

FINAL BILL ANALYSIS

BILL #: CS/HB 143

FINAL HOUSE FLOOR ACTION:

118 Y's 0 N's

SPONSOR: Rep. Workman

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/SB 508, SB 842, SB 872, SB 1084, SB 1224, CS/SB 1506, SB 1820

SUMMARY ANALYSIS

CS/HB 143 passed the House and the Senate on May 7, 2010. The bill was approved by the Governor on May 31, 2011, Chapter 2011-76, Laws of Florida and becomes effective July 1, 2011, except as otherwise provided in the bill. The purpose of the bill is to enhance Florida's economic development potential by creating new incentives, funding existing incentives, and modifying administrative provisions of current programs. The bill provides the following:

Spaceflight Business Tax Credits

A "certified spaceflight" business is allowed to apply for a credit equal to 50 percent of the business's corporate income tax liability in a given year, or may create a transferable income tax credit based upon its net operating losses.

Corporate Income Emergency Excise Tax

The corporate income emergency excise tax is repealed.

Special Impact Estimating Conferences

Special impact estimating conferences are authorized to evaluate proposed law changes.

Single Sales Factor Apportionment

Certain types of corporations that invest a total of \$250 million in qualifying capital expenditures in Florida over a two year period are allowed to use single sales factor apportionment to calculate their corporate income tax liability.

Brownfield Rehabilitation Tax Credits

The corporate income tax credits that are currently available to partially compensate taxpayers that voluntarily clean up drycleaning-solvent-contaminated or brownfield sites are increased from \$2 million to \$5 million annually.

Research and Development Credits

An annual corporate income tax credit for qualifying research and development expenses in Florida is created. The amount of credits available to be awarded under this provision is \$9 million.

Entertainment Industry Financial Incentive Program

Funding for the program is increased from \$38 million to \$42 million per year for fiscal years 2012-13, 2013-14, and 2014-15. Three new bonus credit programs are created, the eligibility of television series to receive credits is limited, and the queue priority of digital media projects and high impact television series is modified.

Enterprise Zone Provisions

Local governments are allowed to apply to OTTED to have certain rural enterprise zones expanded by up to three square miles. It also authorizes Martin County and Lake County to apply for designation of an enterprise zone of up to 10 square miles and the City of Palm Bay to apply for designation of an enterprise zone of up to five square miles.

Sales Tax Holiday

A three day sales tax holiday starting on August 12, 2011, is authorized for certain clothing, shoes, and school supplies.

Florida Defense Support Task Force

The Florida Defense Support Task Force is created to prepare Florida to address federal base realignment or closure actions, support militarily-related research and development, and improve Florida's military-friendly environment.

The bill contains various economic development appropriations. The bill also has several state and local government revenue impacts. See FISCAL ANALYSIS Section for details.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Spaceflight Business Tax Credits

Current Situation

With the retirement of the Space Shuttle program later this year, and the cancellation of its successor Constellation, Florida is expected to lose nearly 9,000 jobs directly associated with the program. The Office of Tourism, Trade and Economic Development (OTTED), the Agency for Workforce Innovation, regional workforce boards and local economic development organizations are developing strategies to soften the impact on local economies, ranging from the recruitment of new companies to offering retraining in related fields. Space Florida, the state's aerospace policy and economic development entity, is coordinating the effort to make Florida the hub of the commercial spaceflight industry.

Incentives and Tax Exemptions Currently Available

Currently, several financial incentives and tax exemptions are available for qualified aerospace businesses. These include, but are not limited to the Qualified Targeted Industry Tax Refund Program, Qualified Defense Contractor and Spaceflight Business Refund Program, and tax exemptions for spaceport and manufacturing machinery and equipment purchases.

Qualified Targeted Industry Tax Refund Program

In general, a qualified business must operate in a targeted industry and must meet certain job and wage requirements. Aerospace activity, including the manufacturing of space vehicles, satellite communication, and launch operations are targeted by this program. Businesses that locate or expand in Florida are eligible for tax refunds of \$3,000 per new job created. The tax refund increases to \$6,000 per job for businesses that locate in an enterprise zone or rural county. In addition, a business is eligible for a \$1,000 per job bonus if it pays over 150 percent of the average wage in the area, and a \$2,000 per job bonus if it exceeds 200 percent of the average wage. Qualified businesses may claim refunds against corporate income tax, sales tax, ad valorem tax, intangible personal property tax, insurance premium tax, and certain other taxes.

Qualified Defense Contractor and Spaceflight Business Tax Refund Program

Pre-approved applicants in defense, homeland security, or space business industries creating or retaining jobs in Florida may receive tax refunds of \$3,000 per net new full-time equivalent job created or retained and \$6,000 in an Enterprise Zone or rural county for every net new full-time equivalent job created or retained. An additional \$1,000 per job is available for businesses paying 150 percent of the average annual wage, and an additional \$2,000 per job is available for businesses paying 200 percent of the average annual wage. A qualified defense contract or spaceflight business may claim refunds against sales and use tax, corporate income tax, and insurance premium tax.

Tax Exemptions for Machinery and Equipment Purchases

Qualified machinery and equipment used in aerospace manufacturing or spaceport activities are exempt from the sales and use tax imposed under ch. 212, F.S.¹

Proposed Changes

The bill establishes a non-transferable corporate income tax credit intended to attract spaceflight businesses² to the state and encourage existing companies to expand or diversify into the aerospace sector. Further, the bill allows a spaceflight business to convert its net operating loss to a transferable tax credit. Through this modification, spaceflight businesses can gain cash liquidity by selling this tax credit. This option could be especially beneficial to new or start-up space businesses that are often not profitable for some time after starting operations. The bill also provides an application process to earn and certify tax credits, clarifies audit procedures, and requires an annual report to the Governor and the Legislature. Section 220.194, F.S., is created to implement the program.

Tax Credits

The bill provides that a spaceflight business approved and certified by OTTED may claim or transfer tax credits on or after October 1, 2015. A certified spaceflight business may be approved for both of these provisions once each, and such approvals must be in separate state fiscal years. Unless transferred, credits may be granted only against corporate income tax liability as a result of a spaceflight project located in Florida. In addition, a spaceflight business or transferee claiming tax incentives provided in this bill may not file a consolidated tax return. The two types of credit provided in this bill are:

Non-transferable Corporate Tax Credit

The bill provides a credit for up to 50 percent of the spaceflight business's annual corporate income tax liability. The maximum annual credit that may be granted to a spaceflight business is \$1 million and the total tax credits approved may not exceed \$3 million. No credit may be approved after October 1, 2017.

Transferable Net Operating Loss Credit

The bill also provides a spaceflight business with the option to convert its net operating loss into a transferable tax credit. The maximum annual transferable credit that may be approved for a spaceflight business in a single year is \$2.5 million. The bill states that the amount that may be transferred by a spaceflight business and claimed by another business entity is equal to 100 percent of the total net operating loss accumulated by the spaceflight business in each of its first three full years of operation in the state. In addition, the total transferable tax credits approved may not exceed \$7 million. No credit may be approved after October 1, 2017. In order to transfer the credit, a spaceflight business must:

- Be approved by OTTED to transfer the credit,

¹ Section 212.08(5)(b), F.S. and s. 212.08(5)(j), F.S.

² Spaceflight business is defined as a business:

- Registered with the Secretary of State to do business in Florida; and
- Currently engaged in a spaceflight project.

- Have incurred a qualifying net operating loss after July 1, 2011, associated with at least one spaceflight project³ in any of its three previous three taxable years,
- Not be 50 percent or more owned by a corporation with positive income in any of its three previous three taxable years, and
- Not be part of a consolidated group of affiliated corporations with positive income in any of its previous three taxable years.

The Department of Revenue (DOR) must provide the transferee a certificate that reflects the tax credit amounts transferred. The transferee may apply the credit against its corporate income tax liability under ch. 220, F.S.

Application and Certification

In general, the application and certification process occurs in two separate steps. A spaceflight business must first submit an application to OTTED seeking the approval to earn credits. The application must include the following:

- A complete description of the applicant's business activity in the state;⁴
- The total amount and type of credits sought; and
- An affidavit certifying that all information contained in the application is true and correct.

