

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – The bill authorizes tax exemptions for businesses operating within an enterprise zone.

Empower Families – The bill provides for job tax credits for businesses located in enterprise zones that hire employees.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Enterprise Zone Program

The Florida Enterprise Zone Act of 1994 (the Act), codified in ss. 290.001-290.016, F.S., was created:

[T]o provide the necessary means to assist local communities, their residents, and the private sector in creating the proper economic and social environment to induce the investment of private resources in productive business enterprises located in severely distressed areas and to provide jobs for residents of such areas.¹

Under the Act, areas of the state meeting specified criteria, including suffering from pervasive poverty, unemployment, and general distress, have been designated as enterprise zones. The Act established a process for the nomination and designation of a maximum of 20 enterprise zones (ss. 290.0055 and 290.0065, F.S.). Subsequent to the 1994 act, however, the Legislature has designated additional zones. Currently, there are 51 state enterprise zones, including 26 rural zones and 25 urban zones. There are also three Federal Enterprise Communities and two Federal Empowerment Zones. Certain federal, state, and local incentives are authorized to induce private businesses to invest in these enterprise zones.



¹ Section 290.003, F.S.

State Incentives

The program's incentives are as follows:

- Jobs credit against corporate income taxes: Businesses located in an enterprise zone which pay Florida corporate income taxes are authorized to receive a tax credit against their tax liability based on the amount of wages paid to new employees who are either residents of an enterprise zone or participants in a welfare transition program.²
- Jobs credit against sales tax: Businesses located within an enterprise zone which collect and pay Florida sales and use tax are allowed a credit against their sales tax due based on the amount of wages paid to new employees who are either residents of an enterprise zone or participants in a welfare transition program.³
- Property tax credit: New, expanded, or rebuilt businesses located within an enterprise zone are allowed a credit on their Florida corporate income tax based on the amount of property taxes paid.⁴
- Sales tax refund for building materials: A refund is available for sales taxes paid on the purchase of building materials used in the rehabilitation of real property in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or \$5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or \$10,000.⁵
- Sales tax refund for business property used in an enterprise zone: A refund is available for sales taxes paid on the purchase of business property with a purchase price of \$5,000 or more purchased by and for use in a business located in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or \$5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or \$10,000.⁶

Local Incentives

The following are examples of local incentives:

- Sales tax exemption for electrical energy used in an enterprise zone: A sales tax exemption (state and local taxes) is available to qualified businesses located in an enterprise zone on the purchase of electrical energy. This exemption is only available if the municipality in which the business is located has passed an ordinance to exempt the municipal utility taxes on such business.⁷
- Economic development ad valorem tax exemption: Up to 100 percent of the assessed value of improvements to real or tangible property of a new or expanded business located in an enterprise zone may be exempted from property taxes if the voters of a municipality authorize the governing body of the municipality to grant such exemptions.⁸
- Occupational license tax exemption: By ordinance, the governing body of a municipality may exempt 50 percent of the occupational license tax for businesses located in an enterprise zone.⁹
- Local impact fee abatement or reduction, or low-interest or interest-free loans, or grants to businesses.¹⁰

State Incentive Use and Job Creation

The Office of Tourism, Trade, and Economic Development (OTTED) has reported the following regarding activity in enterprise zones:

² Section 220.181, F.S.

³ Section 212.096, F.S.

⁴ Section 220.182, F.S.

⁵ Section 212.08 (5) (g), F.S.

⁶ Section 212.08 (5) (h), F.S.

⁷ Sections 212.08 (15) and 166.231(8), F.S.

⁸ Section 196.1995, F.S.

⁹ Section 205.054, F.S.

¹⁰ Section 290.0057 (1) (e), F.S.

FISCAL YEAR	NEW OR RELOCATED BUSINESSES	JOBBS CREATED	NUMBER OF ZONES	STATE INCENTIVES USED
2002-2003	2,268	5,057	51	\$5,401,583
2001-2002	1,244	5,630	47	\$6,739,551
2000-2001	654	6,394	34	\$4,746,396
1999-2000	766	5,141	34	\$5,458,835
1998-1999	776	5,305	32	\$5,170,899
1997-1998	151	3,572	31	\$4,495,218
1996-1997	434	4,573	30	\$4,449,941
1995-1996	128	2,188	19	\$3,437,344

As the chart shows, incentive use and job creation has not always increased as the number of zones has increased over time. Of note, in the 2002-2003 annual report, 14 of the 51 zones reported no incentive activity in their respective zones, although the Department of Revenue is unable to track use of the jobs tax credit or the property tax credit against corporate income tax.

Agency Oversight

The Governor's Office of Tourism, Trade, and Economic Development (OTTED) administers the Florida Enterprise Zone Act; the Department of Revenue reviews and approves or denies a business's application for enterprise zone tax credits; and Enterprise Florida, Inc., is responsible for marketing the Act.

Program Expiration

The Act is scheduled for repeal on December 31, 2005, as provided by s. 37, ch. 94-136, L.O.F. Although most of the statutory authority for the Act expires on December 31, 2005, some of the state tax incentives for the Act are scheduled to expire on June 30, 2005. (See, for example, ss. 212.08(5)(q) and 220.181(9), F.S.)

Effect of Proposed Changes

Name (Section 1)

The bill renames the Act the "Florida Enterprise Zone Act."

Local Nominating Procedure/Boundary Changes (Section 3)

The bill revises the local nominating procedure for enterprise zones in s. 290.0055, F.S., to apply only to the designation of *new* enterprise zones. This change coordinates with the provision that establishes a maximum number of enterprise zones, and only allows a new zone to be nominated if an existing zone is not redesignated.

