HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1373 Qualified Defense Contractor Tax Refund Program

SPONSOR(S): Economic Expansion & Infrastructure, Altman & others

TIED BILLS: **IDEN./SIM. BILLS:** SB 2666

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Economic Development	7 Y, 0 N	West	Croom
2) Economic Expansion & Infrastructure Council	14 Y, 0 N, As CS	West	Tinker
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1373 expands s. 288.1045, F.S., relating to the Qualified Defense Contractor tax refund program (QDC) to allow for space flight businesses or entities with space flight contracts to qualify for QDC tax refunds.

The CS provides definitions for the terms “space flight business,” “space flight business contract,” “new space flight contract,” and “consolidation of space flight contract.”

The CS amends the amount of tax refund available to qualified applicants from $5,000 per job to match the tiered system used to award tax refunds under the Qualified Targeted Industry Tax Refund Program.

The CS further amends the QDC statute by:

- Allowing local governments to use donated or discounted land and buildings to qualify as local match;
- Simplifying the application process;
- Removing the annual report requirement from s. 288.1045, F.S.; and
- Delaying the sunset provision from 2010 to 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The CS may increase the workload of the Office of Tourism, Trade, and Economic Development and Enterprise Florida, Inc., with respect to administering the QDC program by including space flight businesses as industry types eligible for QDC tax refunds.

Ensure Lower Taxes – The CS will provide QDC tax refunds to space flight businesses or entities with space flight contracts that qualify for QDC tax refunds.

B. EFFECT OF PROPOSED CHANGES:

Background

The Qualified Defense Contractor tax refund program[1] was created in 1993 by Executive Order No. 93-118, signed by Governor Chiles on April 13, 1993. The order found at the time that:

- The federal government was in the midst of major post-Cold War cuts in the nation's defense industry;
- By 1997, the federal defense budget was projected to decline by more than 42 percent, in real terms, from 1985 levels; and
- The federal cuts included a 30 percent reduction in military personnel, base closures, and elimination of numerous defense contracts for goods and services, with employment losses in Florida of up to 55,000 by 1997.

The QDC program targets the following types of projects:

- Projects involving the consolidation of a Department of Defense (DOD) contract for manufacturing, assembling, fabricating, research, development or design with a duration of 2 or more years, including homeland security contracts, where one or more of the qualified business's facilities from inside or outside Florida are consolidated into one or more facilities in Florida;
- Projects involving the conversion of defense production jobs to nondefense production jobs; and
- Projects involving the reuse of defense-related facilities for manufacturing, assembling, fabricating, research, development or design with a duration of 2 or more years where the project is located in a port or a facility occupied by a business that had a DOD contract or was occupied by any branch of the Armed Forces within 1 year of the contract for reuse of the facility being executed.

In order to qualify for certification as a qualified defense contractor, applicants must establish, in a written agreement, that the jobs created will pay an estimated annual average wage of 115 percent of the average wage in the area where the project is located. If the project is the consolidation of a DOD contract, then the project must result in a net increase of at least 25 percent in the number of jobs at the facility in Florida or the addition of at least 80 jobs at the applicant's facilities in Florida. If converting defense production jobs to nondefense production jobs, the applicant must show a net increase in

[1] s. 288.1045, F.S.

nondefense employment at the facilities in Florida. The reuse of a defense-related facility must result in the creation of at least 100 jobs at the Florida based facility.

The DOD contract cannot allow the business to include costs of relocation or retooling in its base as allowable costs under a cost-plus, or similar contract. A business unit of the applicant must have derived at least 60 percent of its gross receipts in Florida from DOD contracts in the last fiscal year, and must have derived an average of at least 60 percent of its gross receipts in Florida from DOD contracts over the five years preceding the date an application is submitted.

To qualify for an award, a project must receive a 20 percent match of the total award from the local government. An exemption for the 20 percent local match is available to applicants that have projects located in a county designated by the Rural Economic Development Initiative, however, projects that forego the 20 percent match will only receive 80 percent of the total refund.

After determining that the applicant meets the requirements of the program, the Office of Tourism, Trade, and Economic Development (OTTED) will review each application based on expected contributions to the state; the economic benefits of the jobs created or retained by the project; the amount of capital investment to be made by the applicant in the state; the local commitment and support for the applicant and project; the impact of the project on the local community; the dependence of the local community on the defense industry; the impact of any tax refunds granted as a result of the project; and the length of the project or the long-term commitment to the state resulting from the project.

A qualified applicant may claim refunds from one or more of the taxes they pay, including sales and use, documentary stamp, emergency excise, ad valorem, corporate income, insurance premium, and intangible personal property taxes.

A qualified applicant may receive a refund of up to $5,000 times the number of jobs created or retained under the terms of the refund agreement entered into with OTTED. Recently, OTTED and Enterprise Florida, Inc. (EFI), have issued awards similar to the way QTI awards are issued. A qualified applicant receives $3,000 per job created that pays 115 percent of the average private sector wage, $4,000 per job created that pays 150 percent of the average private sector wage, and $5,000 per job created that pays 200 percent of the average private sector wage. A business may only receive 25 percent of the total refunds authorized in the refund agreement in any fiscal year or no more than $2.5 million. In total, no more than $7.5 million in tax refunds may be provided to a single project.

