

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 563 Reporting Requirements for Economic Development Programs

SPONSOR(S): Rodríguez

TIED BILLS: **IDEN./SIM. BILLS:** SB 572

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Collins	West
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

House Bill 563 directs the Department of Economic Opportunity (DEO) to create a project-based reporting system that uses a model created by the Office of Economic and Demographic Research (EDR) to determine the return on investment of economic development projects that receive state incentives. In addition, the bill requires DEO to maintain a website on which to publish information regarding state-incentivized economic development projects which will be updated twice per year and be easily accessible to the public. Information included on this website will be related to specific projects receiving state incentives and include the number of new jobs associated with each project, the wages of those new jobs, the amount of capital being invested in the state as part of the project, and the amount of state tax revenue generated by the project.

The bill also requires DEO to publish timeline information regarding Quick Action Closing Fund program recipients, which detail the status of each project between the time a business submits an application to DEO and when it receives an incentive award from the state.

The bill requires project-specific information to be published on the website within 48 hours following the expiration of confidentiality provided under s.288.075, F.S. Individual businesses may request a delay in the release of specific information should prematurely releasing such information impede their ability to locate, relocate, expand, or begin its business activities in the state.

Additionally, the bill amends s. 288.075, F.S., to allow information regarding the incremental amount of taxes paid for purposes of reporting the state's per project return on investment, or the aggregate of taxes paid per incentive program to be included in the annual incentives report required under s. 288.907, F.S.

Information regarding projects completed prior to July 1, 2013 shall be compiled and published on the website by DEO no later than July 1, 2014.

The bill may have an indeterminate negative fiscal impact on state funds to establish the portal on DEO's website.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Economic Development Incentives Application and Review

Enterprise Florida, Inc. (EFI), a nonprofit public-private partnership, serves as the state's flagship economic development organization, operating under a contract with DEO.¹ EFI works with businesses and economic development partners to determine whether projects are eligible for state economic development incentives. Once the project has been vetted by EFI and it has been determined that incentives are necessary to secure a deal, an incentive package is developed and sent to DEO for further review. Once the incentive package is finalized, DEO and other appropriate state bodies issue formal approvals.

According to EDR, EFI prospectively evaluates applications for each of the state's economic development incentive programs using RIMS II multipliers, a model developed by the U.S. Department of Commerce's Bureau of Economic Analysis. EDR is required to evaluate the model used by EFI for the prospective impact analysis of all qualified target industry tax refund projects (QTI), and to report such findings every 3 years.² The model evaluated by EDR and used by EFI for the QTI tax refund program is also used across all economic development incentive programs with the exception of the Innovation Incentive Program, which is not required by law to be evaluated for "economic benefits." Innovation Incentive Program projects are required to have a break-even "return on investment" (ROI) within a 20-year period except for certain exceptions.³

In 2010, EDR published its first report⁴ on the model used by EFI to evaluate QTI projects. In this report, EDR concluded that the model being utilized by EFI was not fully in compliance with statutory requirements that EFI's model evaluate ROI, defined as the gain in state revenues as a percentage of the state's investment. EDR determined that the model used by EFI needed changes in order to move incrementally closer to a true ROI. Enterprise Florida and EDR worked to redefine certain variables for the impact analysis in the interim period. In the report, EDR noted that a new ROI model will ultimately be required. Since the publication of the EDR report in 2010, the term "economic benefits" has replaced "return on investment" for the purposes of evaluating QTI in state statute.⁵ The next EDR report is due September 1, 2013.

Economic Development Incentives

Florida's competitive economic development incentives utilize tax refunds and performance-based cash awards. To receive an incentive, businesses must first enter into a contract with DEO which outlines performance expectations such as specific job creation goals, a schedule by which new jobs are to be created, and an average wage to be paid for the new jobs. After the business has commenced the project and begun hiring, it will submit an annual claim form and documentation of taxes paid. The state verifies the claim data with the company's quarterly reemployment assistance and payroll reports and verifies that tax documentation. If the state confirms the contractual obligations have been met and any required local financial support has been received, a refund check is sent to the business. Businesses not filing claims or not meeting the performance obligations of its contract are terminated from the

¹ Section 288.901, F.S.

² Section 288.106(4)(c)2., F.S.

³ Section 288.1089, F.S.

