

HB 7109

2010

1 A bill to be entitled
2 An act relating to the tax refund program for qualified
3 target industry businesses; amending s. 288.106, F.S.;
4 providing legislative findings and declarations; revising
5 and providing definitions; establishing a schedule for the
6 Office of Tourism, Trade, and Economic Development to
7 review and revise the list of target industries and submit
8 a report to the Governor and Legislature; revising the
9 criteria for evaluating applications for the program;
10 requiring consideration of the state's return on
11 investment in evaluating applications for participation in
12 the program; requiring the Office of Economic and
13 Demographic Research to submit reports to the Legislature
14 evaluating the calculation of the state's return on
15 investment for the program; requiring that additional
16 provisions be included in tax refund agreements;
17 redesignating the economic-stimulus exemption as the
18 "economic recovery extension"; revising the date by which
19 qualified target industry businesses may request economic
20 recovery extensions; authorizing waiver of a requirement
21 that qualified target industry businesses annually provide
22 proof of taxes paid under certain conditions; requiring
23 the Office of Tourism, Trade, and Economic Development to
24 submit reports to the Governor and Legislature concerning
25 the failure of qualified target industry businesses to
26 complete their tax refund agreements; deleting obsolete
27 provisions; revising the date by which a target industry
28 business may be certified as qualified for the program;

Page 1 of 33

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb7109-00

HB 7109

2010

29 conforming cross-references; amending ss. 288.1089 and
 30 290.00677, F.S.; conforming provisions to changes made by
 31 the act; amending ss. 159.803, 220.191, and 288.107, F.S.;

32 conforming cross-references; providing an effective date.
 33

34 Be It Enacted by the Legislature of the State of Florida:
 35

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

38 288.106 Tax refund program for qualified target industry
 39 businesses.—

40 (1) LEGISLATIVE FINDINGS AND DECLARATIONS.—The Legislature
 41 finds that retaining and expanding existing businesses in the
 42 state, encouraging the creation of new businesses in the state,
 43 attracting new businesses from outside the state, and generally
 44 providing conditions favorable for the growth of target
 45 industries creates high-quality, high-wage employment
 46 opportunities for residents of the state and strengthens the
 47 state's economic foundation. The Legislature also finds that
 48 incentives narrowly focused in application and scope tend to be
 49 more effective in achieving the state's economic development
 50 goals. The Legislature further finds that higher-wage jobs
 51 reduce the state's share of hidden costs, such as public
 52 assistance and subsidized health care associated with low-wage
 53 jobs. Therefore, the Legislature declares that it is the policy
 54 of the state to encourage the growth of higher-wage jobs and a
 55 diverse economic base by providing state tax refunds to
 56 qualified target industry businesses that originate or expand in

57 | the state or that relocate to the state.

58 | (2)~~(1)~~ DEFINITIONS.—As used in this section:

59 | (a) "Account" means the Economic Development Incentives
60 | Account within the Economic Development Trust Fund established
61 | under s. 288.095.

62 | (b)~~(a)~~ "Authorized local economic development agency"
63 | means a ~~any~~ public or private entity, including an entity ~~those~~
64 | defined in s. 288.075, authorized by a county or municipality to
65 | promote the general business or industrial interests of that
66 | county or municipality.

67 | (c)~~(b)~~ "Average private sector wage in the area" means the
68 | statewide private sector average wage or the average of all
69 | private sector wages and salaries in the county or in the
70 | standard metropolitan area in which the business is located.

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

80 | (e)~~(d)~~ "Corporate headquarters business" means an
81 | international, national, or regional headquarters office of a
82 | multinational or multistate business enterprise or national
83 | trade association, whether separate from or connected with other
84 | facilities used by such business.

85 (f)~~(n)~~ "Director" means the Director of the Office of
 86 Tourism, Trade, and Economic Development.

87 (g)~~(f)~~ "Enterprise zone" means an area designated as an
 88 enterprise zone pursuant to s. 290.0065.

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

94 (i)~~(h)~~ "Fiscal year" means the fiscal year of the state.

