.

Section 3. Paragraph (h) of subsection (1) of section 220.191, Florida Statutes, is amended to read:

220.191 Capital investment tax credit.—

(1) DEFINITIONS.—For purposes of this section:

(h) “Qualifying project” means:

1. A new or expanding facility in this state which creates at least 100 new jobs in this state and is in one of the high-impact sectors identified by Enterprise Florida, Inc., and certified by the office pursuant to s. 288.108(6), including, but not limited to, aviation, aerospace, automotive, and silicon technology industries;

2. A new or expanded facility in this state which is engaged in a target industry designated pursuant to the procedure specified in s. 288.106(2)(t)(1)(e) and which is induced by this credit to create or retain at least 1,000 jobs in this state, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area as defined in s. 288.106(2)(1), and make a cumulative capital investment of at least \$100 million after July 1, 2005. Jobs may be considered retained only if there is significant evidence that the loss of jobs is imminent. Notwithstanding subsection (2), annual credits against the tax imposed by this chapter shall not exceed 50 percent of the increased annual corporate income tax liability or the premium tax liability generated by or arising out of a project qualifying under this subparagraph. A facility that qualifies under this subparagraph for an annual credit against the tax imposed by this chapter may take the tax credit for a period not to exceed 5 years; or

3. A new or expanded headquarters facility in this state which locates in an enterprise zone and brownfield area and is induced by this credit to create at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage, as published by the Agency for Workforce Innovation or its successor, and which new or expanded headquarters facility makes a cumulative capital investment in this state of at least \$250 million.

Section 4. Paragraph (e) of subsection (1), subsection (2), paragraphs (a) and (d) of subsection (4), and paragraph (b) of subsection (5) of section 288.107, Florida Statutes, are amended to read:

288.107 Brownfield redevelopment bonus refunds.—

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

(e) “Eligible business” means:

1. A qualified target industry business as defined in s. 288.106(2)(1)(~~e~~); or
2. A business that can demonstrate a fixed capital investment of at least \$2 million in mixed-use business activities, including multiunit housing, commercial, retail, and industrial in brownfield areas, or at least \$500,000 in brownfield areas that do not require site cleanup, and that ~~which~~ provides benefits to its employees.

(2) BROWNFIELD REDEVELOPMENT BONUS REFUND.—Bonus refunds shall be approved by the office as specified in the final order issued ~~by the director~~ and allowed from the account as follows:

(a) A bonus refund of \$2,500 shall be allowed to any qualified target industry business as defined in ~~by~~ s. 288.106 for each new Florida job created in a brownfield area that ~~which~~ is claimed on the qualified target industry business’s annual refund claim authorized in s. 288.106(6)(~~5~~).

(b) A bonus refund of up to \$2,500 shall be allowed to any other eligible business as defined in subparagraph (1)(e)2. for each new Florida job created in a brownfield area ~~that~~ ~~which~~ is claimed under an annual claim procedure similar to the annual refund claim authorized in s. 288.106(6)(~~5~~). The amount of the refund shall be equal to 20 percent of the average annual wage for the jobs created.

(4) PAYMENT OF BROWNFIELD REDEVELOPMENT BONUS REFUNDS.—

(a) To be eligible to receive a bonus refund for new Florida jobs created in a brownfield area, a business must have been certified as a qualified target industry business under s. 288.106 or eligible business as defined in paragraph (1)(e) and must have indicated on the qualified target industry business tax refund application form submitted in accordance with s. 288.106(4)(~~3~~) or other similar agreement for other eligible business as defined in paragraph (1)(e) that the project for which the application is submitted is or will be located in a brownfield area and that the business is applying for certification as a qualified brownfield business under this section, and must have signed a qualified target industry business tax refund agreement with the office ~~that~~ ~~which~~ indicates that the business has been certified as a qualified target industry business located in a brownfield area and specifies the schedule of brownfield redevelopment bonus refunds that the business may be eligible to receive in each fiscal year.

(d) After entering into a tax refund agreement as provided in s. 288.106 or other similar agreement for other eligible businesses as defined in paragraph (1)(e), an eligible business may receive brownfield redevelopment bonus refunds from the account pursuant to s. 288.106(3)(d)(2)(e).

(5) ADMINISTRATION.—

(b) To facilitate the process of monitoring and auditing applications made under this program, the office may provide a list of qualified target industry businesses to the Department of Revenue, to the Agency for Workforce Innovation, to the Department of Environmental Protection, or to any local government authority. The office may request the assistance of those entities with respect to monitoring the payment of the taxes listed in s. 288.106(3)(2).

Section 5. Paragraph (s) of subsection (2) of section 288.1089, Florida Statutes, is amended to read:

288.1089 Innovation Incentive Program.—

(2) As used in this section, the term:

(s) “Rural area” means a rural city or, rural community, ~~or rural county~~ as defined in s. 288.106.

Section 6. Section 290.00677, Florida Statutes, is amended to read:

290.00677 Rural enterprise zones; special qualifications.—

(1) Notwithstanding the enterprise zone residency requirements set out in s. 212.096(1)(c), eligible businesses as defined in ~~by~~ s. 212.096(1)(a), located in rural enterprise zones as defined in ~~by~~ s. 290.004, may receive the basic minimum credit provided under s. 212.096 for creating a new job and hiring a person residing within the jurisdiction of a rural community county, as defined in ~~by~~ s. 288.106(2)(1)(~~r~~). All other provisions of s. 212.096, including, but not limited to, those relating to the award of enhanced credits, apply to such businesses.

(2) Notwithstanding the enterprise zone residency requirements set out in s. 220.03(1)(q), businesses as defined in ~~by~~ s. 220.03(1)(c), located in rural enterprise zones as defined in s. 290.004, may receive the basic minimum credit provided under s. 220.181 for creating a new job and hiring a person residing within the jurisdiction of a rural community county, as defined in ~~by~~ s. 288.106(2)(1)(~~r~~). All other provisions of s. 220.181, including, but not limited to, those relating to the award of enhanced credits, apply to such businesses.

Section 7. This act shall take effect July 1, 2010.

Approved by the Governor May 27, 2010.

Filed in Office Secretary of State May 27, 2010.