⁴ Office of Economic and Demographic Research, Tax Refund Program for Qualified Target Industry Businesses: A review of the methodology and model used in determining the state's return on investment, (9/1/2010), available at:

<http://edr.state.fl.us/Content/special-research-projects/economic/ROI.pdf>, (last visited on February 8, 2013)

⁵ Section 288.005, F.S.

program. Only QTI businesses are eligible to receive pro-rated refunds in cases where contracted job or wage requirements are not fully met.

Businesses receiving economic development incentive grant awards must also enter into performance-based contracts with the state, which outlines specific milestones for performance and payment. All of the state's incentive grant awards contain penalties for non-performance, and the state may actively pursue the recapture of funds in cases where a business has failed to meet the terms of its contract.

The state has developed numerous economic development programs designed to incentivize private sector investment for the purpose of encouraging job growth. DEO awarded over \$111 million in tax refund and grant awards through existing incentive programs in FY 2012.⁶ Economic development tax credit and grant award incentives include, but are not limited to the following:

- Qualified Target Industry Program⁷
- Qualified Defense and Space Contractor Program⁸
- Brownfield Bonus Program⁹
- Manufacturing and Spaceport Investment Incentive¹⁰
- High Impact Performance Incentive¹¹
- Quick Action Closing Fund¹²
- Innovation Incentive Program¹³
- Quick Response Training Program¹⁴

Proposed Changes

The bill establishes an economic development incentive review and publication process to be implemented by DEO for the purpose of creating greater transparency and accountability within the state's economic development activities.

Economic Development Project Award Publication

DEO will maintain a website for the purpose of publishing information related to economic development incentives awarded to Florida businesses on a project-by-project basis. Within 48 hours of a project's award date, DEO will publish the following information on this website:

General Information

- Program or programs through which the state investment is being made;
- The maximum potential value of the state investment in the project;
- The target industry or industries¹⁵ involved, and any high impact sectors¹⁶ implicated by the project;
- The county or counties that will be substantially impacted by the project; and

⁶ Enterprise Florida, Inc., 2012 Annual Incentives Report, (2012), available at: http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf, (last visited on February 11, 2013).

⁷ Section 288.106, F.S.

⁸ Section 288.1045, F.S.

⁹ Section 288.107, F.S.

¹⁰ Section 288.1083, F.S. The Manufacturing and Spaceport Investment Incentive was created in 2010 to serve as a means of relieving some of the sales tax burden on existing manufacturers that were not increasing their productive output enough to be eligible for the standard manufacturing and equipment sales tax exemption. This is a temporary program, with refunds available through Fiscal Year 2012.

¹¹ Section 288.108, F.S.

¹² Section 288.1088, F.S.

¹³ Section 288.1089, F.S.

¹⁴ Section 288.047, F.S. Quick Response Training Program awards are made directly to third parties on behalf of eligible businesses to be used for employer-driven training programs designed to assist new value-added businesses and to provide existing businesses the necessary training for expansion. This program is managed by Workforce Florida, Inc., a division within DEO.

¹⁵ Section 288.106(2)(q), F.S.

¹⁶ Section 288.108(6)(a), F.S.

- The total value of local financial commitment and support for the project.

Beneficiary Business Information

- The location of the beneficiary business's headquarters, or, if a subsidiary, the headquarters of its parent company;
- The number of permanent full-time employees employed by the beneficiary business, including, the number of permanent full-time employees of the parent company (if applicable), and whether the beneficiary business qualifies as a small business under s. 288.703, F.S.;
- The North American Industry Classification System (NAICS) classifications of the type of business activities or products directly generated by the project;
- The project award date;
- The expected duration of the project; and
- The anticipated date when the beneficiary business will claim the last state investment.

Project Performance Goals

- The incremental direct jobs attributable to the project, identifying both the number of jobs to be generated and retained by the project, in addition to the lowest, highest and median annual wages associated with these jobs;
- The net indirect and induced incremental jobs in the state to be generated by the project, including the lowest, highest and median annual wages associated with these jobs, as well as a brief, but specific description of the methodology used to calculate these figures;
- The incremental direct capital investment in the state to be generated by the project;
- The net indirect and induced incremental capital investment in the state to be generated by the project, as well as a brief, but specific description of the methodology used to calculate these figures;
- The incremental direct tax revenue to the state to be paid by the beneficiary business; and
- The net indirect and induced incremental tax revenue to the state to be generated by the project, as well as a brief, but specific description of the methodology used to calculate these figures.