The bill provides that OTTED will determine the eligibility of the applicant and ensure that the total tax credits approved each fiscal year for all applicants does not exceed the limitations. OTTED may consult with Space Florida regarding the qualifications of the applicant. Approval for tax credits are on a first-come, first-served basis and a spaceflight business may only submit one application per state fiscal year.

In order to claim or transfer tax credits earned, a spaceflight business must also submit to OTTED an application for certification. In the application for certification, the spaceflight business must demonstrate that it has:

- Met the eligibility standard for spaceflight business,
- Engaged in a qualifying spaceflight project in the last three taxable years,
- Created 35 new jobs⁵ directly associated with qualified spaceflight projects in the last three taxable years, and

³ Spaceflight project means any of the following activities performed in Florida:

- Designing, manufacturing, testing, or assembling a space vehicle or components thereof;
- Providing a launch service, payload processing service, or reentry service; or
- Providing the payload for a launch vehicle or reentry space vehicle, administrative support, and tourism activities related to these activities.

⁴ The description should demonstrate to OTTED that such applicant will meet the standards for certification.

⁵ "New job" means the full-time employment of an employee in a manner that 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. To meet the requirement for certification specified in subsection (5)(b) of the bill, a new job must:

- Pay new employees at least 115 percent of the statewide or countywide average annual private-sector wage for the three taxable years immediately preceding filing an application for certification;
- Require a new employee to perform duties on a regular full-time basis in this state for an average of at least 36 hours per week each month for the 3 taxable years immediately preceding filing an application for certification; and
- Not be held by a person who has previously been included as a new employee on an application for any credit authorized by this section.

- Invested a total of at least \$15 million on a spaceflight project in the state during the last three taxable years.

The application for certification must also include a non-refundable payment of \$250 and audit reports of the last three taxable years which identifies the business's spaceflight activities. OTTED has a maximum of 90 days to approve or deny certification. Further, OTTED must provide a letter of certification to the successful applicant, and inform an unsuccessful applicant of the reasons for denial.

Audit Authority and Reporting Requirements

The bill provides direction to DOR for the following: the auditing of certified spaceflight businesses; the procedures for revocation and recapture of tax credits; the requirements for filing amended tax returns; and the penalties for filing inaccurate or fraudulent tax returns.

The bill provides that OTTED, in cooperation with Space Florida and DOR, must submit an annual report accounting the activities of the spaceflight business incentives program to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The first report is due by November 30, 2014.

Other Changes Made By the Bill

The bill authorizes OTTED to administer the tax credit program proposed as s. 220.194, F.S. The bill also authorizes DOR to provide information relating to tax credits claimed under s. 220.194, F.S., to OTTED and Space Florida.

The bill amends s. 220.02(8), F.S., to add s. 220.194, F.S., as the last credit in the order in which credits are to be claimed against the corporate income tax.

The bill creates s. 220.13(1)(a)16., F.S., requiring that the amount of credit claimed under s. 220.194, F.S., be added back in computing corporate income tax. The bill also amends s. 220.13(1)(b)1a., F.S., providing that net operating losses claimed as a credit or transferred may not be subtracted by the seller in computing adjusted federal income for Florida corporate income tax purposes. For the purpose of computing corporate income tax liability, the bill creates s. 220.16(5), F.S., to require the seller of a net operating loss credit tax credit to treat payments received from the sale as non-business income.

The bill will take effect upon becoming law. However, tax credits created by the bill may not be claimed prior to October 1, 2015.

Corporate Income Emergency Excise Tax

Current Situation

Florida has imposed a 5.5 percent tax on the taxable income of corporations doing business in Florida since 1972. The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes. This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. Florida generally maintains this relationship by each year adopting the federal Internal Revenue Code (IRC) as it exists on January 1 of the year in question. By doing this, Florida adopts any changes that were made in the previous year to the determination of

federal taxable income. The bill adopting the federal code is commonly referred to as the “piggyback bill.”

In the spring of 1981, then President Reagan had proposed significant changes to the IRC, many of which would have resulted in a reduction of federal taxable income. For this and other reasons, Florida did not adopt a “piggyback bill” in 1981.

In August, 1981, Congress passed the Economic Recovery Tax Act (ERTA). Included in ERTA was an Accelerated Cost Recovery System (ACRS) that allowed taxpayers, for federal income tax purposes, to depreciate certain capital items on an accelerated basis. This accelerated depreciation would therefore allow taxpayers to take larger deductions in early years of the life of these capital items, lowering their taxable income. The ACRS system, if adopted for Florida corporate income tax purposes would have resulted in significant near-term revenue losses.

To address this issue, and to address the fact that Florida had not adopted the Internal Revenue Code in 1981 as of January 1981, the Legislature in 1982 passed legislation that, among other things, created a new tax called the “emergency excise tax” (EET) in ch. 221, F.S., and provided piggybacking options for taxpayers. The EET was intended to allow ERTA and the corresponding ACRS depreciation system to apply to Florida in a revenue neutral manner. The EET would offset the revenue loss associated with the new depreciation system. Therefore, the EET applied only to those taxpayers who elected to use the ACRS depreciation system for Florida purposes and was coupled with a tax credit granted five years after the year in which the EET was paid. The credit could be taken against EET liabilities, or if the credit exceeded the EET due, the difference could be taken against the taxpayer’s corporate income tax liability. All taxpayers were required to choose one of three elections under which they would be governed for depreciable assets placed in service during specified time frames. This election had to be made by August 26, 1982, or for taxpayers filing an initial return (new taxpayers), the election had to be made upon the filing of its first return.

The initial legislation set an EET tax rate of two percent. This rate was increased to 2.2 percent for tax years beginning on or after September 1, 1984. In addition, the initial legislation also included a sunset date of December 31, 1984. This date was extended several times. The sunset provisions were reconsidered in 1986 and numerous changes to the law were made affecting taxpayers beginning on or after January 1, 1987. Taxpayers who paid EET were allowed to take a credit.

The depreciation adjustments allowed under two of the elections referred to above required taxpayers to essentially calculate a depreciation schedule under ACRS and another depreciation schedule using a straight-line depreciation method and treat the difference as an addition to tax or credit against tax, as the case may be, ratably over the five succeeding taxable years beginning after December 31, 1986. Any ratable portion of a credit against tax which could not be utilized in any taxable year may be carried over to subsequent taxable years until fully utilized.

Proposed Changes

The bill repeals the emergency excise tax effective January 1, 2012. The bill is designed so that taxpayers will not lose any unused tax credits previously accrued under the emergency excise tax.

These changes take effect January 1, 2012.

Special Impact Estimating Conferences

Current Situation

Chapter 216, F.S., establishes the planning and budgeting laws for the fiscal affairs of the state. These laws provide guidelines to the Legislature, the Governor's Office, state agencies, and the judicial branch for developing legislative budgets and administering the general appropriations act. Essential components of the state's planning and budgeting process are the consensus estimating conferences. Sections 216.133-137, F.S., provide statutory authority for the consensus estimating conference process.

Section 216.136, F.S., establishes 10 consensus estimating conferences:

1. Economic Estimating Conference
2. Demographic Estimating Conference
3. Revenue Estimating Conference
4. Education Estimating Conference
5. Criminal Justice Estimating Conference
6. Social Services Estimating Conference
7. Workforce Estimating Conference
8. Early Learning Programming Estimating Conference
9. Self-Insurance Estimating Conference
10. Florida Retirement System Actuarial Assumption Conference

These conferences develop official estimates of revenues, expenditures, and various other impacts related to budgeting and taxation. All state agencies and the judicial branch must use the official results of the conference in carrying out their duties under the state planning and budgeting system; however, the Legislature is not bound to use the official consensus forecasts. Nevertheless, the Florida Legislature has consistently used the results of these conferences in its official duties.⁶ Each estimate considers a baseline forecast and an assumption that "current law, current administration"⁷ remains in effect for the duration of the forecast period unless otherwise provided by law or decided by unanimous agreement of the principals. Section 216.133(3), F.S., defines "consensus" as "the unanimous consent of all of the principals." All of the principals must agree on the forecasts before they are finalized.

