

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 922

INTRODUCER: Senator Gruters

SUBJECT: Economic Development

DATE: January 22, 2020

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Reeve | McKay | CM | Fav/CS |
| 2. | | | ATD | |
| 3. | | | AP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

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

The bill takes effect July 1, 2020.

II. Present Situation:

Qualified Target Industry Tax Refund Program

The Qualified Target Industry (QTI) Tax Refund Program was created by the Legislature in 1994 to encourage the creation and retention of high-quality, high-wage jobs by providing state tax refunds to eligible businesses creating jobs in certain target industries. Tax refunds awarded through the program are determined by the number of jobs created, the average annual wages

paid, and the location of the eligible business. Under current law, the tax refund program will expire on June 30, 2020.¹

In order to be eligible to receive a tax refund, a business must apply to be certified as a qualified target industry business by the Department of Economic Opportunity (DEO). Businesses must be engaged in one of Florida's target industries as identified by DEO and Enterprise Florida, Inc. (EFI).² The current qualified targeted industries are aviation and aerospace; life sciences; manufacturing; defense and homeland security; information technology; financial and professional services; logistics and distribution; research and development; cleantech; and corporate headquarters.³

Additionally, a business applying for certification as a qualified target industry business must meet the following requirements:

- A business's project must create at least 10 new jobs, or create a net employment increase of at least 10 percent in the case of an expansion of an existing business. The DEO is authorized to waive this requirement for a business in a rural community or an enterprise zone;⁴
- New jobs must pay an annual average wage of at least 115 percent of the average private sector wage in a business's area or the statewide private sector average wage. The DEO is authorized to waive this requirement for a business in a brownfield area, a rural city, a rural community, or an enterprise zone.⁵ Jobs created by a manufacturing project in any location within the state may pay an annual average wage of at least 100 percent of the average private sector wage in a business's area;⁶ and
- A business must receive a local funding match, paid by public or private sources, equal to 20 percent of the annual tax refund. The existence of local financial support must be confirmed by a resolution adopted by the governing body of the county or municipality where the business is located.⁷ A business located in a brownfield area, a rural city, or a rural community is authorized to exercise an exemption from the local financial support requirement, but the business would not be eligible for more than 80 percent of the total tax refunds originally allowed.⁸

Under s. 288.106(3)(d), tax refunds may be claimed for one or more of the following taxes paid:

- Sales and use tax;
- Corporate income taxes;
- Insurance premium taxes;
- Intangible personal property taxes;

¹ Section 288.106(9), F.S.

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

³ Enterprise Florida, Inc., *Qualified Targeted Industries for Incentives*, available at https://www.enterpriseflorida.com/wp-content/uploads/SI_Targeted_Industries.pdf (last visited Jan. 22, 2020).

⁴ Section 288.106(4)(b)2., F.S.

⁵ Section 288.106(4)(b)1.a., F.S.

⁶ Section 288.106(4)(b)1.b., F.S.

⁷ Section 288.106(4)(a)10., F.S.

⁸ Section 288.106(2)(k), F.S.

- Ad valorem taxes;
- Certain state communication services taxes; and
- Excise taxes on documents.

Qualified target industry businesses are eligible to receive a tax refund equal to \$3,000 per newly created job. If a business is located in a rural community or an enterprise zone, the refund amount is increased to \$6,000 per created job.⁹ Qualified target industry businesses may also be eligible for the following additional tax refund payments under s. 288.106(3)(b):

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

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

In the event of negative economic conditions in a business's industry, a named hurricane or tropical storm, or specific acts of terrorism, a qualified target industry business may request an economic recovery extension. The request must provide evidence detailing how the aforementioned conditions have prevented a business from carrying out the terms of its tax refund agreement. Upon approval, the DEO will renegotiate a business's tax refund agreement. Agreements may not be extended for more than 2 years, and a business that receives an extension may not receive a tax refund for the period covered by the extension. Requests for an economic recovery extension were permitted in lieu of any tax refund claim scheduled between January 1, 2009, and July 1, 2012.¹⁴

In response to the Deepwater Horizon oil spill, the Legislature enacted a special incentive within the QTI program to encourage business investment in the counties disproportionately affected by

⁹ Section 288.106(3)(b)1., F.S.

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

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

¹² Section 288.106(3)(c), F.S.

¹³ Section 288.095(3)(a), F.S.

¹⁴ Section 288.106(5)(b)1., F.S.

the disaster.¹⁵ DEO was authorized to waive any or all wage or local financial support requirements between July 1, 2011, and June 30, 2014, for a business located in Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton, or Wakulla County. During this period, a qualified target industry business that relocated all or part of its business to one of such counties from another state was also eligible for a tax refund of \$6,000 per job created.¹⁶

To date, 1,360 businesses have been approved to participate in the QTI program and over \$260 million has been awarded in tax refunds. According to the DEO, the 321 businesses actively participating in the program in the 2018-2019 fiscal year created 7,462 jobs in total and exceeded the number of total new jobs expected to be created by 3,184.¹⁷

After June 30, 2020, a business may not become certified as a qualified target industry business. Tax refund agreements already in existence before then will remain in effect.