Other Publication Requirements

The bill requires DEO to review the information on this website on June 30 and December 31 of each year to ensure previously published information is up to date, to publish the total value of state investment disbursed to date for each project, and to publish verified results regarding each project's performance goals. Projects are not required to provide information needed for publication until the next scheduled update occurring at least 60 days after the project award date.

The bill also requires DEO to publish the names of the beneficiary businesses and a copy of incentive contracts or agreements entered into by the department. This information must be published within 48 hours after the expiration of the period of confidentiality provided under s. 288.075, F.S, and may be redacted to protect the beneficiary business from disclosure of information that remains confidential or exempt by law.

Within 48 hours after submitting any report of findings and recommendations concerning a business's failure to complete a QTI tax refund agreement, DEO must publish the report.

DEO is required by the bill to compile a list of economic development projects completed prior to July 1, 2013, and to publish information related to those prior to July 1, 2014.

Quick Action Closing Fund Timeline

The bill also requires that on June 30 and December 31 of each year, DEO will publish a timeline detailing the progress of each project funding under the state's Quick Action Closing Fund (QAC). DEO is responsible for publishing the date(s) upon which each of the following actions occurred:

- DEO received a completed QAC application;
- DEO's QAC application recommendation was transmitted to the Governor for approval or disapproval;
- The Legislature, where required by s. 288.1088, F.S., acted to approve or change the project;
- DEO and the beneficiary business entered into a contract for payment through QAC;
- EFI validated the beneficiary business's performance; and
- Funds were released to the beneficiary business.

Request to Delay Publication of Information

Prior to publication of information pertaining to a beneficiary business, DEO will provide the beneficiary business with an opportunity to request a delay in publication of some of the information required to be published under this bill. The beneficiary business must identify the information it wishes to prevent from being published, specify how long it requests the publication of the information to be delayed, and describe the circumstances necessitating the delay. Acceptable circumstances allowing for delayed publication of information may include those in which the premature revelation of business activities threatens the ability of the beneficiary business to purchase real property at fair market prices. DEO will evaluate and issue a finding regarding the beneficiary business's request to delay release of information to determine if the premature disclosure of the information would negatively affect the ability of the beneficiary business to locate, relocate, expand, or begin its business activities in the state. DEO will only delay publication of information which has been deemed justified by the finding, and will only delay its release for a period also deemed justified by the finding.

It is a second degree misdemeanor for any employee of DEO who violates the provisions of this bill.

Return on Investment Methodology

The bill directs the Office of Economic and Demographic Research (EDR) to annually establish a methodology for calculation of the state's return on investment, including formulas for indirect and induced job creation, incremental capital investment, and increased tax revenue. DEO will publish and use EDR's methodology and formulas as soon as they are available.

Amending Economic Development Confidentiality Statutes

The bill amends s. 288.075, F.S. to allow for the incremental amount of taxes paid to be included in the state's per project return on investment publications.

B. SECTION DIRECTORY:

Section 1: Creates s. 288.076, F.S. related to reporting requirements for economic development incentive programs.

Section 2: Amends s. 288.075, F.S. to limit applicability of an exemption from public records requirements to allow the disclosure of certain information pertaining to taxes paid by businesses participating in economic development incentive programs.

Section 3: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate negative fiscal impact on state funds to establish the portal on DEO's website.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill allows DEO to adopt rules regarding the administration of this section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not use the terms "department" and "economic development agency" consistently. To clarify, "the department" would be a recognized term.

The definition of "project" is vague, broad, and as currently drafted encompasses, "any business undertaking by a beneficiary business." The definition should be changed to be consistent with s. 288.106(2)(m), F.S. The word "value" is used several times in the bill but it not defined and appears to be vague. Adding a definition or using a more specific term would clarify the bill's intent.

The bill does not use the terms "permanent full-time employees" and "jobs" consistently. The language as drafted is ambiguous and needs to be clarified.

As used in the bill, "business" refers to the "beneficiary business." This should be clarified.

Confidentiality language in the bill should be amended to avoid conflict with s. 288.075, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES