HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/SB 406	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Appropriations, Gardiner and others	117 **Y's**	0 **N's**
COMPANION BILLS:	CS/HB 563, HB 641, HB 5001, CS/CS/HB 7007, CS/CS/CS/SB 306, CS/SB 572, CS/CS/SB 1024 and SB 1500	**GOVERNOR'S ACTION:**	Pending

SUMMARY ANALYSIS

CS/SB 406 is an omnibus economic development package, containing the provisions listed below.

Oversight of Economic Development Incentives:
- Directs the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability to evaluate economic development programs;
- Directs EDR to determine the economic benefits of each economic development program on a 3 year review schedule;
- Directs the Department of Economic Opportunity (DEO) to maintain a website for publishing information relating to economic development incentive programs awarded to Florida businesses on a project-by-project basis;
- Directs DEO to publish on its website Quick Action Closing Fund project information and the average time it takes to receive and approve completed applications; and
- Consolidates reports and reporting dates for various economic development programs prepared by DEO, Enterprise Florida, Inc., the Office of Film and Entertainment, and Space Florida.

Brownfields: The bill limits where a project can be located in order to receive a sales tax refund for building materials and the brownfield redevelopment bonus refund for jobs created.

Cigarette Tax Distribution: The bill delays the sunset date of the 1 percent cigarette tax distribution to the Sanford-Burnham Medical Research Institute from June 30, 2021, to June 30, 2033.

Rotary Aircraft Repair and Maintenance Tax Exemption: The bill reduces the maximum takeoff weight threshold for rotary wing aircraft to qualify for an exemption from sales and use tax on the parts and labor used in repair and maintenance.

Natural Gas Used in Fuel Cells Tax Exemption: The bill exempts from the sales and use tax natural gas used in non-combustion fuel cells to generate electricity.

Spring Training Franchise Retention: The bill creates a sales tax distribution to local governments for the purpose of constructing or renovating Major League Baseball spring training facilities and provides administrative procedures and certification requirements for that distribution.

Qualified Target Industry and Qualified Defense and Space Contractor Tax Refunds: The bill removes the individual recipient lifetime limit for both the Qualified Target Industry and Qualified Defense and Space Contractor tax refund programs.

Enterprise Zone Tax Credit: The bill provides that the cap on the corporate income tax credit for property taxes paid on certain improvements made in enterprise zones applies at each eligible location rather than for each business entity.

Sales Tax Holiday: The bill creates a 3 day sales tax holiday beginning August 2, 2013, exempting certain clothing and shoes valued at $75 or less, school supplies valued at $15 or less, and personal computers for non-commercial use valued at $750 or less.

New Markets Development Program: The bill increases the total amount of tax credits that can be awarded under the New Markets Development Program by $15 million and the annual amount by $3 million.

The bill will have an aggregate fiscal impact in fiscal year 2013-14 of negative $28.2 million (negative $7.0 million recurring) to state government and negative $6.3 million (positive $0.1 million recurring) to local governments. The bill also includes an appropriation of $0.2 million in fiscal year 2012-13 to the Department of Revenue to administer the sales tax holiday.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Economic Development Incentives Evaluation

Current Situation

Economic Development 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 report[4] 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 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 the 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 program. Only QTI

[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.

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 outline 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 Program[7]
- Qualified Defense and Space Contractor Program[8]
- Brownfield Bonus Program[9]
- Manufacturing and Spaceport Investment Incentive[10]
- High Impact Performance Incentive[11]
- Quick Action Closing Fund[12]
- Innovation Incentive Program[13]
- Quick Response Training Program[14]

Quick Action Closing Fund

Established by the Legislature in 1999,[15] the Quick Action Closing Fund (QACF) is a discretionary "deal closing" tool in highly competitive negotiations where Florida's traditional incentives are not enough to win the deal."[16] The Legislature declared that sufficient resources must be available to respond to extraordinary economic opportunities and to compete effectively for high-impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities, and that up to 20 percent of these resources may be used for projects to retain or create high-technology jobs that are directly associated with developing a more diverse aerospace economy in the state.[17] Projects eligible to receive funds from the fund must:

- Be a qualified target industry business.[18]
- Have a positive economic benefit ratio of at least 5 to 1.
- Be an inducement to the project's location or expansion in the state.
- Pay an average annual wage of at least 125 percent of the area-wide or statewide private sector average wage.
- Be supported by the local community in which the project is located.

---

[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 April 2, 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 105, ch. 99-251, L.O.F.
[16] *Supra* note 6 at 11.
[17] Section 288.1088(1)(c), F.S.
[18] *See* s. 288.106, F.S.

DEO and EFI are required to jointly review applications and determine the eligibility of each project. Waivers of the required criteria may be granted under certain circumstances. Within seven business days after evaluating a project, DEO must make a recommendation to the Governor to approve or deny funds from the QACF. If the project is recommended, then DEO must include proposed performance conditions that the project must meet in order to obtain funds.[19]

The Governor is authorized to approve projects requiring less than $2 million in funding. However, for project funding amounts of $2 million to $5 million, the Governor must provide a written description and evaluation of a project recommended for approval to the Legislative Budget Commission.[20] Upon approval of the Governor, DEO and the business must enter into a contract that establishes the conditions for payment from the QACF. The contract must include the total amount of funds awarded; the performance conditions that must be met to obtain the award, such as net new employment in the state, average salary, and total capital investment; demonstrate a baseline of current service and a measure of enhanced capability; the methodology for validating performance; the schedule of payments from the fund; and sanctions for failure to meet performance conditions.[21]

EFI is required to validate contractor performance and report the validation within six months after completion of the contract to the Governor and the Legislature.[22]

Publication of Economic Development Incentives Information
Annually, by December 30 of each year, EFI is directed to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a detailed incentives report quantifying the economic benefits for all of the economic development incentive programs marketed by EFI.[23] This report contains information related to the validation of business performance under the various economic development programs, and tax refunds and other payments provided to businesses under the various economic development programs.