95 (j)~~(i)~~ "Jobs" means full-time equivalent positions,
 96 including, but not limited to, positions obtained from a
 97 temporary employment agency or employee leasing company or
 98 through a union agreement or coemployment under a professional
 99 employer organization agreement, that result as that term is
 100 consistent with terms used by the Agency for Workforce
 101 Innovation and the United States Department of Labor for
 102 purposes of unemployment compensation tax administration and
 103 employment estimation, resulting directly from a project in this
 104 state. The term does not include temporary construction jobs
 105 involved with the construction of facilities for the project or
 106 any jobs previously included in any application for tax refunds
 107 under s. 288.1045 or this section.

108 (k)~~(j)~~ "Local financial support" means funding from local
 109 sources, public or private, that ~~which~~ is paid to the Economic
 110 Development Trust Fund and that ~~which~~ is equal to 20 percent of
 111 the annual tax refund for a qualified target industry business.
 112 A qualified target industry business may not provide, directly

HB 7109

2010

113 or indirectly, more than 5 percent of such funding in any fiscal
 114 year. The sources of such funding may not include, directly or
 115 indirectly, state funds appropriated from the General Revenue
 116 Fund or any state trust fund, excluding tax revenues shared with
 117 local governments pursuant to law.

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

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

134 (n)~~(e)~~ "Office" means the Office of Tourism, Trade, and
 135 Economic Development.

136 (o)~~(m)~~ "Project" means the creation of a new business or
 137 expansion of an existing business.

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

141 (g) "Return on investment" means the gain in state
 142 revenues as a percentage of the state's investment. The state's
 143 investment includes state grants, tax exemptions, tax refunds,
 144 tax credits, and other state incentives.

145 ~~(r) "Rural county" means a county with a population of~~
 146 ~~75,000 or fewer or a county with a population of 100,000 or~~
 147 ~~fewer which is contiguous to a county with a population of~~
 148 ~~75,000 or fewer.~~

149 (r)(s) "Rural city" means a city having with a population
 150 of 10,000 or fewer less, or a city having with a population of
 151 greater than 10,000 but fewer less than 20,000 that which has
 152 been determined by the office of ~~Tourism, Trade, and Economic~~
 153 ~~Development~~ to have economic characteristics such as, but not
 154 limited to, a significant percentage of residents on public
 155 assistance, a significant percentage of residents with income
 156 below the poverty level, or a significant percentage of the
 157 city's employment base in agriculture-related industries.

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

- 159 1. A county having with a population of 75,000 or fewer.
- 160 2. A county having with a population of 125,000 or fewer
 161 that which is contiguous to a county having with a population of
 162 75,000 or fewer.
- 163 3. A municipality within a county described in
 164 subparagraph 1. or subparagraph 2.

165
 166 For purposes of this paragraph, population shall be determined
 167 in accordance with the most recent official estimate pursuant to
 168 s. 186.901.

HB 7109

2010

169 ~~(t)-(e)~~ "Target industry business" means a corporate
170 headquarters business or any business that is engaged in one of
171 the target industries identified pursuant to the following
172 criteria developed by the office in consultation with Enterprise
173 Florida, Inc.:

174 1. Future growth.—Industry forecasts should indicate
175 strong expectation for future growth in both employment and
176 output, according to the most recent available data. Special
177 consideration should be given to businesses that export goods
178 ~~Florida's growing access to, or provide services in,~~
179 international markets and businesses that replace domestic and
180 international or to replacing imports of goods or services.

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

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

189 4. Market and resource independent.—The location of
190 industry businesses should not be dependent on Florida markets
191 or resources as indicated by industry analysis, except for
192 businesses in the renewable energy industry. ~~Special~~
193 ~~consideration should be given to the development of strong~~
194 ~~industrial clusters which include defense and homeland security~~
195 ~~businesses.~~

196 5. Industrial base diversification and strengthening.—The

HB 7109

2010

197 industry should contribute toward expanding or diversifying the
 198 state's or area's economic base, as indicated by analysis of
 199 employment and output shares compared to national and regional
 200 trends. Special consideration should be given to industries that
 201 strengthen regional economies by adding value to basic products
 202 or building regional industrial clusters as indicated by
 203 industry analysis. Special consideration should also be given to
 204 the development of strong industrial clusters that include
 205 defense and homeland security businesses.

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

209
 210 The term does ~~office, in consultation with Enterprise Florida,~~
 211 ~~Inc., shall develop a list of such target industries annually~~
 212 ~~and submit such list as part of the final agency legislative~~
 213 ~~budget request submitted pursuant to s. 216.023(1). A target~~
 214 ~~industry business may~~ not include any business ~~industry~~ engaged
 215 in retail industry activities; any electrical utility company;
 216 any phosphate or other solid minerals severance, mining, or
 217 processing operation; any oil or gas exploration or production
 218 operation; or any business ~~firm~~ subject to regulation by the
 219 Division of Hotels and Restaurants of the Department of Business
 220 and Professional Regulation. By January 1 of every 3rd year,
 221 beginning January 1, 2011, the office, in consultation with
 222 Enterprise Florida, Inc., economic development organizations,
 223 the State University System, local governments, employee and
 224 employer organizations, market analysts, and economists, shall

HB 7109

2010

225 review and, as appropriate, revise the list of such target
 226 industries and submit the list to the Governor, the President of
 227 the Senate, and the Speaker of the House of Representatives.

228 (u) ~~(p)~~ "Taxable year" means taxable year as defined in s.
 229 220.03(1)(y).

230 (3) ~~(2)~~ TAX REFUND; ELIGIBLE AMOUNTS.—

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

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

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

HB 7109

2010

253 | annual average wage of at least 200 percent of the average
 254 | private sector wage in the area.

255 | (c) A qualified target industry business may not receive
 256 | refund payments of more than 25 percent of the total tax refunds
 257 | specified in the tax refund agreement under subparagraph
 258 | (5)~~(4)~~(a)1. in any fiscal year. Further, a qualified target
 259 | industry business may not receive more than \$1.5 million in
 260 | refunds under this section in any single fiscal year, or more
 261 | than \$2.5 million in any single fiscal year if the project is
 262 | located in an enterprise zone. A qualified target industry
 263 | business may not receive more than \$5 million in refund payments
 264 | under this section in all fiscal years, or more than \$7.5
 265 | million if the project is located in an enterprise zone. ~~Funds~~
 266 | ~~made available pursuant to this section may not be expended in~~
 267 | ~~connection with the relocation of a business from one community~~
 268 | ~~to another community in this state unless the Office of Tourism,~~
 269 | ~~Trade, and Economic Development determines that without such~~
 270 | ~~relocation the business will move outside this state or~~
 271 | ~~determines that the business has a compelling economic rationale~~
 272 | ~~for the relocation and that the relocation will create~~
 273 | ~~additional jobs.~~

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

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

280 | a. Corporate income taxes under chapter 220.

HB 7109

2010

- 281 b. Insurance premium tax under s. 624.509.
- 282 2. Receive refunds from the account for the following
- 283 taxes due and paid by that business after entering into the
- 284 agreement:
- 285 a. Taxes on sales, use, and other transactions under
- 286 chapter 212.
- 287 b. Intangible personal property taxes under chapter 199.
- 288 c. Emergency excise taxes under chapter 221.
- 289 d. Excise taxes on documents under chapter 201.
- 290 e. Ad valorem taxes paid, as defined in s. 220.03(1).
- 291 f. State communications services taxes administered under
- 292 chapter 202. This provision does not apply to the gross receipts
- 293 tax imposed under chapter 203 and administered under chapter 202
- 294 or the local communications services tax authorized under s.
- 295 202.19.