Hurricane Michael

Hurricane Michael made landfall in the Florida Panhandle as a Category 5 Hurricane on October 10, 2018. The storm, the fourth most powerful hurricane to hit the country, remained at category 3 strength as it traveled into southwest Georgia. Storm surge and 160 mph winds caused destruction and losses of almost \$7 billion along the hurricane's path.¹⁸ In the year following the storm, FEMA has provided \$1.9 billion in federal funds for housing assistance, disaster loans, public assistance grants, and hazard mitigation grants.¹⁹ Businesses have been slow to reopen, largely due to a shortage of workers worsened by the lack of affordable housing in the area.

Public Swimming and Bathing Facilities

Chapter 514, F.S., governs public swimming and bathing facilities. The Department of Health (DOH) and county health departments are jointly responsible for administering the permitting, safety, and sanitation regulations for public swimming pools set forth in this chapter.²⁰

¹⁵ Chapter 2011-142, s. 150, Laws of Fla.

¹⁶ Section 288.106(8), F.S.

¹⁷ Florida Department of Economic Opportunity, *2019 Incentives Report*, 7-8, available at http://www.floridajobs.org/docs/default-source/reports-and-legislation/2018-2019-annual-incentives-report---final.pdf?sfvrsn=c2a340b0_2 (last visited Jan. 22, 2020).

¹⁸ "A year after Michael, Florida community still in crisis" *Associated Press*, October 9, 2019, available at <https://apnews.com/Od260a9ec44545458ab1f25b6f969a5a> (last visited Jan. 22, 2020).

¹⁹ Federal Emergency Management Agency, *Florida Hurricane Michael*, available at <https://www.fema.gov/disaster/4399> (last visited Jan. 22, 2020).

²⁰ Section 514.011, F.S., defines "public swimming pool" or "pool" as a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool shall mean a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.

Anyone wishing to construct, develop, or modify a public swimming pool in Florida must submit an application for an operating permit before filing an application for a building permit under s. 553.79, F.S. Applications must include:²¹

- A description of the structure, its appurtenances, and its operation;
- A description of the source or sources of water supply, and the amount and quality of water available and intended to be used;
- The method and manner of water purification, treatment, disinfection, and heating;
- The safety equipment and standards to be used; and
- A copy of the final inspection from the local enforcement agency, as defined in s. 553.71, F.S.

The DOH is authorized to establish a schedule of fees for plan approval and permitting.²² Operating permits must be renewed annually and may be transferred from one name or owner to another.²³

Public swimming pools must be equipped with an anti-entrapment system or device pursuant to s. 514.0315, F.S.

The DOH is authorized to deny an application for a permit, suspend or revoke a permit, or impose an administrative fine upon the failure to comply with the provisions of ch. 514, F.S. The DOH may, at any reasonable time, enter any and all parts of a public swimming pool to examine and investigate the pool's sanitary and safety conditions.²⁴ Any public swimming pool that presents a significant risk to public health by failing to meet sanitation and safety standards is declared a public nuisance. Such nuisances may be abated in an action brought by the DOH or a county health department.²⁵

If a county health department is staffed with qualified engineering personnel, the DOH shall assign a county health department the functions of: (1) reviewing applications and plans for the construction, development, or modification of public swimming pools, (2) conducting inspections, and (3) issuing all permits. County health departments are also responsible for the routine surveillance of water quality in all public swimming pools.²⁶

III. Effect of Proposed Changes:

CS/SB 922 amends certain provisions in s. 288.106, F.S., regarding economic recovery extensions and additional tax refunds for qualified businesses in Disproportionally Affected Counties. The bill also creates a provision in Chapter 514, F.S., regarding public swimming and bathing facilities, to authorize a supervisory exemption for certain surf pools.

²¹ Sections 514.03 and 514.031, F.S.

²² Section 514.033, F.S.

²³ Sections 514.031(2) and (3), F.S.

²⁴ Section 514.04, F.S.

²⁵ Section 514.06, F.S.

²⁶ Section 514.025, F.S.

Qualified Target Industry Tax Refund Program

Under current law, a qualified target industry business was authorized to submit a request for an economic recovery extension in lieu of any tax refund claim scheduled to be submitted between January 1, 2009, and July 1, 2012. The bill amends s. 288.106(5)(b)4, F.S., which would allow a qualified target industry business located in a county affected by Hurricane Michael to apply for an economic recovery extension in lieu of any tax refund claim scheduled to be submitted after January 1, 2021, but before July 1, 2023. A business that receives an economic recovery extension may not receive a tax refund for the period covered by the extension, which is not to exceed 2 years.

Section 288.106(8), F.S., authorized the DEO to waive any or all wage or local financial support requirements between July 1, 2011, and June 30, 2014, for a business located in a “Disproportionally Affected County.” During this period, a qualified target industry business relocating all or part of its business to a “Disproportionally Affected County” from another state was also eligible for a tax refund of \$6,000 per job created. The bill would replace all references to a “Disproportionally Affected County” in s. 288.106, F.S., with a “county affected by Hurricane Michael” and update the period during which requirements can be waived and businesses can receive an additional tax refund to between July 1, 2020, and June 30, 2023. DEO’s decision to waive wage or financial support eligibility requirements would also have to be stated in writing. The bill would increase the additional tax refund to \$10,000 per created job and entitle a business that “relocates from another state to, or establishes its business or expands its existing business in, a county affected by Hurricane Michael” to such a refund. The bill defines a “county affected by Hurricane Michael” as Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Wakulla, Walton, or Washington County.

Section 189.033, F.S., relating to independent special district services in disproportionately affected counties, refers to the definition of “disproportionally affected county” found in s. 288.106(8), F.S. The bill removes this cross-reference and provides that, as used in s. 189.033, F.S., the term “disproportionally affected county” retains its original definition of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton, or Wakulla County.

The bill removes the tax refund program’s expiration date of June 30, 2020, and would permanently reauthorize the program.

Swimming and Bathing Facilities

The bill creates a provision in ch. 514, F.S., regarding public swimming and bathing facilities, to authorize a supervisory exemption for certain surf pools. Under the bill, a surf pool that is larger than 4 acres and certified by the DEO as part of a new development with an investment value of at least \$100 million would be exempt from supervision under ch. 514, F.S., provided that it is permitted by a local government pursuant to a special use permit process. Through the special use permitting process, the local government asserts regulatory authority over the construction of the surf pool, and in consultation with the Department of Health, establishes the conditions for the surf pool’s operation, water quality, and necessary lifesaving equipment. These provisions do not affect the DOH’s ability to enter any and all premises of public swimming pools to examine

sanitary and safety conditions, or its authority to seek an injunction to restrain the operation of a surf pool if it presents significant public health risks.

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

Effective Date

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article III, Section 6 of the State Constitution requires every law to “embrace but one subject and matter properly connected therewith.” This single subject requirement is intended to prohibit logrolling, in which multiple unrelated measures are combined in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.²⁷ An act may be as broad as the Legislature chooses, provided the matters included in the act have a natural or logical connection.²⁸ The requirement is violated if an act is written to accomplish separate and disassociated objects of legislative intent.²⁹ The Florida Supreme Court has opined that the single subject clause contains three requirements. First, each law shall embrace only one subject. Second, the law may include any matter that is properly connected with the subject. The third requirement, related to the first, is that the subject shall be briefly expressed in the title.³⁰

²⁷ *Santos v. State*, 380 So.2d 1284 (Fla. 1980).

²⁸ *Chenoweth v. Kemp*, 396 So.2d 1122 (Fla. 1981).

²⁹ *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).

³⁰ *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2004).

The subject matter which should be considered when determining whether an act embraces a single subject is the subject expressed in the title.³¹ The test is whether the bill is designed to accomplish separate objectives which have no natural or logical connection to each other.³² An act that contains subjects designed to accomplish separate and disassociated objects of legislative effort violates single subject.³³

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

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

The bill increases the amount of tax refunds that certain qualified target industry businesses in specified counties are eligible to receive. However, the annual funding cap of \$35 million, pursuant to s. 288.095(3)(a), F.S., would still apply. This could decrease the total number of tax refunds the DEO is able to award through the program.

B. Private Sector Impact:

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

C. Government Sector Impact:

The Department of Economic Opportunity and the Department of Health have not yet analyzed the bill’s potential impact.

VI. Technical Deficiencies:

None.

³¹ *Ex parte Knight*, 41 So. 786 (Fla. 1906).

³² *Board of Pub. Instruction v. Doran*, 224 So.2d 693 (Fla. 1969).

³³ *State ex rel. Landis v. Thompson*, 163 So. 270, 283 (Fla. 1935).

VII. Related Issues:

The bill gives the DEO new authority to “certify” whether a surf pool larger than 4 acres is part of a new development with an investment value of at least \$100 million. The bill does not specify the process for this certification.

VIII. Statutes Affected:

This bill substantially amends sections 288.106 and 514.0115 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Commerce and Tourism on January 21, 2020:**

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

B. Amendments:

None.