In addition to the EFI annual incentives report, DEO has developed and maintains a website that contains the Economic Development Incentives Portal[24] for the purpose of publishing information related to economic development incentives awarded and completed since January 1996 to Florida businesses on a project-by-project basis. The Economic Development Incentives Portal can run a report based on:

- Economic Development Incentive Program
- Project County
- Date Approved
- Business Name

Reports generated from the Economic Development Incentives Portal show:

- Economic Development Incentive Program Name
- Economic Development Incentive Program Statutory Reference
- Business Name
- Business Industry
- Approval Date
- Amount of State Incentive
- Payments to Date
- Project County
- Project Status

[19] Section 288.1088(3), F.S.
[20] Section 288.1088(3)(c), F.S.
[21] Section 288.1088(3)(d), F.S.
[22] Section 288.1088(3)(e), F.S.
[23] Section 288.907(1), F.S.
[24] DEO's Economic Development Incentives Portal, *available at* http://www.floridajobs.org/office-directory/division-of-strategic-business-development/economic-development-incentives-portal, (last visited on February 27, 2013).

- Capital Investment
- New Jobs related to Performance Requirements
- New Jobs related to Performance Due to Date
- New Jobs Confirmed to Date.

DEO is in the process of populating the Economic Development Incentives Portal with data for all approved economic development projects by March 2013, and not just those that have been completed since January 1996.

Proposed Changes

Economic Development Program Evaluation
The Office of Economic and Demographic Research (EDR) and the Office of Office of Program Policy Analysis and Government Accountability (OPPAGA) are directed to develop the Economic Development Programs Evaluation. The work plan must be submitted to the President of the Senate and the Speaker of the House of Representatives by July 1, 2013. EDR and OPPAGA must provide a detailed analysis of economic development programs based on the following schedule:

Incentive Program Evaluation Schedule

Year 1 (January 1, 2014 and every 3rd year thereafter)	
Economic Development Incentives	**Florida Statutes**
Capital Investment Tax Credit	s. 220.191, F.S.
Qualified Target Industry Tax Refund	s. 288.106, F.S.
Brownfield Redevelopment Bonus Tax Refund	s. 288.107, F.S.
High-Impact Sector Performance Grants	s. 288.108, F.S.
Quick Action Closing Fund	s. 288.1088, F.S.
Innovation Incentive Program	s. 288.1089, F.S.
Enterprise Zone Program	ss. 212.0805, 212.0815, 212.096, 220.181, and 220.182, F.S.
Year 2 (January 1, 2015 and every 3rd year thereafter)	
Economic Development Incentives	**Florida Statutes**
Entertainment Industry Financial Incentive Program	s. 288.1254, F.S.
Entertainment Industry Sales Tax Exemption Program	s. 288.1258, F.S.
VISIT Florida	ss. 288.122, 288.1266, 288.12265, and 288.124, F.S.
Florida Sports Foundation	ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171, F.S.

Year 3 (January 1, 2016 and every 3rd year thereafter)	
Economic Development Incentives	**Florida Statutes**
Qualified Defense Contractor and Space Flight Business Tax Refund Program	s. 288.1045, F.S.
Tax Exemption for Semiconductor, Defense, or Space Technology Sales	s. 212.08(5)(j), F.S.
Military Base Protection Program	s. 288.980, F.S.
Manufacturing and Spaceport Investment	s. 288.1083, F.S.

Incentive Program	
Quick Response Training Program	s. 288.047, F.S.
Incumbent Worker Training Program	s. 445.003, F.S.
International Trade and Business Development Programs	s. 288.826, F.S.

Based on the program evaluation schedule, EDR must evaluate and determine the economic benefits[25] of each program over the previous three years. The analysis must also evaluate:

- The number of jobs created.
- The increase or decrease in personal income.
- The impact state gross domestic product from the direct, indirect, and induced effects of the state's investment in each program over the previous three years.

When evaluating incentive programs, EDR must evaluate only data from those projects in which businesses received state funds during the evaluation period. The projects may be fully complete, partially completed with future fund dispersal possible pending performance measures, or partially completed with no future fund dispersal possible as a result of a business's inability to meet performance measures. The analysis must use the model[26] developed by EDR to evaluate each program. EDR must provide a written explanation of the model's key assumptions. Should EDR determine that another evaluation model is more appropriate, EDR is authorized to use the model so long as they provide an explanation as to why the selected model was more appropriate.

Based on the program evaluation schedule, OPPAGA is directed to evaluate each program over the previous 3 years for effectiveness and value to the state's taxpayers and include recommendations on each program for consideration by the Legislature. The analysis may include relevant economic development reports or analyses prepared by DEO, EFI, or local or regional economic development organizations; interviews with parties involved; or any other relevant data.

EDR and OPPAGA are provided access to all data necessary to complete the Economic Development Programs Evaluation, including any confidential information, notwithstanding s. 213.053, F.S., relating to confidentiality and information sharing. EDR and OPPAGA are also authorized to collaborate on data collection and analysis.

Economic Development Project Evaluation
DEO is directed to 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 after expiration of the period of confidentiality provided under s. 288.075, F.S., DEO must publish the following information on the website:

Projected Economic Benefits

- The projected economic benefits at the time of the initial project award date.

Project 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 industries[27] involved, and any high impact sectors[28] implicated by the project.
- The county or counties that will be substantially impacted by the project.

[25] "Economic benefits" means the direct, indirect, and induced gains in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives. Section 288.005, F.S.
[26] *See* s. 216.138, F.S., authority to request additional analysis of legislative proposals.
[27] Section 288.106(2)(q), F.S.
[28] Section 288.108(6)(a), F.S.

- The total value of local financial commitment and in-kind support for a project that requires local commitment.

Participant Business Information

- The location of the participant business's headquarters, or, if a subsidiary, the headquarters of its parent company.
- The firm size class of the participant business, or where owned by a parent company the firm size class of the participant business' parent company, using the firm size classes established by the US Department of Labor Bureau of Labor Statistics, and whether the participant business qualifies as a small business under s. 288.703, F.S.
- Project award date.
- Expected duration of the project.
- Anticipated dates when the participant business will claim the first and last state investment.

Project Evaluation Criteria

- Economic benefits generated by the project.

Project Performance Goals

- The incremental direct jobs attributable to the project, identifying the number of jobs generated and the number of jobs retained by the project.
- The number of jobs generated and the number of jobs retained by the project; for projects that commence after the effective date of this act, the average annual wage of persons holding such jobs.
- The incremental direct capital investment in the state generated by the project.

Total Amount of State Investment

- The total amount of state investment disbursed to the participant business to date, itemized by incentive program.