296

297 ~~The addition of state communications services taxes administered~~

298 ~~under chapter 202 is remedial in nature and retroactive to~~

299 ~~October 1, 2001. The office may make supplemental tax refund~~

300 ~~payments to allow for tax refunds for communications services~~

301 ~~taxes paid by an eligible qualified target industry business~~

302 ~~after October 1, 2001.~~

303 (e)-(d) However, a qualified target industry business may

304 not receive a refund under this section for any amount of

305 credit, refund, or exemption previously granted to that business

306 for any of the such taxes listed in paragraph (d). If a refund

307 for such taxes is provided by the office, which taxes are

308 subsequently adjusted by the application of any credit, refund,

309 or exemption granted to the qualified target industry business
 310 other than as provided in this section, the business shall
 311 reimburse the account for the amount of that credit, refund, or
 312 exemption. A qualified target industry business shall notify and
 313 tender payment to the office within 20 days after receiving any
 314 credit, refund, or exemption other than one provided in this
 315 section.

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

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

325 1. Is liable for repayment of the amount of the refund to
 326 the account, plus a mandatory penalty in the amount of 200
 327 percent of the tax refund which shall be deposited into the
 328 General Revenue Fund.

329 2. Commits ~~Is guilty of~~ a felony of the third degree,
 330 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

331 (4)(3) APPLICATION AND APPROVAL PROCESS.-

332 (a) To apply for certification as a qualified target
 333 industry business under this section, the business must file an
 334 application with the office before the business decides ~~has made~~
 335 ~~the decision~~ to locate a ~~new business~~ in this state or before
 336 the business decides ~~had made the decision~~ to expand its ~~an~~

HB 7109

2010

337 existing operations ~~business~~ in this state. The application must
338 ~~shall~~ include, but need is not be limited to, the following
339 information:

340 1. The applicant's federal employer identification number
341 and, if applicable, ~~the applicant's~~ state sales tax registration
342 number.

343 2. The proposed permanent location of the applicant's
344 facility in this state at which the project ~~is or~~ is to be
345 located.

346 3. A description of the type of business activity or
347 product covered by the project, including a minimum of a five-
348 digit NAICS code for all activities included in the project. As
349 used in this paragraph, "NAICS" means those classifications
350 contained in the North American Industry Classification System,
351 as published in 2007 by the Office of Management and Budget,
352 Executive Office of the President, and updated periodically.

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

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

362 6. The anticipated commencement date of the project.

363 7. A brief statement explaining ~~concerning~~ the role that
364 the estimated tax refunds to be requested will play in the

365 decision of the applicant to locate or expand in this state.

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

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

383 10. Any additional information requested by the office.

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

387 1.a. The jobs proposed to be created ~~provided~~ under the
388 application, pursuant to subparagraph (a)4., must pay an
389 estimated annual average wage equaling at least 115 percent of
390 the average private sector wage in the area where the business
391 is to be located or the statewide private sector average wage.
392 In determining the average annual wage, the office shall include

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

395 b. The office may waive the average wage requirement at
 396 the request of the local governing body recommending the project
 397 and Enterprise Florida, Inc. The office may waive the wage
 398 requirement ~~may only be waived~~ for a project located in a
 399 brownfield area designated under s. 376.80 or in a rural city,
 400 rural community, ~~or county~~ or ~~in an~~ enterprise zone ~~and~~ only if
 401 ~~when~~ the merits of the individual project or the specific
 402 circumstances in the community in relationship to the project
 403 warrant such action. If the local governing body and Enterprise
 404 Florida, Inc., make such a recommendation, it must be
 405 transmitted in writing, and the specific justification for the
 406 waiver recommendation must be explained. If the office ~~director~~
 407 elects to waive the wage requirement, the waiver must be stated
 408 in writing, and the reasons for granting the waiver must be
 409 explained.