The voting members of each conference (i.e., the principals) consist of one representative from professional staff of the Governor's Office, the coordinator of the Office of Economic and Demographic Research, professional staff of the Senate designated by the President of the Senate, and professional staff of the House of Representatives designated by the Speaker of the House of Representatives. Non-voting participants may be requested to generate alternative forecasts and provide additional information for the conference. The conference principals consider information provided by participants in the development of its "official information."⁸ All the conferences are open, public meetings.

⁶ Further information on the consensus forecasting process can be found on the Office of Economic and Demographic Research website. <http://edr.state.fl.us/conferences/confprocess.pdf> (last visited on May 24, 2011)

⁷ Section 216.134(1), F.S.

⁸ Section 216.133, F.S., defines "official information" as data, forecasts, estimates, analyses, studies, and other information which the principals of a consensus estimating conference unanimously adopt for the purpose of the state planning and budgeting system.

A conference session may be convened at the call of any principal to review and reconsider any official information of the conference that a principal feels is no longer valid. Additionally, s. 216.137(1)(d), F.S., allows any principal to call a special impact session of the conference to develop official information that reflects the impact of proposed law changes related to a conference's subject area.

The Revenue Estimating Conference meets throughout the year to update estimates of various revenue sources. This conference also meets several times before, during, and after legislative sessions to estimate the anticipated state and local government revenue impacts of proposed or current law changes. Many of these impacts are analyzed by the conference numerous times before a final estimate is adopted. In 2009, the Revenue Estimating Conference completed 343 analyses: 240 (70 percent) analyses during the 60 day session with 140 (41 percent) analyses in the final 30 days.

Current law does not specify particular methods, techniques, or approaches to developing the official estimates of the consensus estimating conferences.

Proposed Changes

This bill amends s. 216.138, F.S., providing for the creation of special impact estimating conferences, which will require the appointment of four principals each time a special impact session is requested by the President of the Senate or the Speaker of the House of Representatives. These principals would be one each from the Executive Office of the Governor, the Office of Economic and Demographic Research, Senate professional staff, and House of Representatives professional staff and will be appointed based on their appropriate fiscal expertise in the subject matter area of the proposal to be evaluated. Any principle can invite other subject matter area experts to the special impact estimating conferences in order to collect and supply data, perform analyses, or provide other information needed by the conference. All meetings of the special impact estimating conferences are open to the public.

These changes will take effect on July 1, 2011.

Single Sales Factor Apportionment

Current Situation

Florida imposes a 5.5 percent tax on the taxable income of corporations doing business in Florida. The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes, modified by certain Florida adjustments, to determine adjusted federal income. Corporations doing business both within Florida and outside Florida must determine the portion of their adjusted federal income that will be subject to Florida tax, using a three-factor formula. This process is referred to as "apportionment." The formula is a weighted average, designating 25 percent each to the factors for property and payroll, and 50 percent to sales.⁹

⁹ Section 220.15, F.S., details the apportionment formulas for most corporations. Section 220.151, F.S., details the apportionment for entities that pay the premium insurance tax and for transportation entities. Finally, s. 220.152, F.S., sets out a process for how DOR would apportion the Florida corporate income tax liability for businesses that don't fit into the other categories; in such cases, the taxpayer is required to petition DOR to compute its apportionment and must agree to provide the agency additional documentation.

Background on Income Apportionment

One challenge for states imposing a corporate income tax is how to determine the portion of a corporation's income that can be fairly attributed to a given state, when the corporation is doing business in more than one state. States use formulas containing some or all of three different factors when trying to make this determination: a corporation's payroll, its property and its sales. The theory behind this approach is that the income of a business is the result of a complex set of interrelated factors. Using the payroll, property and sales of a corporation as a proxy for its presence in a given state is intended to provide a fair measure of a corporation's activities in a particular state compared to its activities everywhere.

States use a variety of formulas for determining the portion of a corporation's income that is to be subject to tax in a given state. As of January 1, 2011¹⁰:

- Nine states equally weight the three basic factors- payroll, property and sales.
- 12 states, including Florida, use payroll, property and sales in their formulas, with sales given twice the weight at the other two factors (commonly referred to as a "double weighted sales factor" apportionment formula).
- 12 states currently require an apportionment formula that uses only the sales factor (commonly referred to as a "single sales factor" apportionment formula).
- Six states make using single sales factor apportionment optional.
- The remaining states with a corporate income tax use various combinations of the three factors.

Eliminating consideration of property and payroll in the apportionment formula (and thereby using single sales factor apportionment) eliminates or significantly reduces any adverse income tax consequences of locating more property and payroll in a state. Consequently, it may encourage corporations to expand operations in a given state, or to consider that when deciding where to locate operations.

Proposed Changes

The bill creates an optional mechanism for eligible corporations to use single sales factor apportionment (SSFA) to calculate Florida income for Florida income tax purposes.

To qualify as eligible, the taxpayer must notify OTTED of its intent to submit an application to apportion its adjusted federal income in order to commence the 2-year period for measuring qualified capital expenditures.

The taxpayer must then apply to use SSFA, demonstrating that it made at least \$250 million in qualified capital expenditures in Florida over a two year period, beginning no earlier than July 1, 2011. The application must be made under oath and provide all information required by OTTED rule for determining the corporation's eligibility to apportion adjusted federal income. The corporation is responsible for affirmatively demonstrating to OTTED's satisfaction that it meets the eligibility requirements. OTTED must acknowledge receipt of the notice, and must approve or deny the application in writing within 45 days after receipt.

¹⁰ Federation of Tax Administrators: <http://www.taxadmin.org/fta/rate/apport.pdf> (last visited on May 24, 2011)

Beginning in the taxable year that OTTED approves the application, but not before a taxable year that begins on or after January 1, 2013, the taxpayer may elect to use SSFA.

The bill defines “qualified capital expenditures” to mean expenditures that fund the acquisition, construction, renovation and repair of real property, and furniture and equipment needed to furnish or operate a new or improved facility, as long as the expenditures are for purposes substantially related to the business’s production or sale of goods or service. In contrast, expenditures for passive investment, including a passive investment intended for the accumulation of reserves or the realization of profit for distribution to any person holding an ownership interest in the business, are excluded from the definition.

The other exclusions are for expenditures for acquisition of an existing business, and expenditures in excess of \$125 million used to acquire land or buildings.

The bill provides that, in addition to its existing statutory audit authority, DOR may perform any financial and technical review and investigation, including examining the accounts, books, and records of any corporation that opted to use the single sales apportionment methodology to verify that its tax return correctly computes and apportions adjusted federal income and to ensure compliance with ch. 220, F.S.

The bill authorizes DOR to share confidential taxpayer information with OTTED needed to administer the single sales factor apportionment authorized by the bill.

Review Authority

If a DOR audit, investigation, or examination indicates problems with a corporation’s tax returns, OTTED may revoke its decision to qualify the corporation as eligible for single sales factor apportionment. OTTED also may order the recalculation of apportionment factors to those applicable under s. 220.15, F.S., if, as the result of a DOR audit, investigation, or examination, it determines that information provided by the offending corporation in its application or other documents was materially false at the time it was made and that an individual acting on behalf of the corporation knew, or should have known, that the information submitted was false.

In such cases, the corporation must pay the additional taxes and interest that may be due, calculated as the difference between the taxes paid under the single sales factor apportionment and the double-weighted sales apportionment in s. 220.15, F.S. DOR also shall assess the corporation a penalty equal to 100 percent of the additional tax due.

OTTED must immediately notify DOR of its decision to revoke a corporation’s eligibility for the single sales factor apportionment. At that point, the corporation must file an amended return with DOR, or any other such report that OTTED requires by rule, and pay any required tax, interest, and penalty within 60 days after receiving notification from OTTED about the revocation. If the corporation contests the revocation order, it still must file an amended return or other report within 30 days after the revocation order becomes final. A corporation that fails to pay the past tax, interest, and penalty by the due date is subject to the penalties provided in s. 220.803, F.S.¹¹

¹¹ This section provides for an additional 10-percent penalty if the deficiency in tax payments is a result of negligence or intentional disregard of the rules and regulations, or in the case of fraud, a penalty equal to 100 percent of the deficient amount.