Other Publication Requirements
DEO is required to update information on its website related to Project Information, Participant Business Information, Project Evaluation Criteria, and Project Performance Goals at least once a year, and to publish on its website when such information was most recently updated.

The bill also requires DEO to publish on its website copies of incentive contracts or agreements. 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 participant 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 to compile a list of economic development projects completed prior to October 1, 2013, and to publish information related to those projects prior to October 1, 2014.

Quick Action Closing Fund Timeline
At least once per year, DEO must publish on its website information pertaining to Quick Action Closing Fund projects and the average number of days between the date upon which DEO has received completed applications and the date upon which they were approved.

Economic Benefits Methodology
DEO is required to publish the economic benefits of each project on its website within 48 hours of the conclusion of the agreement between each participant business and DEO. DEO is directed to work with EDR to provide a description of the methodology used for this purpose, and to publish the information on the department's website.

<u>Annual Report Consolidation</u>

Current Situation

Numerous annual reports relating to economic development programs and activities are required to be submitted to the Governor and the Legislature at various times of the year. Additionally, certain entities are required to compile and submit information to the Governor and Legislature and/or to DEO as separate reports. A lack of uniform reporting makes it difficult for DEO to effectively track and report program activities and functions.

Department of Economic Opportunity
The Department of Economic Opportunity, with assistance from EFI, is directed to submit an annual report by January 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state.[29]

Enterprise Florida, Inc.
Enterprise Florida, Inc., is required to prepare an annual report and an annual incentives report.[30] Annually, before December 1, EFI is directed to submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader, a complete and detailed report including a description of the operations and accomplishments of EFI, and its divisions, boards, advisory councils, or similar entities created by EFI, and an identification of any major trends, initiatives, or developments affecting the performance of any program or activity. The individual annual reports prepared by each division must be included as addenda.[31]

Annually, by December 30 of each year, EFI is directed to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a detailed incentives report quantifying the economic benefits for all of the economic development incentive programs marketed by EFI.[32] The report is not required to be submitted in conjunction with DEO. The following is a list of statutorily required economic development related annual reports and their due dates:

Program	Statute	Date Report Due
Corporate income tax credits for spaceflight	s. 220.194(9), F.S.	November 30 – Separate report submitted to the Governor and Legislature (Beginning 2014)
State of Florida international offices	s. 288.012(3), F.S.	October 1 – Report submitted to DEO
Rural Economic Development Initiative	s. 288.0656(8), F.S.	On or before September 1 – Separate report submitted to the Governor and Legislature
Economic Development Trust Fund	s. 288.095(3)(c), F.S.	December 30 - Separate report submitted to the Governor and Legislature
Tax refund program for qualified target industry businesses	s. 288.106(7), F.S.	December 1 - Separate report submitted to the Governor and Legislature
Economic Gardening Business Loan Pilot Program	s. 288.1081(8), F.S.	June 30 December 31 Separate report submitted to the Governor and Legislature
Economic Gardening Technical Assistance Pilot Program	s. 288.1082(8), F.S.	December 31 - Separate report submitted to the Governor and

[29] Section 20.60(10), F.S.
[30] Section 288.903(3), F.S.
[31] Section 288.906(1) and (1)(a), F.S.
[32] Section 288.907(1), F.S.

Program	Statute	Date Report Due
		Legislature
Quick Action Closing Fund	s. 288.1088(3), F.S.	Within 6 months after completion of the contract - Separate report submitted to the Governor and Legislature
Innovation Incentive Program	s. 288.1089(9) and (11)(a), F.S.	Within 90 days after the conclusion of the innovation incentive award agreement. Separate report submitted to the Governor and Legislature Report summarizing the activities and accomplishments of grant recipients from the Innovation Incentive Program during the previous 12 months. No specific date but in time to be submitted as part of the DEO's annual report.
Travel and Entertainment Expenses – Office of Film and Entertainment	s. 288.1253(3), F.S.	December 30 – Separate report submitted to the Legislature.
Entertainment Industry Financial Incentive Program	s. 288.1254(10), F.S.	October 1 - Separate report submitted to the Governor and the Legislature
Entertainment industry qualified production companies – relationship of tax exemptions and incentives to industry growth	s. 288.1258(5), F.S.	December 1 – Separate Report to the Legislature
Black Business Loan Program	s. 288.714(3), F.S.	August 31 - Separate report submitted to the Governor and Legislature
Florida Export Finance Corporation	s. 288.7771, F.S.	No specific date but should report on its assets and liabilities at the end of its most recent year and submitted in time to be incorporated into the DEO's annual report.
Annual Report of EFI	s. 288.906, F.S.	December 1 – Separate report due to the Governor and Legislature
Annual Incentives Report -EFI	s. 288.907, F.S.	December 30 – Separate report submitted to the Governor and the Legislature
Divisions of Enterprise Florida, Inc.	s. 288.92(3), F.S.	October 15
Florida Small Business Technology Growth Program	s. 288.95155(5), F.S.	No specific date – Report prepared for inclusion in DEO's annual report.
New Markets Development Program Act	s. 288.9918, F.S.	April 30 – Report submitted to DEO

Program	Statute	Date Report Due
Enterprise Zone Development Agency	s. 290.0056(11), F.S.	December 1 – Report submitted to DEO
Information detailing the usage and revenue impact of state incentives authorized for use in support of the Florida Enterprise Zone Act provided by the Department of Revenue (DOR). Information provided by the enterprise zone development agencies required under the Florida Enterprise Zone Act.	s. 290.014(1), F.S. s. 290.014(2), F.S.	February 1 – Report submitted to DEO March 1 – Separate report but combined with the information provided by DOR submitted to the Governor and the Legislature.
Displaced Homemaker Program	s. 446.50(4), F.S.	January 1 – 3 year plan and annual updates submitted to the Governor and the Legislature.

Proposed Changes

The bill consolidates annual reporting requirements of statutorily required reports and information and incorporates them into reports prepared by DEO, EFI, and the Office of Film and Entertainment.

DEO Annual Report
The bill changes the due date of DEO's annual report from January 1 to November 1 and incorporates the annual reports of the following programs:

- Rural Economic Development Initiative.
- Economic Gardening Business Loan Pilot Program and the Economic Gardening Technical Assistance Pilot Program.
- Black Business Loan Program.
- Enterprise Zone Program.
- Displaced Homemaker Program.