410 2. The target industry business's project must result in
 411 the creation of at least 10 jobs at the ~~such~~ project and, in the
 412 case of ~~if~~ an expansion of an existing business, must result in
 413 a net increase in employment of at least 10 percent at the
 414 business. ~~Notwithstanding the definition of the term "expansion~~
 415 ~~of an existing business" in paragraph (1)(g),~~ At the request of
 416 the local governing body recommending the project and Enterprise
 417 Florida, Inc., the office may waive this requirement for a
 418 business ~~define an "expansion of an existing business"~~ in a
 419 rural community or ~~an~~ enterprise zone ~~as the expansion of a~~
 420 ~~business resulting in a net increase in employment of less than~~

421 ~~10 percent at such business~~ if the merits of the individual
 422 project or the specific circumstances in the community in
 423 relationship to the project warrant such action. If the local
 424 governing body and Enterprise Florida, Inc., make such a
 425 request, the request must be transmitted in writing, and the
 426 specific justification for the request must be explained. If the
 427 office ~~director~~ elects to grant the request, the grant must be
 428 stated in writing, and the reason for granting the request must
 429 be explained.

430 3. The business activity or product for the applicant's
 431 project must be ~~is~~ within an industry ~~or industries that have~~
 432 ~~been~~ identified by the office as a target industry business ~~to~~
 433 ~~be high-value-added industries~~ that contributes ~~contribute to~~
 434 ~~the area and~~ to the economic growth of the state and the area in
 435 which the business is located, that produces ~~produce~~ a higher
 436 standard of living for residents of this state in the new global
 437 economy, or that can be shown to make an equivalent contribution
 438 to the area's ~~area~~ and state's economic progress. ~~The director~~
 439 ~~must approve requests to waive the wage requirement for~~
 440 ~~brownfield areas designated under s. 376.80 unless it is~~
 441 ~~demonstrated that such action is not in the public interest.~~

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

447 1. Expected contributions to the state's economy,
 448 consistent with the state strategic economic development plan

449 | adopted by Enterprise Florida, Inc., ~~taking into account the~~
 450 | ~~long term effects of the project and of the applicant on the~~
 451 | ~~state economy.~~

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

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

464 | 4. The local financial commitment and support for the
 465 | project.

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

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

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

HB 7109

2010

477 the project.

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

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

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

HB 7109

2010

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

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

513 | (5)~~(4)~~ TAX REFUND AGREEMENT.—

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

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

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

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

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

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

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

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

550 (b) Compliance with the terms and conditions of the
 551 agreement is a condition precedent for the receipt of a tax
 552 refund each year. The failure to comply with the terms and
 553 conditions of the tax refund agreement results in the loss of
 554 eligibility for receipt of all tax refunds previously authorized
 555 under this section and the revocation by the office ~~director~~ of
 556 the certification of the business entity as a qualified target
 557 industry business, unless the business is eligible to receive
 558 and elects to accept a prorated refund under paragraph (6) (e)
 559 ~~(5) (d)~~ or the office grants the business an economic recovery
 560 extension ~~economic stimulus exemption~~.

HB 7109

2010

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

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

585 3. As a condition for receiving a prorated refund under
586 paragraph (6) (e) ~~(5) (d)~~ or an economic recovery extension
587 ~~economic-stimulus-exemption~~ under this paragraph, a qualified
588 target industry business must agree to renegotiate its tax

HB 7109

2010

589 refund agreement with the office to, at a minimum, ensure that
590 the terms of the agreement comply with current law and office
591 procedures governing application for and award of tax refunds.
592 Upon approving the award of a prorated refund or granting an
593 economic recovery extension ~~economic-stimulus exemption~~, the
594 office shall renegotiate the tax refund agreement with the
595 business as required by this subparagraph. When amending the
596 agreement of a business receiving an economic recovery extension
597 ~~economic-stimulus exemption~~, the office may extend the duration
598 of the agreement for a period not to exceed 2 years.

599 4. A qualified target industry business may submit a
600 request for an economic recovery extension ~~economic-stimulus~~
601 ~~exemption~~ to the office in lieu of any tax refund claim
602 scheduled to be submitted after January 1, 2009, but before July
603 1, 2012 ~~2011~~.

