

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Commerce Committee

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BILL: CS/SB 2644

INTRODUCER: Commerce Committee and Senator Bennett

SUBJECT: Energy Economic Zones

DATE: April 7, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	<b>Fav/CS</b>
2.			CU	
3.			CA	
4.			GA	
5.			WPSC	
6.				

**I. Summary:**

The Legislature in 2009 directed the Department of Community Affairs (DCA) to implement a 2-year Energy Economic Zone (EEZ) Pilot Program to develop a model of sustainable, energy-efficient land-use development that could be replicated by other Florida communities. The legislation did not name the initial participants in the pilot program; DCA later selected the City of Miami Beach and two isolated locations within Sarasota County. A brief interim report on the status of the pilot program, dated February 15, 2010, indicated that a variety of state agencies have been meeting with the two local governments to collect and organize data, and to evaluate their initial plans on how they would prefer to proceed.

CS/SB 2644 creates five state tax incentives, similar to ones offered in enterprise zones, to businesses that locate or expand in the two designated pilot EEZs. The total amount of these state incentives that can be claimed annually by eligible businesses is limited to \$300,000 per EEZ pilot community.

CS/SB 2644 amends ss. 212.08 and 377.809, F.S., and creates ss. 220.185 and 220.196, F.S.

**II. Present Situation:**

EEZ Pilot Program

In 2009, the Legislature passed a transportation-related bill<sup>1</sup> that included creation of the Energy Economic Zone Pilot Program to select at least one local governmental entity interested in developing and implementing strategies for energy-efficient land-use patterns, reduce

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<sup>1</sup> Ch. 2009-89, L.O.F. (HB 5013).

greenhouse gas emissions, cultivate green economic development, encourage the generation of renewable electric energy, and promote manufacturing to create “green” products and jobs. DCA was designated the lead agency, but was directed to collaborate with the Department of Transportation, the Governor’s Office of Tourism, Trade, and Economic Development (OTTED), and the Florida Energy and Climate Commission in implementing the pilot program.

Applicants were required to submit to DCA the following information:

- Identification of the proposed “energy economic zone” (EEZ);
- A proposed strategic plan for development and redevelopment in the EEZ;
- An explanation of how the strategic plan would be consistent with the existing local comprehensive plan or include proposed plan amendments necessary to achieve consistency; and
- A list of the necessary comprehensive plan amendments.

The legislation specified that the strategic plan must integrate mixed-used and transportation facilities with the local government’s land-use and development patterns to:

- Reduce reliance on automobiles as a form of transportation;
- Encourage certified green building developments and renewable energy systems;
- Encourage the creation of green jobs; and
- Demonstrate how local financial and regulatory incentives would be used in the EEZ.<sup>2</sup>

DCA selected the City of Miami Beach and Sarasota County, which offered two sites, to participate in the 2-year pilot project. The entities have developed and submitted to DCA their initial strategy plans,<sup>3</sup> and are continuing to work with state officials to fine-tune their proposals.

The City of Miami Beach, which is a compact, dense, built-out urban area with 13,400 residents per square mile, is interested in using the EEZ to improve intermodal, energy-efficient transportation in the city and to explore opportunities to re-use or re-purpose existing infrastructure.

Sarasota County’s two sites are the opposite of Miami Beach: one is a 1,000-acre undeveloped site and the other is its 7,000-acre Central County solid waste complex, where the county plans to build a methane gas-to-energy conversion plant.

In a February 15, 2010, letter<sup>4</sup> to the Governor and legislative leaders, DCA Secretary Tom Pelham summarized the progress the two local governments and state agencies have made in implementing the EEZ pilot program over the last 10 months, but noted that “at this early date, (DCA) does not deem statutory changes as appropriate.” A final report on the pilot program is due February 15, 2011.

#### The Florida Enterprise Zone Program

The Legislature created the enterprise zone program in 1982 to encourage economic development in economically distressed areas of the state by providing tax incentives designed to

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<sup>2</sup> The legislation does not mention state incentives.

<sup>3</sup> Both plans are on file with the Senate Commerce Committee.

<sup>4</sup> A copy of the letter is on file with the Senate Commerce Committee.

induce private investment that creates jobs and increases property values. There currently are 57 EZs, all of which were either created or reauthorized by the Legislature.

OTTED reports that between October 1, 2008, and September 30, 2009, new businesses numbering 3,104 moved into or were created in enterprise zones and 9,073 new jobs were created by businesses there.<sup>5</sup> More than \$45 million in state (more than \$30 million of that was for sales and use tax refunds for the purchase of building materials within enterprise zones) and nearly \$11.6 million in local-government financial incentives were approved during that same period. Over the last 5 years, 17,325 new businesses have moved into or were created in enterprise zones and 54,000 new jobs have been created.<sup>6</sup>

Sections 290.001-290.016, F.S., authorize the creation of enterprise zones; establish criteria and goals for the program; require a strategic plan; require annual reporting to OTTED; and establish state incentives for businesses.

Florida's enterprise zones qualify for various incentives from corporate income tax and sales-and-use tax liabilities. As noted above, OTTED reported that \$45.3 million in state incentives were approved by the Department of Revenue (DOR), between October 1, 2008, and September 30, 2009, for all the enterprise zones.

During that same time period, \$11.5 million in incentives were provided by local governing bodies, half of the FY 07-08 total. Examples of local incentives include: utility tax abatement, reduction of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.<sup>7</sup>

Available state sales-and-use tax incentives for enterprise zones include:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone: Provides a refund for taxes paid on the purchase of certain building materials, up to \$5,000 or 97 percent of the tax paid, whichever is less. For projects where at least 20 percent of the employees live in the enterprise zone, the refund is the lesser of \$10,000 or 97 percent of the tax paid.
- Business Equipment Used in Enterprise Zones: Provides a refund for taxes paid on the purchase of certain equipment, up to \$5,000 or 97 percent of the tax paid, whichever is less. For projects where at least 20 percent of the employees live in the enterprise zone, the refund is the lesser of \$10,000 or 97 percent of the tax paid.
- Rural Enterprise Zone Jobs Credit against Sales Tax: Provides a tax credit for either 20 percent, 30 percent, or 45 percent of wages paid to new employees, depending on where they live.
- Urban Enterprise Zone Jobs Credit against Sales Tax: Provides a tax credit for 20 percent or 30 percent of wages paid to new employees, depending on where they live.
- Business Property Used in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain business property, up to \$5,000 or 97 percent of the tax paid per

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<sup>5</sup> Florida Enterprise Zone Program Annual Report, October 1, 2008 - September 30, 2009. Published March 1, 2010. On file with the Senate Commerce Committee.

<sup>6</sup> Ibid, page 3.

<sup>7</sup> Ibid, page 11.

- parcel of property, whichever is less. The property also must have been used exclusively in an enterprise zone for at least 3 years.
- Community Contribution Tax Credit: Provides 50-percent sales tax refund for donations made to local community development projects.
  - Electrical Energy Used in an Enterprise Zone: Provides 50-percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy.

Available state corporate income tax incentives for enterprise zones include:

- Rural Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit equal to either 20 percent, 30 percent, or 45 percent of wages paid to new employees, depending on where they live.
- Urban Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 20 percent or 30 percent of wages paid to new employees, depending on where they live.
- Enterprise Zone Property Tax Credit: Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
- Community Contribution Tax Credit: Provides a 50-percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects.

### III. Effect of Proposed Changes:

CS/SB 2644 creates five state tax-refund or tax-credit incentives that would be available to businesses that locate or expand in the pilot EEZs, and caps the total at \$300,000 per year per pilot community.

It also exempts development within the pilot EEZs from state DRI and transportation concurrency laws, and provides so-called “density bonuses” for developments in the EEZs, meaning more housing units could be built per acre than is allowed under the local governments’ current comprehensive plan. These state incentives would be available to businesses in the City of Miami Beach and in Sarasota County’s two identified EEZs.

**Section 1** amends s. 377.809, F.S., to specify that the final report due February 15, 2012, from DCA on the EEZ pilot program should include recommendations on whether incentives should be revised, renewed, or expanded.

It also specifies that EEZ pilot communities will be able to access state tax incentives created especially for them, to be implemented by local ordinance. The purposes of these incentives are expressed as a means to “cultivate green economic development, encourage renewable electric energy generation, manufacture products that contribute to energy conservation and green jobs, develop energy-efficient land use patterns, and reduce greenhouse gas emissions.”

In order for a pilot community to use the state incentives, the local governing board must designate the EEZ by ordinance and certify to DCA and OTTED that its developments are eligible to receive the incentives. The ordinance also must:

- Describe the type of energy-efficiency investments, clean technology industries, and businesses that will be eligible to receive the incentives.
- Identify the Leadership in Energy and Environmental Design (LEED)<sup>8</sup> standards, or standards of another professionally promulgated green building code applicable for eligibility for specified incentives for building materials, business property, and lean technology products within a pilot EEZ.
- Identify a list, developed in consultation with the Florida Energy Systems Consortium, of clean technology and manufacturing products eligible for the specified incentives.

The total amount of state incentives that may be claimed by businesses within the two pilot EEZ communities is \$300,000 annually per community. The incentives are available on a first-come, first-served basis; no credit or refund claimed after the \$300,000 per-community threshold is reached will be accepted. However, any unused portion of the available incentives is carried forward for up to 5 years. Also, an individual business that earns an incentive amount in excess of its tax liability for that same year may carry forward to a subsequent year its unused EEZ credit.

The local governing body that has jurisdiction over the EEZ is responsible for tracking and accounting for the levels of credits and refunds granted, and for the carried forward credits.

Finally, the terms “clean efficiency investments” and “clean technology industries and businesses are broadly defined as encompassing a “diverse range of products, services, and processes” that, for example, harness renewable materials and energy sources, and significantly reduces the use of natural resources, greenhouse gas emissions, and waste. Several examples of the products envisioned by these terms are listed, such as electric propulsion, fuel cell, and solar-powered vehicles; ultraviolet purification water systems; and improvements to real property that meet Green Lodging Standards.<sup>9</sup>

**Section 2** amends s. 212.08, F.S., to create three sales-and-use tax exemptions for purchases made by businesses within EEZs. They are:

- Building materials used in the construction or rehabilitation of energy-efficient structures of real property within an EEZ, to be taken as a refund. The building materials must meet the LEED standards. The minimum refund must exceed \$500. The maximum refund is the lesser of \$5,000 or 97 percent of the tax paid, if fewer than 20 percent of the of the eligible business’ employees live in the EEZ. For projects where at least 20 percent of the eligible business’ employees live in the EEZ, the refund is the lesser of \$10,000 or 97 percent of the tax paid. The processes of claiming the tax refund and most of the definitions are nearly identical to an existing exemption for building materials used in enterprise zones.
- Business property purchased for use in an EEZ, to be taken as refund. The minimum refund must exceed \$100 on eligible purchases made within a 60-day period. The

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<sup>8</sup> A basic primer on the LEED designation is available at [http://en.wikipedia.org/wiki/Leadership\\_in\\_Energy\\_and\\_Environmental\\_Design](http://en.wikipedia.org/wiki/Leadership_in_Energy_and_Environmental_Design).

<sup>9</sup> More information on Florida’s “Green Lodging Standards” is available at <http://www.dep.state.fl.us/greenlodging/default.htm>.

maximum refund is the lesser of \$5,000 or 97 percent of the tax paid, if fewer than 20 percent of the eligible business' employees live in the EEZ, or the lesser of \$10,00 or 97 percent of the tax paid, if at least 20 percent of the eligible business' employees live in the EEZ. Again, the language is nearly identical to an exemption for business property used within a ch. 290, F.S., enterprise zone.

- Clean technology and manufacturing products used in an EEZ. The governing board of the EEZ community must specify by ordinance a list of eligible products, which have been selected based on consultation with the Florida Energy Systems Consortium.<sup>10</sup> The list must be submitted to the Department of Revenue by December 31, 2010, and must be updated at least every 2 years. The amount of sales and use tax refunds under this provision is subject to the overall pilot community cap of \$300,000.

**Section 3** creates s. 220.195, F.S., the “Energy Economic Zone Jobs Tax Credit.” This corporate income tax credit will apply to eligible businesses within the pilot EEZs, and is based on the number of qualified employees.

A “qualified employee” is defined as a Florida resident that is first employed by an eligible business on or after July 1, 2011; is not an owner, partner, or majority stockholder of the eligible business; is employed at least 6 months; and earns a minimum annual wage that is at least equal to the statewide average annual private-sector wage or the annual average wage of the Metropolitan Statistical Area where the EEZ is located.

The credit is equal to 10 percent (up to a maximum \$5,000 annually) of the qualified employee's salary paid during the first 2 years of employment if the employee does not live in the EEZ, and 20 percent (or a maximum \$10,000 annually) if the employee does live in the EEZ. This computation is based on the employee's wages that are subject to the unemployment compensation tax.

This section details the process an eligible business must follow to submit the required documentation to receive the tax credit, and provides penalties for businesses that overstate the refund or otherwise fraudulently claim the credit.

The provisions and wording of this section are very similar to those in s. 220.181, F.S., which is the corporate jobs tax credit for ch. 290, F.S., enterprise zones.

**Section 4** creates s. 220.196, F.S., the “Energy Economic Zone Pilot Program property tax credit.” This tax credit against corporate income tax credit is based on the amount of ad valorem taxes paid by a new or expanding EEZ business on real and tangible personal property.

The amount of the credit is a maximum \$50,000 annually for an eligible business with at least 20 percent of its employees residents of the EEZ or an enterprise zone, or a maximum \$25,000 a year if fewer than 20 percent of its employees live in those designated areas.

A business may carry forward any unused tax credits for up to 4 years, to apply that balance against future tax liability.

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<sup>10</sup> More information about the consortium is available at <http://www.floridaenergy.ufl.edu/>.

This section details the process an eligible business must follow to submit the required documentation to receive the tax credit, and provides penalties for businesses that overstate the refund or otherwise fraudulently claim the credit.

The provisions and wording of this section are very similar to those in s. 220.182, F.S., which is the corporate jobs tax credit for ch. 290, F.S., enterprise zones.

**Section 5** provides that CS/SB 2644 shall take effect July 1, 2010.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The amendment that formed the basis for CS/SB 2644 was evaluated by the Revenue Estimating Conference at its April 2, 2010, meeting. The REC, by consensus, adopted a (\$300,000) cash reduction to the state General Revenue Fund in FY 11-12; a (\$600,000) cash reduction in FY 12-13, and a (\$900,000) cash reduction in FY 13-14.

B. Private Sector Impact:

Indeterminate, but likely positive, to the extent that the City of Miami Beach and Sarasota County use these incentives to successfully recruit businesses to their EEZ, or expand existing businesses, that will create jobs.

C. Government Sector Impact:

Indeterminate. DOR likely will incur some costs in modifying its computer software to track, record, and refund these new tax credits.

**VI. Technical Deficiencies:**

DOR is reviewing CS/SB 2644 to determine if there is sufficient guidance on how the tax credits, which are treated as tax refunds, will be tracked.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by the Commerce Committee on April 7, 2010:**

- Removes provisions designating EEZs as transportation concurrency exception areas, exempting development within the EEZs as exempt from DRI review; and providing density bonuses for developments within EEZs.
- Directs the EEZ pilot communities to adopt ordinances specifying the creation of their EEZs and eligibility requirements for businesses, replacing references to land-use comprehensive plan amendments and maps for this information.
- Deletes the proposed jobs tax credit against state sales-and-use tax liability;
- Refines the remaining five tax credits to more closely align them with activities expected to occur in EEZs;
- Caps the total incentives at \$300,000 annually per each pilot community.
- Replaces the term “clean technology industries and technologies” with two terms: “energy efficiency investments” and “clean technology industries and businesses” and expanded the type of activities under each;
- Specifies that the final report due February 15, 2012, from DCA on the EEZ pilot program should include recommendations on whether incentives should be revised, renewed, or expanded; and
- Changes the legislation’s effective date to July 1, 2010.

**B. Amendments:**

None.