If the business does not meet its job creation objectives, it may still receive a prorated share of the refund minus a five percent penalty if it creates at least 80 percent of the jobs and pays at least 90 percent of the wages and meets the other requirements of its performance agreement.

Effect of Proposed Changes

The CS expands the QDC statute to allow for space flight businesses or entities with space flight contracts to qualify for QDC awards. Section 288.1045(1), F.S., is amended to expand the definition of "applicant" to include space flight businesses or entities with space flight business contracts and the definition of "project" is expanded to include space flight business contracts.

<u>Tax Refund Amounts</u>

The CS changes the amount of tax refund available to qualified applicants to match the tiered system used to award tax refunds for the Qualified Targeted Industry tax refund program (QTI). The language that allowed for qualified QDC applicants to receive up to $5,000 per job specified in the tax refund agreement is deleted and replaced with the following:

- Qualified applicants will receive $3,000 per job specified in the QDC contract;

- Projects in rural counties or enterprise zones will qualify for $6,000 per job specified in the QDC contract;
- An additional $1,000 per job bonus is available when jobs pay 150 percent of the average private sector wage in the area; and
- An additional $2,000 per job bonus is available when jobs pay 200 percent of the average private sector wage in the area.

Tax refunds may be used to reduce liabilities relating to corporate income taxes, sales and use taxes, intangible personal property taxes, emergency excise taxes, excise taxes paid on documents, ad valorem taxes, and state communication services taxes.

The CS removes two requirements relating to the application process: (1) removes the provision requiring a notarized signature on the application form; and (2) removes the provision requiring an applicant to estimate the amount of tax refunds claimed for each year. The QDC program is the only program to require a notarized signature on forms. Estimating tax credits claimed for each year can be confusing and difficult to calculate. Removing these requirements will simplify the application process.

The CS provides that the new space flight business contract or the consolidation of a space flight business contract must result in net increases in space flight business employment at the applicant's facility in this state.

The CS allows the Department of Revenue to share confidential refund information with OTTED relating to Chapter 202, communication service taxes.

The CS amends the QDC statute to allow local governments to use donated or discounted land and buildings to count against the 20 percent local match requirement.

The CS removes the requirement from s. 288.1045, F.S., that OTTED submit an annual report relating to the QDC program. OTTED is required to submit an annual report on incentives pursuant to s. 288.095, F.S., so the reporting language in s. 288.1045, F.S. was duplicative in nature.

The CS delays the sunset provision of the QDC program from June 30, 2010 to June 30, 2014.

C. SECTION DIRECTORY:

Section 1: Amends subsection (1), paragraphs (b) and (f) of subsection (2), subsections (3), (4), and (5), paragraphs (d) and (e) of subsection (6), and subsection (8) of s. 288.1045, F.S. to allow for space flight businesses to qualify for QDC awards.

Section 2: Amends paragraph (f) of subsection (2) of s. 14.2015, F.S. relating to the powers and duties of OTTED, to include space flight business contractors for the QDC program.

Section 3: Amends paragraph (k) of subsection (8) of s. 213.053, F.S., to include a confidentiality provision for space flight business contractors utilizing the QDC program.

Section 4: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The CS may have a positive fiscal impact to local governments with jurisdiction over the area where space flight businesses attracted to the state are located.

2. Expenditures:

   To receive an award, local governments must support the project by paying 20 percent of the total award or providing an equivalent value in land and buildings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Space flight businesses that qualify will receive a tax refund based on the number of jobs created. Tax refunds can qualify against corporate income taxes, sales and use taxes, intangible personal property taxes, excise taxes paid on documents, ad valorem taxes, and state communication services taxes.

D. FISCAL COMMENTS:

There is no appropriation in this CS. Section 288.095(3), F.S., provides that OTTED can award tax credits, up to $35 million in a fiscal year, for contracts under QDC or the Qualified Targeted Industry (QTI) programs. Historically, not all businesses scheduled to receive a payment in a fiscal year meet the necessary performance requirements. Therefore, funding levels are typically well below the award amount and consequently the $35 million cap. In fiscal year 2007-08, QDC was funded at $118,750; this amount includes $23,750 in matching funds provided by local governments and $95,000 from General Revenue. In fiscal year 2007-08, QTI was funded at $14.7 million. If the businesses that qualify under this legislation are more likely to meet contractual obligations and performance requirements, then there may be a fiscal impact to the state. However, the statutory cap will continue to apply and the program will continue to be subject to annual legislative appropriations.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This CS does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This CS does not reduce the percentage of state tax shared with counties or municipalities. This CS does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR:

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On Thursday March 20, 2008, the Committee on Economic Development reported the bill favorably with two technical amendments.

Amendment 1:

- Replaced the term, “qualified defense contractor” with “qualified applicant” so that space flight businesses and entities with space flight contracts can participate in the QDC program.

Amendment 2:

- Added chapter 202 and deleted chapter 221, F.S., from the requirement of DOR to share payment information with OTTED.

On Tuesday April 8, 2008, the Economic Expansion and Infrastructure Council reported the bill favorably with a strike-all amendment as a Council Substitute. The CS:

- Changed the timeframe for when space flight contracts may qualify for a QDC award to mirror the effective date of the bill, preventing the bill from allowing applications to be certified retroactively;
- Reinserted language relating to emergency excise taxes that was removed by the original bill; and
- Inserted language that allows the Department of Revenue to share confidential refund information with OTTED relating to Chapter 202, communication service taxes.