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

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

615 (d) The agreement must contain the following legend,
616 clearly printed on its face in bold type of not less than 10

617 | points in size: "This agreement is not ~~neither~~ a general
 618 | obligation of the State of Florida, nor is it backed by the full
 619 | faith and credit of the State of Florida. Payment of tax refunds
 620 | is ~~are~~ conditioned on and subject to specific annual
 621 | appropriations by the Florida Legislature ~~of moneys~~ sufficient
 622 | to pay amounts authorized in section 288.106, Florida Statutes."

623 | (6) ~~(5)~~ ANNUAL CLAIM FOR REFUND.—

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

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

639 | (c) The office may waive the requirement for proof of
 640 | taxes paid in future years for a qualified target industry
 641 | business that provides the office with proof that, in a single
 642 | year, the business has paid an amount of state taxes from the
 643 | categories in paragraph (3) (d) that is at least equal to the
 644 | total amount of tax refunds that the business may receive

645 through successful completion of its tax refund agreement.

646 (d)~~(e)~~ A tax refund may not be approved for a qualified
 647 target industry business unless the required local financial
 648 support has been paid into the account for that refund. If the
 649 local financial support provided is less than 20 percent of the
 650 approved tax refund, the tax refund must be reduced. In no event
 651 may the tax refund exceed an amount that is equal to 5 times the
 652 amount of the local financial support received. Further, funding
 653 from local sources includes any tax abatement granted to that
 654 business under s. 196.1995 or the appraised market value of
 655 municipal or county land conveyed or provided at a discount to
 656 that business. The amount of any tax refund for such business
 657 approved under this section must be reduced by the amount of any
 658 such tax abatement granted or the value of the land granted,~~+~~
 659 and the limitations in subsection (3) ~~(2)~~ and paragraph
 660 (4) ~~(3)~~ (e) must be reduced by the amount of any such tax
 661 abatement or the value of the land granted. A report listing all
 662 sources of the local financial support shall be provided to the
 663 office when such support is paid to the account.

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

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

671 2. The average wage paid by the business is at least 90
 672 percent of the average wage specified in the tax refund

HB 7109

2010

673 agreement, but in no case less than 115 percent of the average
674 private sector wage in the area available at the time of
675 certification, ~~or 150 percent or 200 percent of the average~~
676 ~~private sector wage~~ If the business requested the additional
677 per-job tax refund authorized in paragraph (3)-(2)(b) for wages
678 at or above the 150-percent or 200-percent level, the business
679 may request to drop to the next lowest wage threshold and the
680 corresponding tax refund amount ~~those levels~~. The prorated tax
681 refund shall be calculated by multiplying the tax refund amount
682 for which the qualified target industry business would have been
683 eligible, if all applicable requirements had been satisfied, by
684 the percentage of the average employment specified in the tax
685 refund agreement which was achieved, and by the percentage of
686 the average wages specified in the tax refund agreement which
687 was achieved.

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

699 (g)-(f) The total amount of tax refund claims approved by
700 the office director under this section in any fiscal year must

HB 7109

2010

701 not exceed the amount authorized under s. 288.095(3).

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

704 (i) ~~(h)~~ Upon approval of the tax refund under paragraphs
705 ~~(e)~~, (d), ~~and (e)~~, and (f), the Chief Financial Officer shall
706 issue a warrant for the amount specified in the written order.
707 If the written order is appealed, the Chief Financial Officer
708 may not issue a warrant for a refund to the qualified target
709 industry business until the conclusion of all appeals of that
710 order.

711 (7) ~~(6)~~ ADMINISTRATION.—

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

718 (b) To facilitate the process of monitoring and auditing
719 applications made under this section ~~program~~, the office may
720 provide a list of qualified target industry businesses to the
721 Department of Revenue, to the Agency for Workforce Innovation,
722 or to any local government or authority. The office may request
723 the assistance of those entities with respect to monitoring
724 jobs, wages, and the payment of the taxes listed in subsection
725 (3) ~~(2)~~.

726 (c) Funds specifically appropriated for ~~the tax~~ refunds
727 ~~refund program~~ for qualified target industry businesses under
728 this section may not be used by the office for any purpose other

729 than the payment of tax refunds authorized by this section.

730 (d) Beginning with tax refund agreements signed after July
 731 1, 2010, the office shall attempt to ascertain the causes for
 732 any business's failure to complete its agreement and shall
 733 report its findings and recommendations to the Governor, the
 734 President of the Senate, and the Speaker of the House of
 735 Representatives. The report shall be submitted by December 1 of
 736 each year beginning in 2011.

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

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

HB 7109

2010

757 | in accordance with its terms.

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

760 | 159.803 Definitions.—As used in this part, the term:

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

769 | Section 3. Paragraph (h) of subsection (1) of section
770 | 220.191, Florida Statutes, is amended to read:

771 | 220.191 Capital investment tax credit.—

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

773 | (h) "Qualifying project" means:

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

780 | 2. A new or expanded facility in this state which is
781 | engaged in a target industry designated pursuant to the
782 | procedure specified in s. 288.106(2)~~(t)~~~~(1)~~~~(e)~~ and which is
783 | induced by this credit to create or retain at least 1,000 jobs
784 | in this state, provided that at least 100 of those jobs are new,

785 pay an annual average wage of at least 130 percent of the
 786 average private sector wage in the area as defined in s.
 787 288.106 (2) ~~(1)~~, and make a cumulative capital investment of at
 788 least \$100 million after July 1, 2005. Jobs may be considered
 789 retained only if there is significant evidence that the loss of
 790 jobs is imminent. Notwithstanding subsection (2), annual credits
 791 against the tax imposed by this chapter shall not exceed 50
 792 percent of the increased annual corporate income tax liability
 793 or the premium tax liability generated by or arising out of a
 794 project qualifying under this subparagraph. A facility that
 795 qualifies under this subparagraph for an annual credit against
 796 the tax imposed by this chapter may take the tax credit for a
 797 period not to exceed 5 years; or

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

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

810 288.107 Brownfield redevelopment bonus refunds.—

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

812 (e) "Eligible business" means:

HB 7109

2010

813 1. A qualified target industry business as defined in s.
814 288.106 (2) ~~(1)(e)~~; or

815 2. A business that can demonstrate a fixed capital
816 investment of at least \$2 million in mixed-use business
817 activities, including multiunit housing, commercial, retail, and
818 industrial in brownfield areas, or at least \$500,000 in
819 brownfield areas that do not require site cleanup, and that
820 ~~which~~ provides benefits to its employees.

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

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

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

836 (4) PAYMENT OF BROWNFIELD REDEVELOPMENT BONUS REFUNDS.—

837 (a) To be eligible to receive a bonus refund for new
838 Florida jobs created in a brownfield area, a business must have
839 been certified as a qualified target industry business under s.
840 288.106 or eligible business as defined in paragraph (1)(e) and

841 must have indicated on the qualified target industry business
 842 tax refund application form submitted in accordance with s.
 843 288.106 (4) ~~(3)~~ or other similar agreement for other eligible
 844 business as defined in paragraph (1)(e) that the project for
 845 which the application is submitted is or will be located in a
 846 brownfield area and that the business is applying for
 847 certification as a qualified brownfield business under this
 848 section, and must have signed a qualified target industry
 849 business tax refund agreement with the office that ~~which~~
 850 indicates that the business has been certified as a qualified
 851 target industry business located in a brownfield area and
 852 specifies the schedule of brownfield redevelopment bonus refunds
 853 that the business may be eligible to receive in each fiscal
 854 year.

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

860 (5) ADMINISTRATION.—

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

HB 7109

2010

869 Section 5. Paragraph (s) of subsection (2) of section
870 288.1089, Florida Statutes, is amended to read:

871 288.1089 Innovation Incentive Program.—

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

873 (s) "Rural area" means a rural city or, rural community,
874 ~~or rural county~~ as defined in s. 288.106.

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

877 290.00677 Rural enterprise zones; special qualifications.—

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

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

HB 7109

2010

897 | businesses.

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