Enterprise Florida, Inc. Annual Report
The bill directs EFI to include, as a supplement to its annual report, information or reports required for the following programs and activities:

- State of Florida International Offices.
- The Florida Export Finance Corporation.
- EFI's division reports.

Annual Incentives Report
The bill incorporates the following reports or information into the annual incentives report:

- Beginning in 2014, the summary of activities relating to the Florida Space Business Incentives Act.
- The Economic Development Trust Fund Annual Report. Section 288.095(3)(c), F.S., relating to the annual report and its components for the Economic Development Trust Fund is repealed and most of those provisions are integrated into the annual incentives report, rather than a separate report. The following information originally required as part of the Economic Development Incentives Account Report must be incorporated in the annual incentives report:

- Tax refunds or other payments funded out of the Economic Development Incentives Account for each project.
  - The types of projects supported.
  - Separate analysis of the impact of tax refunds on state enterprise zones, rural communities, brownfield areas, and distressed urban communities.
  - The name and tax refund amounts for each business receiving a tax refund under the qualified defense contractor and space flight business tax refund program or the tax refund program for qualified target industry businesses.
- Information on the causes of a business's inability to complete its Qualified Targeted Industry (QTI) incentives agreement.
- Validation by DEO, instead of EFI, of contractor performance for the Quick Action Closing Fund which makes it consistent with the Innovation Incentive Program.
- Validation of the Innovation Incentive Program to include the evaluation as to whether the recipients were catalysts for additional economic development in Florida is also added to the report**.** The bill deletes the requirement for reporting on contractor performance 90 days after completion because it is included in the annual incentives report.
- Validation of contractor performance for incentives.
- Recommended changes to the underutilized incentive programs. Current law requires the annual incentive report to identify incentive programs that are not utilized.
- Florida Small Business Technology Growth Program.

The bill revises the annual incentives report to require it be a joint report by EFI and DEO. The report due date remains December 30 as provided in current law.

Office of Film and Entertainment
The bill changes the due date of the Office of Film and Entertainment's (OFE) annual report from October 1 to November 1 and consolidates the annual reports relating to the OFE by requiring the expenditures report and the report detailing the relationship between tax exemptions and incentives to industry growth[33] to be included. The report remains as a separate report submitted to the Governor and Legislature.

Space Florida Annual Report
The bill requires that the annual operations report be included as a supplement to the annual performance report.

Brownfields Redevelopment Act

Current Situation

In 1995, the U.S. Environmental Protection Agency initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields.[34] Florida followed suit with a state level program in 1997[35] when the Legislature enacted the Brownfields Redevelopment Act[36] to provide incentives for the private sector to redevelop abandoned or underused real property, the development of which was complicated by real or perceived environmental contamination. A "brownfield area" is a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by local government resolution. Such areas may include all or portions of

[33] *See* s. 288.1258(5), F.S.
[34] U.S. Environmental Protection Agency, Brownfields and Land Revitalization, Community Reinvestment Fact Sheet, http://www.epa.gov/swerosps/bf/laws/cra.htm (last visited February 20, 2013).
[35] Chapter 97-277, L.O.F.
[36] Sections 376.77–86, F.S., are known as the "Brownfields Redevelopment Act."

community redevelopment areas, enterprise zones, empowerment zones; other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.[37]

The act also created the Brownfields Redevelopment Bonus Refund. This provision authorizes a bonus refund of $2,500 from the Economic Development Incentives Account to any qualified target industry business for each new Florida job created in a brownfield and claimed on the business's annual refund claim.[38]

In addition, current law authorizes a sales tax exemption on building materials in a housing project or mixed use housing project in a redevelopment area such as a designated brownfield area.[39]

Proposed Changes

The bill amends the definition of "housing project" and "mixed-use project" to specify that a redevelopment project located in a brownfield site for which a rehabilitation agreement with the Department of Environmental Protection (DEP) or a local government delegated by DEP has been executed under the Brownfields Redevelopment Act and any abutting real property parcel within a brownfield area is eligible for the sales tax exemption.

The bill also amends the brownfield redevelopment bonus refund to specify that in order to be eligible for the bonus refund for a qualified target industry agreement the jobs must be created in a brownfield area eligible for bonus refunds. The term "brownfield area eligible for bonus refunds" is amended to specify that an eligible area is a brownfield site for which a rehabilitation agreement with DEP or a local government delegated by DEP has been executed under the Brownfields Redevelopment Act and any abutting real property parcel within a brownfield area which has been designated by a local government.

The bill further provides that the amendments to ss. 212.08(5)(o) and 288.107, F.S., made by this act do not apply to building materials purchased under projects where site development or construction work was initiated before the effective date of the act or to contracts for brownfield redevelopment bonus refunds for which a local government has granted approval, notice to seek a refund was applied for or a tax refund agreement was executed prior to the effective date of this act.

Cigarette Tax Distribution

Current Situation

Chapter 210, F.S., provides for the taxation of tobacco products. Taxes are imposed on the sale of cigarettes and other non-cigar tobacco products in Florida. For cigarettes of a common size, the tax rate is $0.339 per pack. Additionally, a $1.00 surcharge per pack of common size cigarettes is imposed. For other tobacco products, the tax is at 25 percent of wholesale price, with an additional surcharge of 60 percent of wholesale price. The cigarette tax is collected by the Department of Business and Professional Regulation and deposited into Cigarette Tax Collection Trust Fund.

Section 210.20(2), F.S., provides for monthly distribution from the cigarette tax (not the surcharge) as follows:

Distribution from total collections:

- 8 percent to General Revenue Service Charge[40]; and

[37] Section 376.79(4), F.S. "Brownfield sites" are real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination. Section 376.79(3), F.S.
[38] Section s. 288.107, F.S.
[39] Section 212.08(5)(o), F.S.

- 0.9 percent to the Alcoholic Beverage and Tobacco Trust Fund[41].

Distribution from remaining collections (until June 30, 2013):

- 2.9 percent to Revenue Sharing Trust Fund for Counties;
- 29.3 percent to Public Medical Assistance Trust Fund;
- 1.47 percent to Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute (Moffitt); and
- The remainder of funds to General Revenue.

Beginning July 1, 2013, the Moffitt distribution will be increased to 2.75 percent (through June 30, 2033), and an additional distribution of 1 percent will be made to the Biomedical Research Trust Fund, to be annually appropriated (up to $3 million annually) for the Department of Health and the Sanford-Burnham Medical Research Institute to work in conjunction for the purpose of establishing activities and grant opportunities in relation to biomedical research (through June 30, 2021).

The Sanford Burnham Medical Research Institute, which has campuses in La Jolla, CA and Lake Nona, FL, performs research on the molecular causes of disease and develops treatments. Its main research programs focus on cancer, neurodegeneration, diabetes, and infectious, inflammatory, and childhood diseases. It is particularly well known for stem cell research. Its Diabetes and Obesity Research Center, which also studies cardiovascular disease, is based in Lake Nona.

Proposed Changes

The bill changes the end date for the distribution to the Biomedical Research Trust Fund from June 30, 2021 to June 30, 2033.

Rotary Wing Aircraft Sales Tax Exemption

Current Situation

Rotary wing aircraft may be defined as any aircraft that is supported in flight by rotors on a substantially vertical axis.[42] In general, rotary wing aircraft include helicopters, gyroplanes, and certain types of compound rotorcraft. Helicopters are considered high-value items because of their mobility, operational flexibility, and their capacity to provide rapid response.

Taxable Repair and Maintenance Work
Chapter 212, F.S., imposes a sales or use tax on the installation, repair, or maintenance of tangible personal property. This tax is applicable to the entire amount charged by the repairperson, which includes parts, equipment and labor. If the repair or maintenance of tangible personal property requires only labor, such charges are not taxable.[43]

Aircraft Repair and Maintenance Labor Charges
Section 212.08(7)(ee), F.S., provides a tax exemption for labor charges related to the maintenance and repair of qualified aircraft and aircraft with maximum takeoff weight of more than 2,000 pounds.[44] With respect to rotary wing aircraft, current law limits the exemption to aircraft with maximum takeoff weight of 10,000 pounds or less.

---

[40] Section 215.20, F.S.
[41] Section 210.02, F.S.
[42] As defined by the International Civil Aviation Organization, http://www.icao.int/Pages/default.aspx, last visited March 15, 2013.
[43] Department of Revenue, Sales and Use Tax on Repair of Tangible Personal Property, http://dor.myflorida.com/dor/forms/, last visited March 14, 2013.
[44] "Qualified Aircraft" means any aircraft having a maximum certified takeoff weight of less than 10,000 pounds and equipped with twin turbofan engines that meet Stage IV noise requirements that is used by a business operating as an on-demand air carrier under Federal Aviation Administration Regulation Title 14, chapter I, part 135, C.F.R, that owns or leases and operates a fleet of at least 25 of such aircraft in this state.

Parts and Equipment used in Aircraft Repair and Maintenance
Section 212.08(7)(rr), F.S., provides a tax exemption for equipment, parts, and replacement engines installed on qualified aircraft and aircraft with more than 2,000 pounds maximum takeoff weight. In order to qualify for the exemption, the aircraft must be repaired or maintained in Florida. This exemption is not applicable to rotary wing aircraft with maximum certified takeoff weight of 10,300 pounds or less.

Proposed Changes

The bill expands tax exemptions available for rotary wing aircraft that are repaired or maintained in the state. Specifically, the bill will exempt rotary wing aircraft with maximum takeoff weight exceeding 2,000 pounds from the sales and use tax imposed on repair maintenance charges related to labor, parts, and installed equipment. This change will allow helicopters to qualify for exemptions in ss. 212.08(7)(ee) and 212.08(7)(rr), F.S., under the same maximum takeoff weight requirements as currently applied to airplanes.

Natural Gas Sales Tax Exemption

Current Situation

Fuel cells are devices that convert fuel into electricity through a clean electrochemical process rather than combustion. Instead, oxygen and a hydrogen-rich fuel combine to form water. Unlike internal combustion engines, the energy is released electrocatalytically.[45]

Currently, natural gas purchased for use in a fuel cell would have sales and use tax imposed under ch. 212, F.S., unless its use qualified for an exemption, such as the agricultural use exemption provided by s. 212.08(5)(e), F.S., or the exemption for fuels used in generation of electricity for sale by a public or private utility provided by s. 212.08(4)(a), F.S.

Proposed Changes

The bill exempts natural gas used to generate electricity in a non-combustion fuel cell from sales and use tax. The fuel cell must be used in stationary equipment to qualify for this exemption.

Spring Training Franchise Retention

Current Situation

Section 288.11621, Florida Statutes, defines a process by which the Department of Economic Opportunity (the department) may certify local governments to receive a distribution from state sales tax of $41,667 per month ($500,000 per year) for a period of up to 30 years. The funds may be used to acquire, construct, reconstruct, or renovate a facility for a baseball spring training franchise, pay debt service on bonds issued for those purposes, or, in some instances, assist a spring training franchise in moving from one local government to another. Funds must be expended within 48 months of the receipt of the initial payment, and the acquisition, construction, reconstruction, or renovation must be completed within 24 months of starting.

In order to be certified, the department must verify that:

- The local government applying owns or will own the facility or the land on which the facility is or will be located;
- The applicant has a certified copy of a signed agreement with a spring training franchise to use the facility for at least 20 years, and to reimburse the state for any state funds expended under this section if the franchise relocates prior to the end of the agreement;

[45] http://www.fuelcelltoday.com/about-fuel-cells/introduction, last visited May 6, 2013.

- The applicant has made a commitment to pay for at least 50 percent of the cost of acquisition, construction, reconstruction, or renovation of the facility;
- The applicant has demonstrated that the facility will attract paid attendance of at least 50,000 annually; and
- The facility is located in a county that levies a tourist development tax.

The department is required to evaluate the applications on a competitive basis, using the following criteria:
- The projected impact on the local economy;
- The amount of local matching funds dedicated to the project;
- The potential for the facility to serve multiple purposes;
- The intended use of the funds;
- The length of time that a franchise has held spring training in the applicant's community;
- The amount of time the facility has been used by any team for spring training;
- The amount of time remaining in the agreement for the franchise to use the facility;
- The net increase in total recreational space that the facility would represent; and
- The location of the facility in a brownfield, enterprise zone, or community redevelopment area.

The department is authorized to certify up to 10 facilities at any given time. Upon certification, the applicant and the department must enter into an agreement specifying:
- The amount of state incentive funding to be distributed;
- The criteria that must be met in order for the applicant to remain certified;
- That the department may recover state incentive funds if the applicant is decertified;
- The information that the applicant must report to the department; and
- Any other provision deemed prudent by the department.

An applicant may not be certified for more than one spring training franchise at a time. Also specified are the contents to be included in an annual report by the applicant to the department, and a process by which an applicant may be decertified. Current law also authorizes the Auditor General to conduct audits to ensure that the funds are being used as required by law, and if an audit finds that this is not the case, the Department of Revenue may pursue recovery of the funds.

The applicants currently certified are as follows[46]:

Certified Applicant	Team	Date of First Payment	Total Distributed (as of 1/8/2013)
Clearwater	Philadelphia Phillies	Feb. 2001	$6.0M
Dunedin	Toronto Bluejays	Feb. 2001	$6.0M
Indian River County	Los Angeles Dodgers	Feb. 2001	$6.0M
Osceola County	Houston Astros	Feb. 2001	$6.0M
Lakeland	Detroit Tigers	Feb. 2001	$5.6M
Charlotte County	Tampa Bay Rays	Mar. 2007	$3.0M
Bradenton	Pittsburgh Pirates	Mar. 2007	$3.0M
Sarasota	Cincinnati Red/ Baltimore Orioles	Mar. 2007	$3.0M
St. Lucie County	New York Mets	Mar. 2007	$1.6M
Lee County	Minnesota Twins	N/A	N/A

<u>Proposed Changes</u>

The bill creates s. 288.11631, F.S., which mostly mirrors the provisions of s. 288.11621. The differences between the sections include:

[46] Department of Economic Opportunity, *Spring Training Baseball*

Certification Process

- The agreement must be for a minimum of the length of the term of the bonds issued for the construction or renovation of the facility, or if no such bonds are issued, at least 20 years;
- A new agreement may not be signed unless the previous agreement, if any, is within 4 years of expiring;
- There is no limit to the number of applicants which may be certified;
- The net increase in recreational areas represented by the facility are not considered in the evaluation process; and
- The amount of state funding provided in the agreement between the applicant and the department may not exceed $20 million, or if the applicant hosts 2 or more franchises, $50 million.

Use of Funds

- Funds provided as a result of certification under this section may not be used to acquire or reconstruct a facility, or to assist a franchise in moving from one local government to another.

Upon certification under this new section, the bill amends s. 212.20, F.S., to direct the Department of Revenue to distribute $55,555 monthly ($666,660 annually) to the applicant from sales tax revenues. In the event the applicant hosts more than one franchise, the distribution will be $111,110 monthly ($1,333,320 annually). An applicant which has already been certified and receiving a distribution under current law may also be certified to receive funding under this new section.

The bill specifies that the distribution shall begin 60 days after certification, or July 1, 2016, whichever is later.

<u>Qualified Target Industry and Qualified Defense and Space Contractor Tax Refunds</u>

<u>Current Situation</u>

Qualified Target Industry Tax Refund

The Qualified Target Industry Tax Refund (QTI) was established in 1995. Tax refunds are made to qualifying, pre-approved businesses creating new jobs within Florida's target industries. All QTI projects include a performance-based contract with the state, which outlines specific milestones that must be achieved and verified by the state prior to payment of refunds.

This incentive requires that 20 percent of the award comes from the local city or county government, but that may be reduced by one-half for a qualified target industry business located in the counties of Bay, Escambia, Franklin, Gadsden, Gulf, Jefferson, Leon, Okaloosa, Santa Rosa, Wakulla or Walton. The reduction in local match is determined by the Department of Economic Opportunity and based on a determination that the project facilitates economic development, growth, or new employment within the previously referenced counties, and is in the best interest of the state.

The program also requires that a project must propose to create at least 10 new jobs, or in the case of a business expansion must result in a net increase in employment of at least 10 percent at that business. The jobs proposed to be created or retained must pay an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage. The statewide private sector average wage being used currently is $40,555[47].

[47] Enterprise Florida Inc., *State of Florida Incentives Average Wage Requirements*; 2012

The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is $3,000 per employee, and the maximum amount is $11,000 per employee over the term of the incentive agreement. Jobs created in rural communities and enterprise zones, as well as those paying higher annual average wages, are eligible for more incentives.

Since the inception of the QTI program, 1,134 applications have been approved, 967 contracts have been executed, and 97 agreements have been completed. Of those 967 projects, 335 remain active, meaning they are eligible to receive refunds through the QTI program. These 335 projects have committed to create 45,157 jobs cumulatively. The 97 completed agreements cumulatively created 19,694 new jobs, above the initial commitment to create 19,094. In fiscal year 2011-2012, $58,063,500 in QTI incentives were awarded.[48]

Qualified Defense and Space Contractor Tax Refund
The Qualified Defense and Space Contractor Tax Refund (QDSC) was established in 1996. Tax refunds are made to qualifying, pre-approved businesses bidding on new competitive contracts or consolidating existing defense or space contracts. This incentive is a partnership between the State and local community—20 percent of the award comes from the local city or county government. All QDSC projects include a performance-based contract with the State of Florida, which outlines specific milestones that must be achieved and verified by the State prior to payment of refunds.

Like QTI, the program requires that jobs created by a QDSC project have an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage.

The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is $3,000 per employee, and the maximum amount is $8,000 per employee over the term of the incentive agreement.

Since the QDSC project's inception, 22 QDSC applications have been approved, 15 contracts, have been executed, and 5 projects have been completed. Of those 15 executed contracts, 6 remain active. These 6 projects have committed to create 418 cumulative jobs. The 5 completed projects cumulatively created 1,521 new jobs, exceeding their commitment to create 795 new jobs. In fiscal year 2011-2012, $2,180,000 in QDSC incentives were awarded.[49]

QTI/QDSC Program Limits
Sections 288.106 and 288.1045, Florida Statutes, set the criteria for the QTI and QDSC programs. Included in these criteria are limits on awards for qualified projects under both programs. The limits include:

- The QTI and QDSC programs limit applicants to 25 percent of the total tax refunds in any given fiscal year;
- The QDSC program limits applicants to $2.5 million in tax refunds in any given fiscal year;
- The QTI program limits applicants to $1.5 million in tax refunds in any given fiscal year or $2.5 million if the project is located within an enterprise zone;
- The QDSC program limits applicants to $7 million in tax refunds over all fiscal years;
- The QTI program limits applicants to $7 million in tax refunds over all fiscal years, or $7.5 million if the project is located within an enterprise zone.

<u>Proposed Changes</u>

[48] Enterprise Florida, Inc, *2012 Annual Incentive Report*; 2012
[49] Enterprise Florida, Inc, *2012 Annual Incentive Report*; 2012

The bill eliminates the maximum amount of tax refunds a business could receive over all fiscal years for the QTI and QDSC programs. The limits imposed on the percentage of total awards and dollar amounts a qualified project could receive in a single fiscal year would remain in effect.

Enterprise Zone Corporate Income Tax Credit

Current Situation

The Florida Enterprise Zone Program offers an assortment of tax incentives to businesses that choose to create employment within an enterprise zone, which is a specific geographic area targeted for economic revitalization. Tax incentives include a sales and use tax credit, tax refund for business machinery and equipment used in an enterprise zone, sales tax refund for building materials used in an Enterprise Zone, and a sales tax exemption for electrical energy used in an enterprise zone.[50]

Section 220.182, F.S., provides a corporate income tax credit for certain ad valorem taxes paid by business in enterprise zones. For existing businesses, the credit shall be calculated as the additional ad valorem tax paid in this state resulting from assessments on additional real or tangible personal property acquired, or property replaced or restored, to facilitate the expansion or rebuilding of an existing business. New businesses may take a credit for the total ad valorem taxes paid in Florida during the taxable year on new real property and new tangible personal property acquired. However, there is an annual limit on credits taken under this section of $25,000 for each business, or $50,000 if no less than 20 percent of the employees of that business are residents of an enterprise zone. Levies for debt service are not included in the credit calculation.

Proposed Changes

The corporate income tax credit annual limits are modified to apply to each eligible location that is within an enterprise zone, rather than each business, increasing the annual limit in situations where a single business entity operates more than one location within an enterprise zone.

New Markets Development Program

Current Situation

Federal New Markets Tax Credit[51]
Created by Congress in 2000, the Federal New Markets Tax Credit (NMTC) Program[52] permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). The CDE must in turn invest the qualified equity investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.

An organization wishing to receive allocations under the federal NMTC Program must be certified as a CDE by the U. S. Department of Treasury.[53] To qualify as a CDE, an organization must:

---

[50] Enterprise Zones, http://www.eflorida.com/Enterprise_Zones.aspx?id=286 (last visited May 6, 2013).
[51] Federal New Markets Tax Credit Program, Overview, http://cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited February 14, 2013).
[52] The Federal New Markets Tax Credit Program was enacted as P.L. 106-554, Community Tax Relief Act of 2000 and signed into law on December 21, 2000.
[53] The Community Development Financial Institutions Fund is the entity within the U.S. Department of Treasury that administers the federal New Markets Tax Credit Program. The CDFI Fund was created for the purpose of promoting economic development through investment in and assistance to community development financial institutions. U.S. Department of Treasury, Community

- Be a domestic corporation or partnership at the time of the certification application;
- Demonstrate a primary mission of serving, or providing investment capital for low-income communities or low-income persons; and
- Maintain accountability to residents of low-income communities through representation on a governing board of or advisory board to the entity.

Since the Federal NMTC Program's inception, the CDFI Fund has made 664 awards allocating a total of $33 billion in tax credit authority to CDEs through a competitive application process.[54]

How Florida's New Markets Development Program Works
Mirrored after the federal program, Florida's New Markets Development Program, established by the Legislature in 2009,[55] encourages "capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that invest in qualified active low-income community businesses to create and retain jobs."[56]

Under the program, federally-certified Community Development Entities (CDEs), which have entered into allocation agreements with the U.S. Department of Treasury, have the ability to apply to the Department of Economic Opportunity (DEO) for a certification of Florida tax credits. The CDE must show that it is prepared to invest capital into qualified businesses in Florida's low-income communities. The certification process includes proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding how the investments will be used, and a description of the CDE's efforts to partner with local community-based groups.

DEO is also authorized to request additional information needed to verify continued certification. DEO certifies qualified applications on a first-come, first-served basis. Once DEO certifies a CDE's qualified equity investment, the CDE has 30 days to raise its investment capital (the qualified equity investment) and then 12 months to invest a minimum of 85 percent of the purchase price in qualified low-income investments. Thereafter, the CDE must annually report to DEO information including:[57]

- Audited financial statements;
- The industries for the investments;
- The counties investments were made in;
- The number of jobs created; and
- Verification that the average wages paid are at least equal to 115 percent of the federal poverty income guidelines for a family of four.

Any failure by a CDE to follow either Florida or federal law may result in the state recapturing tax credits claimed, together with interest and penalties.[58]

Tax Credits
The New Markets Tax Credit Program allows a tax credit to be taken against the corporate income tax found in s. 220.11, F. S. or the insurance premium tax found in s. 624.509, F.S. This credit may be claimed after the investment has been made and held for a minimum of two years. Therefore, no credit can be claimed in the first two years. In year three the credit is worth seven percent of the investment, and from the fourth year through the seventh year the credit is worth eight percent.

As in the federal program, over seven years this credit totals 39 percent of the total investment. Therefore, a qualified taxpayer with a qualified investment approved for both the federal and state program could receive 78 percent of the purchase price of the investment in tax credits over seven

---

Development Financial Institutions Fund, About the CDFI Fund, http://cdfifund.gov/who_we_are/about_us.asp (last visited February 14, 2013).
[54] *See supra* note 1.
[55] Chapter 2009-50, L.O.F.
[56] Section 288.9912, F.S.
[57] Section 288.9918, F.S.
[58] Section 288.9920, F.S.

years. In addition to the tax credits that are received, the investor also has the potential to receive benefit from the results of the investment and eventual return of their principal.

Any unused portion of the tax credit may be carried forward for future tax years; however, all tax credits expire on December 31, 2022.[59] The program has a cap of $163.8 million on the total of tax credits allowed to be allocated to all investments or $33.6 million in tax credits in a single state fiscal year.[60] The transfer or sale of tax credits is not permitted; however, a tax credit may travel with the purchase of an investment to a new owner.[61]

<u>Proposed Changes</u>

The bill increases the total amount of tax credits available to be allocated for the New Markets Development Program from $163.8 million to $178.8 million and increases the amount of tax credits that the state may award in a single fiscal year from $33.6 million to $36.6 million.

<u>Sales Tax Holiday</u>

<u>Current Situation</u>

Chapter 212, F.S, imposes a 6 percent tax on the retail sale of tangible personal property,[62] which includes books, clothing, footwear, wallets, bags, school supplies, and computers.

In addition, county governments may impose discretionary sales surtaxes (e.g., indigent care and trauma center surtax, county public hospital surtax, school capital outlay surtax).[63] County discretionary sales surtaxes (commonly called “local option sales taxes”) apply to all transactions in the county which are subject to the state sales tax.[64]

History of Sales Tax Holidays:
Since 1998, the Legislature has enacted eleven temporary periods (commonly called “sales tax holidays”) during which certain clothing, footwear, books and school supply items were exempted from the state sales tax and county discretionary sales surtaxes.[65]

The length of the exemption periods has varied from 3 to 10 days. The type and value of exempt items has also varied. Clothing and footwear has always been exempted. In seven holidays such items valued at $50 or less were exempted. Twice, items valued at $100 or less were exempt. Books valued at $50 or less were exempt in five periods. School supplies were included in the most recent seven holidays, with the value threshold increasing from $10 to $15.

Dates	Length	TAX EXEMPTION THRESHOLDS				Appropriation/ DOR
		Clothing/ Footwear	Wallets/ Bags	Books	School Supplies	
August 15-21, 1998	7 days	$50 or less	N/A	N/A	N/A	$200,000
July 31-August 8, 1999	9 days	$100 or less	$100 or less	N/A	N/A	$200,000
July 29-August 6, 2000	9 days	$100 or less	$100 or less	N/A	N/A	$215,000
July 28-August 5, 2001	9 days	$50 or less	$50 or less	N/A	$10 or less	$200,000

59 Section 15, ch. 2009-50, L.O.F.
60 Section 288.914(3)(c), F.S. *See* s. 16, ch. 2012-32, L.O.F.
61 Section 288.9916(2), F.S.
62 Sections 212.02(19) and 212.05(1)(a)1.a., F.S.
63 Section 212.055, F.S.
64 Section 212.054(2)(a), F.S.
65 Chapters 98-341, 99-229, 2000-175, 2001-148, 2004-73, 2005-271, 2006-63, 2007-144, and 2010-93, L.O.F.

July 24-August 1, 2004	9 days	$50 or less	$50 or less	$50 or less	$10 or less	$206,000
July 23-31, 2005	9 days	$50 or less	$50 or less	$50 or less	$10 or less	$206,000
July 22-30, 2006	9 days	$50 or less	$50 or less	$50 or less	$10 or less	$206,000
August 4-13, 2007	10 days	$50 or less	$50 or less	$50 or less	$10 or less	$224,110
August 13-15, 2010	3 days	$50 or less	$50 or less	$50 or less	$10 or less	$250,304
August 12-14, 2011	3 days	$75 or less	$75 or less	N/A	$15 or less	$218,905
August 3-5, 2012	3 days	$75 or less	$75 or less	N/A	$15 or less	$226,284

The following table summarizes the history of the "back to school" sales tax holidays:

Tax Information Publications:
Since 2004, the Department of Revenue has published a Tax Information Publication (TIP) for each sales tax holiday.[66] A TIP provides detailed information about the sales tax holiday, including instructions and specific examples, for dealers who collect the tax.

Proposed Changes

The bill provides for a 3 day sales tax holiday beginning August 2, 2013, at 12:01 a.m. and ending August 4, 2013, at 11:59 p.m. During the sales tax holiday, the following items that cost $75 or less are exempt from the state sales tax and county discretionary sales surtaxes:

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

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

The bill also exempts personal computers and related accessories purchased for noncommercial home or personal use with a sales price of $750 or less. This would include tablets, laptops, monitors, input devices, and non-recreational software. Furniture and devices or software intended primarily for recreational use are not exempted.

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

The bill also provides a nonrecurring General Revenue appropriation in fiscal year 2012-13 to offset the Department of Revenue's cost to administer the tax holiday.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS

2. Expenditures:

   The Department of Revenue estimates it will cost $235,695 to administer the sales tax holiday. These costs are due to the need to provide a Tax Information Publication to sales tax dealers throughout the state. The bill contains a nonrecurring appropriation to the department to offset this cost.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is designed to encourage economic development throughout Florida.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has not adopted an estimate for the New Markets provisions of SB 406, the figure below is a staff estimate. Estimates are in millions of dollars.

2013-14 Fiscal Year	**General Revenue**		**State Trust Funds**		**Local**		**Total**	
	Cash	**Recur.**	**Cash**	**Recur.**	**Cash**	**Recur.**	**Cash**	**Recur.**
Brownfields	1.2	1.2	*	*	0.3	0.3	1.5	1.5
Cigarette Tax Distribution (1)	-	-	-	-	-	-	-	-
Rotary Wing Aircraft	(1.1)	(1.1)	(*)	(*)	(0.2)	(0.2)	(1.3)	(1.3)
Natural Gas in Fuel Cells	(*)	(0.1)	(*)	(*)	(*)	(*)	(*)	(0.1)
Spring Training (2)	-	(3.3)	-	-	-	-	-	(3.3)

Qualified Defense and Space Contractor	-	-	-	-	-	-	-	-
Enterprise Zone Income Tax Credit	(0.0)	(0.7)	-	-	-	-	(0.0)	(0.7)
New Markets (3)	-	(3.0)	-	-	-	-	-	(3.0)
Sales Tax Holiday	(28.3)	-	(*)	-	(6.4)	-	(34.7)	-
TOTALS	(28.2)	(7.0)	(*)	(*)	(6.3)	0.1	(34.5)	(6.9)

(1) Fiscal impact will begin in FY 2022-23. Approximately $2.5 million will annually be shifted to State Trust Funds out of General Revenue.
(2) Negative cash impact begins in FY 2015-16 and will increase over time as additional applicants are certified.
(3) Negative cash impact begins in FY 2015-16.
(*) An insignificant impact of less than $50,000 annually