The bill authorizes OTTED and DOR to adopt rules to administer these provisions.

These changes take effect July 1, 2011.

Brownfield Rehabilitation Tax Credits

Current Situation

In 1998, the legislature provided the Department of Environmental Protection (DEP) the direction and authority to issue tax credits as an additional incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites. The legislature created a tax credit in the amount of 35 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program;
- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility; or
- A brownfield site in a designated brownfield area.

At that time, an eligible tax credit applicant could receive up to \$250,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits, the statute also provided a completion incentive in the form of an additional 10 percent supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order from DEP. This additional supplemental credit was 10 percent of the total cost of cleanup over the life of the project, with a \$50,000 cap. Site rehabilitation tax credit applications must be complete and submitted by January 31 of each year. The total amount of tax credits for all sites that may be granted by the DEP is \$2 million annually. In the event that approved tax credit applications exceed the \$2 million annual authorization, the statute provides for remaining applications to roll over into the next fiscal year to receive tax credits in first come, first served order from the next year's authorization. When the voluntary cleanup tax credit program (VCTC) was created, these tax credits could be applied toward corporate income tax or intangible personal property tax in Florida. The tax credits may be transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.

In 2006, amendments were made to VCTC provisions in s. 220.1845, F.S., (Corporate Income Tax) and s. 376.30781, F.S., (Pollutant Discharge Prevention and Removal) to allow costs incurred prior to the brownfield area designation to be claimed, as long as the brownfield area designation is made in the same calendar year as when the first VCTC costs are claimed. Additional amendments were also adopted that:

- Increase the amount and percentage of costs of voluntary cleanup activity that is integral to site rehabilitation from 35 percent to 50 percent and from \$250,000 to \$500,000;
- Increase the percentage and value of the completion incentive tax credit from 10 percent to 25 percent and from \$50,000 to \$500,000;
- Allows a one-time application for an additional 25 percent of the total site rehabilitation costs, up to \$500,000, for brownfield sites at which the land use is restricted to affordable housing;

- Allows an eligible applicant to submit a one-time application claiming 50 percent of the costs, up to \$500,000, for removal, transportation and disposal of solid waste at a brownfield site; and
- Extends the review and certificate issuance period from March 1 to March 31.

The 2006 legislature also repealed s. 199.1055, F.S., the intangible personal property tax provision.

According to a DEP's analysis, the requests for tax credits have met or exceeded the annual \$2 million authorization since 2006. All tax credit authorizations have been exhausted to date and tax credit awards for costs incurred as far as 2008 are still pending, with a current backlog of approximately \$7.4 million in approved but un-awarded tax credits. For 2010, DEP received 52 applications requesting approximately \$5.6 million in tax credits.¹² Those applications are currently being reviewed for eligibility.

Proposed Changes

The bill amends s. 220.1845(2)(f), F.S., increasing the cap on the total amount of corporate income tax credits that DEP can issue from \$2 million to \$5 million annually.

These changes will take effect July 1, 2011.

Research and Development Credits

Current Situation

Federal Tax Credit

The "U.S. Research and Experimentation Tax Credit" was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost U.S. business competitiveness and encourage investment and savings by American taxpayers during a period of economic recession.¹³ Originally, the credit was 25 percent of qualified research expenses that exceeded the previous year's expenses, and the types of expenses that qualified were limited to scientific or experimental research. Over the years, the tax credit formula has been modified several times and the types of eligible expenses changed.¹⁴

The current federal credit provides credit for three types of expenses: (1) qualified research expenses, (2) basic research payments, and (3) payments to energy research consortiums.¹⁵

Under current federal law, "qualified research expenses" include wages paid to in-house research staff, supplies used in research activities (not including land, improvements to land or

¹² Department of Environmental Protection. CS/HB 641 Tax Credits/Rehabilitation of Contaminated Sites 2011 Draft Bill Analysis. Published March 25, 2011. (on file with the Finance & Tax Committee as of May 24, 2011)

¹³ "The U.S. Research and Experimentation Tax Credit in the 1990s" by Francisco Moris. National Science Foundation Report #NSF05-316 published July 2005. Retrieved at <http://www.nsf.gov/statistics/infbrief/nsf05316/> and "The Prospects for Economic Recovery," prepared by the Congressional Budget Office. Published February 1982. Pertinent information on pages 87-93. Retrieved at <http://www.cbo.gov/ftpdocs/51xx/doc5135/doc03b-Part8.pdf>. (last visited on May 24, 2011)

¹⁴ The U.S. General Accounting Office has prepared two reports over the years that examine changes in the tax credit program and analyze the program's impact. GAO/GGD-89-114 is found at <http://archive.gao.gov/d26t7/139607.pdf>. GAO/GGD-96-43 is found at <http://www.gao.gov/archive/1996/gg96043.pdf>. (last visited on May 24, 2011.)

¹⁵ 26 USC sec. 41(a)(1)

certain depreciable property), and up to 65 percent of funds paid to contracted personnel for qualified research.¹⁶ “Qualified research” includes research undertaken to discover technological information that is intended to be useful in the development of a new or improved business process, product, software, formula, invention or other business component that will be used by the company or which the company intends to sell, license, or lease.¹⁷

The federal tax credit for qualified expenses is an incremental tax credit because a company is only rewarded if it increases its research & development (R&D) spending as compared to its spending during a predetermined base period. The amount of the federal tax credit can be determined by three different methods, depending in part on how long the company has been in business. Under the basic formula, the tax credit is equal to 20 percent of the current tax year’s qualified R&D expenses over the base amount, which is calculated using a ratio of qualified R&D expenses and gross receipts during the period of 1984 through 1988.¹⁸ Newer companies can use simpler formulas that still compare current year R&D spending with past years.

Business entities that do not pay federal corporate income tax, such as S corporations and partnerships, are allowed to “pass-through” their federal R&D credits to shareholders or partners, based on these individuals’ shares in such business entities.¹⁹

For the 2008 federal tax year, 12,736 companies claimed \$8.3 billion in R&D tax credits, including \$167.7 million claimed via “pass-through” entities.²⁰ At \$5.76 billion, manufacturing companies claimed the largest portion of research tax credits.²¹

Since its inception, the federal R&D tax credit has lapsed several times. Most recently, Congress reauthorized the R&D tax credit in December 2010 through December 31, 2011.²²

Other States’ R&D Tax Credits

Thirty-eight states have enacted an R&D tax credit.²³ The majority of the states appear to use the federal definitions for credit eligibility and follow the federal formula for establishing a base time period.

Some states allow the tax credit to be taken only against their state income tax, while others allow it to be taken against a variety of state tax liabilities. Also, some states offer the highest tax credit rate to R&D activities done in conjunction with university partners, while others make no distinction. Five states²⁴ offer refundable tax credits, meaning those states remit to eligible businesses the excess difference between their taxes owed and the amount of R&D tax credit they earned.

¹⁶ 26 USC sec. 41(b).

¹⁷ 26 USC sec. 41(d).

¹⁸ 26 USC sec. 41(c).

¹⁹ 26 USC sec. 41 (g).

²⁰ Internal Revenue Service, Statistics of Income Division. Retrievable at <http://www.irs.gov/taxstats/article/0,,id=164402,00.html>. (last visited May 24, 2011)

²¹ Ibid.

²² The most recent extension was accomplished by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L.111 - 312, signed into law on December 17, 2010.

²³ “Iowa’s Research Activities Tax Credit Tax Credits Program Evaluation Study.” Iowa Department of Revenue. Published January 2008. Appendix/Table 6, on pages 37-41 of the report lists details of all 38 states’ R&D tax credits. See: <http://www.iowa.gov/tax/taxlaw/IDRTaxCreditEvalJan2008.pdf>. (last visited on May 24, 2011)

²⁴ Hawaii, Iowa, Louisiana, Nebraska, and New York are the states. Ibid.

Tax Credit Statistics

Internationally, the United States, in 2007, ranked first in R&D expenditures, at \$344 billion, most of it spent on defense research.²⁵ The nation's R&D expenditures as a measure of the Gross Domestic Product have remained stable over the last several years at around 2.6 percent, which ranks seventh internationally.²⁶ Many nations offer a version of R&D tax credits, which are considered an important economic-development tool.²⁷

According to research²⁸ compiled by the Alliance for Science & Technology Research in America, in 2007 Florida's business R&D ranked 17th in the nation, totaling less than two percent of the U.S. total, but private- and public-sector R&D affiliated with state universities ranked in the top 10 nationally, based on 2006 statistics.

Proposed Changes

The bill creates s. 220.194, F.S., which authorizes a R&D tax credit against state corporate income taxes. The tax credit is 10 percent of the difference between the current tax year's research and development expenditures and the average of R&D expenditures over the previous four tax years. However, if the business has existed fewer than four years, then the credit amount is reduced by 25 percent for each year the business or predecessor corporation did not exist.

Definitions

- "Base amount" means the average of the business enterprise's qualified research expenses in this state allowed under 26 U.S.C., s. 41 for the four taxable years preceding the taxable year for which the credit is determined. The qualified research expenses taken into account in computing the base amount shall be determined on a basis consistent with the determination of qualified research expenses for the taxable year.
- "Business enterprise" means any corporation as defined in s. 220.03, F.S. which meets the definition of a target industry business as defined in s. 288.106, F.S.
- "Qualified research expenses" mean research expenses qualifying for the credit under 26 U.S.C., s. 41 for in-house research expenses incurred in this state or contract research expenses incurred in this state. The term does not include research conducted outside this state or research expenses that do not qualify for a credit under 26 U.S.C. s. 41.

²⁵ "Briefing Note on the United States." Organisation for Economic and Co-operation and Development's Science, Technology and Industry Scoreboard 2007. <http://www.oecd.org/dataoecd/19/11/39695454.pdf>. (last visited on May 24, 2011)

²⁶ Organisation for Economic and Co-operation and Development's Fact Book for 2009. <http://oberon.sourceoecd.org/vl=5806526/cl=18/nw=1/rpsv/factbook/07/01/01/index.htm>. (last visited on May 24, 2011)

²⁷ "2010 Global Survey of R&D Tax Incentives," prepared by Deloitte and published in January 2011. http://www.nam.org/~media/C917926074BE4CE8A4E7AF2C017D67A2/Global_RD_Survey_Final.pdf. (last visited on May 24, 2011)

²⁸ The Alliance for Science & Technology Research in America, 2010 report. http://www.usinnovation.org/state/pdf_cvd/CVD10FloridaR&D.pdf. (last visited on May 24, 2011)

Tax Credit

The state tax credit taken in any taxable year may not exceed 50 percent of the company's remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled have been applied.

Any unused credits may be carried forward by the business that originally earned them for up to 5 years following the year in which the qualified research expenses were incurred.

The maximum amount of research and development credits that may be approved by DOR during any calendar year is \$9 million. Applications may be filed with DOR on or after March 20th for qualified research expenses incurred within the preceding calendar year, and credits shall be granted in the order in which completed applications are received.

Recalculation of Credit Amount

The bill provides that if the amount of qualified research expenses is reduced as a result of federal audit or examination, the credit granted under s. 220.196, F.S., must be recalculated. The taxpayer will need to file an amended return for all affected years, and will be responsible to pay DOR the difference between the initial credit amount taken and the recalculated credit amount with interest.

Rules

The bill permits DOR to adopt rules related to its administration of this program, including, but not limited to, rules prescribing forms, application procedures and dates, and notification or other procedures for the sale or assignment of a credit. DOR may also establish guidelines for making an affirmative showing of credit and any evidence needed to substantiate a claim for credit under this section.

The bill has an effective date of July 1, 2011, for tax years beginning on or after January 1, 2012.

Entertainment Industry Financial Incentive Program

Current Situation

The Office of Film and Entertainment (OFE) currently administers the Entertainment Industry Financial Incentive Program, which awards transferrable tax credits for certain expenditures associated with film, television, and digital media productions. Generally, the credits are 20 percent of qualified expenditures, with additional amounts available in certain circumstances. Sections 288.1254 and 288.1258, F.S., govern the administration of this incentive program.

The aggregate amount of tax credits authorized is \$53.5 million for FY 2010-11, \$74.5 million for fiscal year 2011-12, and \$38 million for each of FY 2012-13, 2013-14 and 2014-15. Any portion of the maximum annual amount of tax credits that is not certified as of the end of a fiscal year shall be carried forward and made available for certification during the following 2 fiscal years. If the total amount of certified credits applied for in any particular fiscal year exceeds the aggregate amount of credits authorized, such excess must be treated as having been applied for on the first day of the next fiscal year in which credits remain available for allocation. Tax credits may not be claimed against tax liability for any tax period beginning before July 1, 2011,

regardless of when the credits are awarded. Any tax credits awarded to a certified production company may be carried forward for a maximum of 5 years from the date of the award.

Relevant Terms

Production

Production means a theatrical or direct-to-video motion picture; a made-for-television motion picture; visual effects or digital animation sequences produced in conjunction with a motion picture; a commercial; a music video; an industrial or educational film; an infomercial; a documentary film; a television pilot program; a presentation for a television pilot program; a television series, including, but not limited to, a drama, a reality show, a comedy, a soap opera, a telenovela, a game show, an awards show, or a miniseries production; or a digital media project by the entertainment industry. Also, one season of a television series is considered one production. The term does not include a weather or market program; a sporting event; a sports show; a gala; a production that solicits funds; a home shopping program; a political program; a political documentary; political advertising; a gambling-related project or production; a concert production; or a local, regional, or Internet-distributed-only news show, current-events show, pornographic production, or current-affairs show. A production may be produced on or by film, tape, or otherwise by means of a motion picture camera; electronic camera or device; tape device; computer; any combination of the foregoing; or any other means, method, or device now used or later adopted.

Production Expenditures

Production expenditures are costs of tangible and intangible property used and services performed primarily and customarily in production, including preproduction and postproduction, excluding costs for development, marketing, and distribution.

Qualified Expenditures

Qualified expenditures are production expenditures incurred in Florida by a qualified production for goods purchased, leased from, or services provided by a vendor or supplier in this state that is registered with the Department of State or DOR and has a physical location with at least one legal Florida resident employed at that location. Also included are salary, wages, and other compensation to legal residents of Florida, up to a maximum of \$400,000 per resident.

Qualified Production

"Qualified production" means a production in Florida meeting all of the requirements of the incentive program. The term does not include a production in which, for the first two years of the incentive program, less than 50 percent, and thereafter, less than 60 percent, of the positions that make up its production cast and below-the-line production crew, or, in the case of digital media projects, less than 75 percent of such positions, are filled by legal residents of this state, or by students enrolled full-time in a film-and-entertainment-related course of study at an institution of higher education in this state. Legal residency is demonstrated by a valid Florida driver's license or other state-issued identification. A qualified production also does not include a production that contains obscene content.

Qualified Production Company

A qualified production company is a corporation, LLC, partnership, or other legal entity engaged in one or more productions in this state.

Application Procedure, Approval Process and Program Requirements

Program Application

A qualified production company producing a qualified production in this state may submit an application to OFE no earlier than 6 months before the first date production expenses are incurred in Florida.

Certification

OFE is required to review the application and determine whether it contains all the required information. If so, the OFE qualifies the applicant and recommends to OTTED that the applicant be certified for the maximum tax credit award amount. OTTED must then reject the recommendation or certify the maximum recommended tax credit award, if any, to the applicant and to the executive director of DOR.

Verification of Actual Qualified Expenditures

OFE will verify the actual qualified expenditures of a certified production prior to awarding tax credits. The verification process requires that:

- A certified production must submit data substantiating each qualified expenditure to an independent certified public accountant licensed in this state after production ends, and after making all of its qualified expenditures.
- The accountant must conduct a compliance audit, at the certified production's expense, to substantiate each qualified expenditure and submit the results as a report, along with the required substantiating data to OFE.
- OFE must review the accountant's submittal and report to OTTED the final verified amount of actual qualified expenditures made by the certified production.
- OTTED must determine and approve the final tax credit award amount to each certified applicant based on the final verified amount of actual qualified expenditures. The final amount of tax credit award must not exceed the maximum tax credit award amount certified by OFE.

Queues

There are currently three separate categories, or "queues," of productions eligible for the tax credit.

General Production Queue

- Ninety-four percent of tax credits authorized in any state fiscal year must go to this queue.
- A qualified production that demonstrates a minimum of \$625,000 in qualified expenditures is eligible for tax credits equal to 20 percent of its actual qualified expenditures, up to a maximum of \$8 million in credits.

- A qualified production spanning multiple state fiscal years may combine qualified expenditures from such fiscal years to satisfy the \$625,000 threshold.
- Certain off-season productions are eligible for an additional five percent tax credit
- A qualified high-impact television series is allowed first position in this queue.

Commercial and Music Video Queue

- Three percent of tax credits authorized in any state fiscal year must go to this queue.
- The credit is 20 percent of qualified expenditures, up to a maximum of \$500,000, if:
 - A minimum of \$100,000 in qualified expenditures per commercial or music video; and
 - A total of \$500,000 in qualified expenditures.
- Surplus tax credits remaining in this queue at the end of the fiscal year rollover into the new fiscal year under the general production queue.

Independent and Emerging Media Production Queue

- Three percent of tax credits authorized in any state fiscal year must go to this queue.
- Excludes commercials, infomercials and music videos.
- Any qualified production, excluding commercials, infomercials, or music videos, that demonstrates at least \$100,000, but not more than \$625,000, in total qualified expenditures is eligible for tax credits equal to 20 percent of its actual qualified expenditures.

Tax credits

Cap

The aggregate amount of tax credits currently authorized is \$53.5 million for fiscal year 2010-11, \$74.5 million for fiscal year 2011-12, and \$38 million for each of fiscal years 2012-13, 2013-14 and 2014-15.

Election and Distribution of Tax Credits

Upon award of a tax credit by OTTED, a certified production company must make an irrevocable election to apply the credit against sales and use taxes (ch. 212, F.S.), corporate income taxes (ch. 220, F.S.), or a combination of the both. The election is binding upon any distributee, successor, transferee, or purchaser.

Tax Credit Carryforward

Any tax credits awarded to a certified production company may be carried forward for a maximum of five years from the date of the award.

Transfers

A certified production company may transfer its tax credits only once. Sales tax credits can be transferred to only one entity, but corporate income tax credits can be transferred to up to four entities, in the same taxable year. The transferee is subject to the same rights and limitations as

the certified production company awarded the tax credit, except that the transferee may not sell or otherwise transfer the tax credit.

Additional Credit

“Family-friendly” productions meeting certain specified criteria are eligible for an additional five percent tax credit. There is also an “off season” incentive program where a feature film, independent film, or television series or pilot which films 75 percent or more of its principal photography days from June 1 through November 30 is eligible for an additional five percent tax credit. Further, an off-season certified production that does not complete 75 percent of principal photography due to a disruption caused by a hurricane or tropical storm may not be disqualified from eligibility for the additional five percent credit as a result of the disruption.

Revocation or forfeiture of tax credits

OTTED may revoke or modify any written decision qualifying, certifying, or otherwise granting eligibility for tax credits if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits. A determination by DOR as a result of an audit by DOR or from information received from the OFE, that an applicant received tax credits to which the applicant was not entitled is grounds for forfeiture of previously claimed and received tax credits. Tax credits purchased in good faith are not subject to forfeiture unless the transferee submitted fraudulent information in the purchase or failed to meet the requirements.

Program Results

As of March 2011, OFE had either awarded or certified to 117 productions, \$226.7 million in tax credits out of a total of \$242 million available over five years. Of that amount, 59 percent (\$134.2 million) was awarded or certified for high impact television series, 12 percent (\$26.2 million) was to digital media projects and video games, and 18 percent (\$41.9 million) was to feature films.²⁹ Geographically, the majority of credits were for productions in southern Florida, with 72 percent (\$163.4 million) of the credits going to productions in one of Miami-Dade, Broward, Palm Beach, St. Lucie, Monroe, or Charlotte counties.³⁰

Proposed Changes

Definitions

The definition of “qualified expenditures” is clarified to exclude rebilled goods or services from out-of-state vendors. A definition of “qualified production facility” is provided. To qualify, a facility where film and television productions have regularly occurred for a period of at least a year must include a soundstage of greater than 7800 square feet. A definition of “qualified digital media production facility” is provided to mean a facility where data processing, visualization, and sound synchronization technologies are regularly applied for the production of qualified digital media projects or the digital animation components of qualified productions.

²⁹ Office of Film and Entertainment Presentation to the Finance and Tax Committee, Florida House of Representatives, March 17, 2011.

³⁰ Data from the Office of Film and Entertainment as of March 1, 2011. The report is on file with staff of the Finance and Tax Committee, Florida House of Representatives.

Additional Tax Credits

The bill creates three new bonus tax credit programs. Productions that spend at least 85 percent of their qualified expenditures in an “underutilized region” receive an additional five percent tax credit on their qualified expenditures. The bill subdivides Florida into five regions for the purposes of awarding this bonus: North, Central East, Central West, Southeast, and Southwest.³¹ The bill provides a procedure to determine which regions are underutilized. Using data available as of the first day of each fiscal year, the Office of Film and Entertainment will calculate two ratios. A “regional tax credit ratio” is calculated for each region, which is the ratio of tax credits awarded in that region plus credits certified but not yet awarded to ongoing productions in that region to the total tax credits awarded plus credits certified but not yet awarded to ongoing productions statewide. A “regional population ratio” is calculated for each region as the ratio of the population of that region to the population of the state as a whole. Any region where the regional tax credit ratio is lower than the regional population ratio is designated as underutilized for that fiscal year. Based on current population estimates and tax credit awards and certifications to date, all regions except the Southeast would be classified as underutilized.

Additionally, the bill provides that any production can receive an additional 15 percent credit on those qualified expenditures that are wages, salary, or other compensation paid to students currently enrolled in film and entertainment related programs at an accredited institution of higher learning in the state of Florida. The additional 15 percent is also available for employees hired within 12 months of graduating from such a program.

Finally, the bill creates a production facility usage credit. Any production for which 50 percent or more of its principal photography takes place at a qualified production facility or any digital media project or digital animation component for which 50 percent or more of its qualified expenditures are related to a qualified digital media production facility³² is eligible for an additional five percent credit on qualified expenditures.

General Queue Priority Treatment

Currently, high impact television series are automatically awarded first position in the general production queue. The bill broadens this preferential treatment to include digital media projects, but it also provides thresholds for when high impact television series or digital media projects are granted first position. A high impact television series will only automatically move to the front of the queue if less than 25 percent of total tax credits awarded to date plus credits certified but not yet awarded were for high impact television series. A similar provision, with the threshold at 20 percent, governs if digital media projects are granted first position. If both thresholds are met, between a high impact series granted first position and a digital media project also granted first

³¹ With the North region consisting of Alachua, Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Okaloosa, Putnam, Santa Rosa, St. Johns, Suwannee, Taylor, Union, Wakulla, Walton, and Washington counties.

The Central East region consisting of Brevard, Flagler, Indian River, Lake, Okeechobee, Orange, Osceola, Seminole, St. Lucie, and Volusia counties.

The Central West region consisting of Citrus, Hernando, Hillsborough, Manatee, Marion, Polk, Pasco, Pinellas, Sarasota and Sumter counties.

The Southwest region consisting of Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, and Lee counties.

The Southeast region consisting of Broward, Martin, Miami-Dade, Monroe, and Palm Beach counties.

³² See definitions above.

position, queue placement will be on a first come, first served basis. These new provisions only apply to tax credits available for certification and award on or after July 1, 2011. In addition to those changes to queue priority, the bill would also prohibit any television program from being placed in the general production queue if more than 25 percent of totals credits awarded on or after July 1, 2010, were awarded to high impact television series.

Application Process

The bill makes two modifications to the application process. High impact television series are allowed to apply for no more than two successive seasons of credits even if the second season has not been picked up by a network. The second season's qualified expenditure amounts shall be based on the current season's estimated qualified expenditures.

Productions in the General Production and Commercial and Music video queues must establish verification of funding within 90 days of submitting their program application. Productions that fail to do so will have their applications denied.

Funding

The maximum amount of tax credits available for fiscal years 2012-13 through 2014-15 is increased from \$38 million per year to \$42 million per year.

Transferability of Tax Credits

This bill grants the initial transferee of credits created through this program an additional one-time transfer.

Reporting

OFE will also be required to provide an estimate of full time equivalent positions created by each production that received credits pursuant to s. 288.1254, F.S., in their annual report to the legislature.

These changes take effect July 1, 2011.

Enterprise Zones

Current Situation

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 59 enterprise zones.

Designation Process

Sections 290.001-016, F.S., authorize the creation of enterprise zones and establish criteria and goals for the program. Prior to submitting an application for an enterprise zone, a local government body must determine that an area:

- Has chronic extreme and unacceptable levels of poverty, unemployment, physical deterioration, and economic disinvestment;

- Needs rehabilitation or redevelopment for the public health, safety, and welfare of the residents in the county or municipality; and
- Can be revitalized through the inducement of the private sector.

OTTED is responsible for approving applications for enterprise zones, and also approves changes in enterprise zone boundaries when authorized by the Florida Legislature. As part of the application process for an enterprise zone, the county or municipality in which the designation will be located also is responsible for creating an Enterprise Zone Development Agency and an enterprise zone development plan.

As outlined in s. 290.0056, F.S., an Enterprise Zone Development Agency is required to have a board of commissioners of at least eight, and no more than 13, members. The agency has the following powers and responsibilities:

- Assisting in the development, implementation and annual review of the zone and updating the strategic plan or measurable goals;
- Identifying ways to remove regulatory burdens;
- Promoting the incentives to residents and businesses;
- Recommending boundary changes;
- Working with nonprofit development organizations; and
- Ensuring the enterprise zone coordinator receives annual training and works with Enterprise Florida, Inc.

Pursuant to s. 290.0057, F.S., an enterprise zone development plan (or strategic plan) must accompany an application. At a minimum this plan must:

- Describe the community's goal in revitalizing the area;
- Describe how the community's social and human resources—transportation, housing, community development, public safety, and education and environmental concerns—will be addressed in a coordinated fashion;
- Identify key community goals and barriers;
- Outline how the community is a full partner in the process of developing and implementing this plan;
- Describe the commitment from the local governing body in enacting and maintaining local fiscal and regulatory incentives;
- Identify the amount of local and private resources available and the private/public partnerships;
- Indicate how local, state, and federal resources will all be utilized;
- Identify funding requested under any state or federal program to support the proposed development; and
- Identify baselines, methods, and benchmarks for measuring success of the plan.

Available Incentives

Florida's enterprise zones qualify for various state and local government-provided incentives. Examples of local incentives include: utility tax abatement, reduction of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.

Available state sales tax incentives for enterprise zones include:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain building materials, up to \$5,000 or 97 percent of the tax paid.
- Business Equipment Used in Enterprise Zones: Provides a refund for sales taxes paid on the purchase of certain equipment, up to \$5,000 or 97 percent of the tax paid.
- Rural Enterprise Zone Jobs Credit against Sales Tax: Provides a sales and use tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.
- Urban Enterprise Zone Jobs Credit against Sales Tax: Provides a sales and use tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.
- Business Property Used in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain business property, up to \$5,000 or 97 percent of the tax paid on such property, which is used exclusively in an enterprise zone for at least three years.
- Community Contribution Tax Credit: Provides 50 percent sales tax refund for donations made to local community development projects.
- Electrical Energy Used in an Enterprise Zone: Provides 50 percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy.

Available state corporate income tax incentives for enterprise zones include:

- Rural Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.
- Urban Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.
- Enterprise Zone Property Tax Credit: Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
- Community Contribution Tax Credit: Provides a 50 percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects.

OPPAGA Report on Enterprise Zones

The Office of Program Policy Analysis and Government Accountability released a report in January 2011 finding that most enterprise zone activity occurs in a few counties. The report also found that program participation remains relatively low in most enterprise zones, which limits the progress toward achieving the legislative goals of revitalizing distressed areas and increasing employment of area residents. The report made several recommendations related to the viability of the program, suggesting that the Legislature could:

1. Encourage more participation by lowering incentive eligibility thresholds;
2. Focus on job creation by eliminating all incentives except jobs tax credits;
3. Suspend the program for a year;

4. Repeal the program entirely; or
5. Allow it to sunset under current law in 2015.³³

REDI and RACECS

The Rural Economic Develop Initiative (REDI) was created by the Florida Legislature to encourage and align critical state agency participation and investment around important rural issues and opportunities.³⁴ In order to strengthen the regional wage and tax base in rural regions of the state, the Initiative facilitates the location and expansion of major economic development projects in rural communities. The initiative is operated by OTTED and involves the participation of all state and regional agencies to assist in meeting the needs of the rural areas.

Within REDI, the Governor may designate up to three Rural Areas of Critical Economic Concern (RACEC).³⁵ Most rural counties have been categorized into one of three RACECs: the North Central, the Northwest, and the South Central. RACECs are defined by OTTED based on measures of economic interdependence among the rural counties in each of the three geographic regions. A RACEC designation establishes each region as a priority assignment for REDI agencies and allows the Governor, through REDI, to waive criteria for certain economic development incentives including, but not limited to the Qualified Target Industry Tax Refund Program, the Quick Response Training Program, the Rural Job Tax Credit program and certain transportation projects.³⁶ RACEC counties in each region also partner in creating catalyst sites that will attract key businesses.

Proposed Changes

The bill provides authority to a governing body of a jurisdiction which nominated an application for an enterprise zone that is no larger than 12 square miles and that includes a portion of a state designated as a RACEC to apply to OTTED to expand the boundary of the enterprise zone by up to three square miles. The four current enterprise zones that are potentially affected are: Columbia (EZ-1202), Pahokee (EZ-5001), South Bay (EZ-5002), and Suwannee (EZ-6101).

The bill also provides authority to Martin County to apply to OTTED for designation of an enterprise zone of up to 10 square miles. The bill requires that Martin County exclude residential condominiums from benefiting from state enterprise zone incentives unless prohibited by law. If OTTED approves the application, OTTED will determine the initial effective date of the enterprise zone.

The above changes take effect January 1, 2012.

The bill also provides authority to Lake County to apply to OTTED for designation of an enterprise zone of up to 10 square miles. If OTTED approves the application, OTTED will determine the initial effective date of the enterprise zone.

³³ Report no. 11-01-Few Businesses Take Advantage of Enterprise Zone Benefits; the Legislature Could Consider Several Options to Modify the Program, January 2011. Office of Program Policy Analysis and Government Accountability. Report on file with the Finance & Tax Committee.

³⁴ Section 288.0656, F.S.

³⁵ Section 288.0656(7)(a)-(c), F.S.

³⁶ Section 288.0656(7)(a), F.S.

The bill also provides authority to the City of Palm Bay to apply to OTTED for designation of an enterprise zone of up to five square miles. The City of Palm Bay reports it has a population of over 100,000.³⁷ If OTTED approves the application, OTTED determines the initial effective date of the enterprise zone.

These changes take effect July 1, 2011.

Sales Tax Holiday

Current Situation

Current law imposes a six percent tax on the retail sale of tangible personal property,³⁸ which includes books, clothing, footwear, wallets, bags, school supplies, and computers.

In addition, county governments may impose discretionary sales surtaxes (e.g., indigent care and trauma center surtax, county public hospital surtax, school capital outlay surtax).³⁹ County discretionary sales surtaxes (commonly called “local option sales taxes”) apply to all transactions in the county which are subject to the state sales tax.⁴⁰

History of Sales Tax Holidays

Since 1998, the Legislature has enacted nine temporary periods (commonly called “sales tax holidays”) during which certain clothing, footwear, books and school supply items were exempted from the state sales tax and county discretionary sales surtaxes.⁴¹

The length of the exemption periods has varied from three to 10 days. The type and value of exempt items has also varied. Clothing and footwear has always been exempted. In seven of the nine holidays such items valued at \$50 or less were exempted. Twice, items valued at \$100 or less were exempt. Books valued at \$50 or less were included in the most recent five exempt periods. Schools supplies valued at \$10 or less were included in the most recent six holidays. The following table summarizes the history of the “back to school” sales tax holidays:

Tax Information Publications

Since 2004, DOR has published a Tax Information Publication (TIP) for each sales tax holiday.⁴² A TIP provides detailed information about the sales tax holiday, including instructions and specific examples, for dealers who collect the tax.

Proposed Changes

The bill establishes a three day sales tax holiday beginning August 12, 2011, at 12:01 a.m. and ending at 11:59 p.m. August 14, 2011. During the sales tax holiday, the following items that cost \$75 or less would be exempt from the state sales tax and county discretionary sales surtaxes:

³⁷ City of Palm Bay website, <http://www.palmbayflorida.org/about/history.html> (last visited on May 24, 2011).

³⁸ Sections 212.02(19) and 212.05(1)(a)1.a., F.S.

³⁹ Section 212.055, F.S.

⁴⁰ Section 212.054(2)(a), F.S.

⁴¹ Chapters 98-341, 99-229, 2000-175, 2001-148, 2004-73, 2005-271, 2006-63, 2007-144, and 2010-93, L.O.F.

⁴² See Florida Department of Revenue, *2004 Sales Tax Holiday*, TIP# 04A01-05 (June 10, 2004); *2005 Sales Tax Holiday*, TIP# 05A01-02 (June 1, 2005), *2006 Sales Tax Holiday*, TIP# 06A01-04 (June 9, 2006), and *2007 Sales Tax Holiday*, TIP# 07A01-07 (June 15, 2007).

- Clothing (defined as an “article of wearing apparel intended to be worn on or about the human body,” but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags); and

During the sales tax holiday, the bill exempts “school supplies” that cost \$15 or less per item. “School supplies” are defined as pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, calculators, binders, lunch boxes, construction paper, markers, folders, and poster board.

The bill provides that the sales tax holiday would not apply to sales within a theme park, entertainment complex, public lodging establishment, or airport. Thus, sales in these locations would be subject to taxation during the sales tax holiday.

The bill gives DOR authority to adopt emergency rules. The bill also provides an appropriation of \$218,905 in nonrecurring General Revenue funds from state General Revenue to DOR for the administration of the sales tax holiday.

These changes will take effect upon becoming law.

Florida Defense Support Task Force

Current Situation

Defense related spending is estimated to be responsible for nearly \$60 billion of the state's gross domestic product. The state is also home to many of the nation's leading defense companies and a large pool of highly skilled workers and veterans. Florida's top ten contractors alone employ more than 28,000 Floridians. In 2010, Florida companies generated \$12.8 billion in Department of Defense Contract awards, ranking the state 4th in the nation.⁴³

Proposed Changes

The bill creates the Florida Defense Support Task Force in s. 288.987, F.S. The task force’s mission is to make recommendations in order to:

- Prepare the state to effectively compete in any federal base realignment and closure action,
- Support the state’s position in research and development related to or arising out of military missions and contracting, and
- Improve the state’s military-friendly environment for service members, military dependents, military retirees, and businesses that bring military and base-related jobs to the state.

⁴³ Enterprise Florida, Inc. Florida Industry Clusters: Homeland Security/Defense. http://www.eflorida.com/Homeland_Security_Defense.aspx?id=324 (last visited on May 24, 2011)

The task force will have 13 members consisting of the Governor or his or her designee and four members appointed by the Governor, President of the Senate, and Speaker of the House, respectively. The task force members will represent defense-related industries or communities that host military bases and installations.

OTTED will contract with the task force for the expenditure of appropriated funds which can be used for economic and product research and development, joint planning with host communities to accommodate military missions and prevent base encroachment, advocacy on the state's behalf with federal civilian and military officials, assistance to school districts in providing a smooth transition for large numbers of additional military-related students, job training and placement for military spouses in communities with high proportions of active duty military personnel, and promotion of the state to military and related contractors and employers. The bill provides OTTED with a \$5 million nonrecurring General Revenue appropriation for the Florida Defense Support Task Force.

These changes take effect on July 1, 2011.

Incentive Programs

Current Situation

Current law provides that total refund payments to a qualified business are capped at \$5 million for both the Qualified Targeted Industry Tax Refund Program and the Qualified Defense Contractor and Spaceflight Business Tax Refund Program.

Proposed Changes

The bill raises the cap for each program from \$5 million to \$7 million.

Appropriations

Proposed Changes

The bill provides four appropriations of nonrecurring General Revenue funds to OTTED for the following:

- \$15 million for the Innovation Incentive Fund program,
- \$42 million for the Quick Action Closing Fund program,
- \$10 million for the Institute for the Commercialization of Public Research, and
- \$5 million for the Florida Defense Support Task Force.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Spaceflight Business

Staff estimates that the spaceflight provisions will have a negative nonrecurring impact on state General Revenue of \$10 million in FY 2015-16 through 2017-18.

Emergency Excise Tax

The Revenue Estimating Conference (REC) estimates that the emergency excise provisions will have an insignificant (i.e., less than \$50,000) negative impact on state General Revenue.

Single Sales Factor Apportionment

The REC estimates single sales factor apportionment provisions will not have a cash impact on General Revenue or state trust fund revenue in FY 2011-12 but a recurring negative \$7.5 million impact beginning in 2013-14.

Brownfield Rehabilitation Tax Credits

Based on 2011 estimates of similar provisions, staff estimates the brownfield rehabilitation tax credit provisions will have a negative recurring impact to state General Revenue of \$3 million beginning in FY 2011-12.

Research and Development Credits

Based on 2011 estimates of similar provisions, staff estimates the research and development credit provisions will have a negative \$3 million impact to state General Revenue in FY 2011-12 and a negative \$9 million recurring state General Revenue impact beginning in FY 2012-13.

Entertainment Industry Financial Incentive Program

Based on 2011 estimates of similar provisions, it is likely the entertainment industry financial incentive program provisions will have a negative nonrecurring impact to General Revenue of \$3.6 million for each FY 2012-13, 2013-14, and 2014-15.

Enterprise Zones

The REC and staff estimate the enterprise zone provisions will have a negative impact of \$0.2 million on state General Revenue in FY 2011-12, with a recurring negative \$0.4 million impact on General Revenue and a recurring negative insignificant impact on state trust fund revenue.

Sales Tax Holiday

The REC estimates the sales tax holiday provisions will have a negative \$25.6 million impact on state General Revenue and a negative insignificant impact on state trust fund revenue in FY 2011-12.

2. Expenditures:

Sales Tax Holiday

The bill provides an appropriation of \$218,905 in nonrecurring General Revenue funds from state General Revenue to DOR for the administration of the the sales tax holiday.

Appropriations

The bill also provides an appropriation to OTTED through the State Economic Enhancement and Development Trust Fund for a total of \$72 million in nonrecurring General Revenue funds to be used for economic development purposes, as follows:

- \$15 million for the Innovation Incentive Fund program,
- \$42 million for the Quick Action Closing Fund program,
- \$10 million for the Institute for the Commercialization of Public Research, and
- \$5 million for the Florida Defense Support Task Force.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Entertainment Industry Financial Incentive Program

Based on 2011 estimates of similar provisions, it is likely the program will have a negative nonrecurring impact to local governments of \$0.4 million for each of fiscal years 2012-13, 2013-14, and 2014-15.

Enterprise Zones

The REC estimates a negative insignificant recurring impact on local government revenue beginning in FY 2011-12.

Sales Tax Holiday

The REC estimates a negative nonrecurring \$5.7 million impact on local government revenues in FY 2011-12.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is designed to encourage economic development in Florida through a combination of tax incentives and appropriations totaling more than \$100 million in FY 2011-12.

D. FISCAL COMMENTS:

None.