This section also provides a boundary change process for enterprise zones that allows a governing body, upon recommendation by the enterprise zone development agency, to request a change once

every three years, subject to review and approval by OTTED. The boundary change must comply with existing limitations on the size of enterprise zones. This procedure eliminates the necessity of seeking legislation to change a boundary.

This section also deletes obsolete language in the criteria for enterprise zone designation.

Enterprise Zone Development Agency (Section 4)

The bill amends s. 290.0056, F.S., regarding the local enterprise zone development agency (EZDA). This section provides greater flexibility to a governing body regarding an appointment to a board of commissioners for an EZDA, while emphasizing the importance of choosing members from within the enterprise zone community, when possible. The powers and responsibilities of an EZDA are also revised:

- To require an annual review and update of the enterprise zone's strategic plan or measurable goals;
- To encourage the EZDA board members to assist in marketing the enterprise zone to enterprise zone residents and businesses;
- To make the EZDA responsible for recommending boundary changes to the governing body as appropriate;
- To encourage board members to work with three Florida universities who have established the "University Partnership for Community Development" on enterprise zone development issues; and
- To have the EZDA work with Enterprise Florida, Inc., and OTTED to ensure that an enterprise zone coordinator is properly trained on an annual basis.

This section also eliminates some extraneous notice and filing requirements regarding an annual report by an EZDA to its governing body, while continuing to provide public access to the report in the office of the EZDA.

Enterprise Zone Strategic Plan (Section 5)

The bill amends s. 290.0057, F.S., by specifying that an enterprise zone strategic plan must be created by a governing body if the governing body submits a *new* application for enterprise zone designation.

Determination of Pervasive Poverty, Unemployment and General Distress (Section 6)

The bill amends s. 290.0058, F.S., regarding the determination of pervasive poverty, unemployment, and general distress in an enterprise zone application. This section provides greater flexibility when determining the level of pervasive poverty in an area nominated to be a rural enterprise zone by allowing the poverty level in the entire county to be used when a particular census geographic block group does not meet the requirement of having a poverty level of 20 percent or greater. Additionally, this section exempts an area nominated to be a rural enterprise zone from the requirement of demonstrating a poverty level of 30 percent or greater in a certain number of census geographic block groups within an area nominated to be a rural enterprise zone.

Redesignation and Designation of Enterprise Zones (Section 7)

The bill amends s. 290.0065, F.S., to specify that the maximum number of zones authorized under the Act is the number of zones with an effective date on or before January 1, 2005, which, according to OTTED staff, is 55. This number is subject to revision upward if the 2005-2006 Legislature designates any new zones during the legislative session.

This section also provides a procedure for redesignation of existing enterprise zones. (Section 9 "sunsets" all existing zones, until redesignated pursuant to this section.) To be redesignated, the

governing body for an existing enterprise zone must complete and submit to OTTED for review and approval:

- An updated zone profile for the enterprise zone based on the most recent census data;
- A resolution passed by the governing body requesting redesignation and explaining why the conditions of the zone merit redesignation; and
- Measurable goals for the enterprise zone developed by the enterprise zone development agency, which may be the goals established in the enterprise zone's strategic plan.

The governing body may also submit a request for a boundary change in the same application to OTTED.

In consultation with Enterprise Florida, Inc., OTTED must determine, based on the information provided above, that the enterprise zone merits redesignation. OTTED may also review progress made, if any, in the enterprise zone's strategic plan, and also may review the use of enterprise zone incentives during the life of the zone. If OTTED approves or denies redesignation, it must inform the governing body of its decision in writing. Any enterprise zone denied redesignation may not apply again for redesignation for one year from the date of denial. If an enterprise zone is redesignated, OTTED must determine if the measurable goals submitted by the governing body are reasonable, and must inform the governing body of its approval of the measurable goals.

If an existing enterprise zone was designated under a Federal act, it may seek redesignation for that zone from OTTED by following the same procedure as outlined above, without any limitation as to the size of the zone. (Some zones were allowed to be larger than existing limitations on enterprise zones to match the zones with the geographic sizes authorized in the Federal acts.)

This section also provides a procedure for designation of new enterprise zones. If an existing enterprise zone is not redesignated, a governing body may apply to fill the opening and request designation of an enterprise zone by OTTED. A governing body is required to follow the procedure outlined in s. 290.0055, F.S., (see Section 3 above), a procedure that was completed by most of the existing enterprise zones when those zones were designated. OTTED, in consultation with Enterprise Florida, Inc., must rank the applications competitively based on the:

- Pervasive poverty, unemployment, and general distress of the area;
- Strategic plan, including local fiscal and regulatory incentives; and
- Prospects for new investment and economic development in the area.

Each of these factors is weighted a certain percentage in the application. OTTED must then determine which applications for enterprise zones will be approved.

This section also removes a size categorization procedure for enterprise zones that was based on population, and instead references the same procedure located in s. 290.0055, F.S. Further, this section adds measurable goals in the guidelines that OTTED may establish when reviewing applications. Additionally, this section deletes several references to out-of-date boundary change procedures and specific enterprise zone and satellite zone designations.

Revocation of Enterprise Zone Designation (Section 8)

The bill amends s. 290.0066, F.S., to give OTTED additional authority to revoke an enterprise zone designation, by adding failure to make progress in or failure to comply with an enterprise zone's measurable goals.

Transition Period for Existing Enterprise Zones (Section 9)

The bill amends s. 290.012, F.S., to specify a transition period for existing enterprise zones. This section provides that any enterprise zone with an effective date on or before January 1, 2005, continues to exist until December 31, 2005, and ceases to exist on that date. Any enterprise zone redesignated or designated on or after January 1, 2006, must do so in accordance with the Florida Enterprise Zone Act (see the procedures outlined in section 7). A transition period is necessary in order to bring all zones under the procedures specified in the bill.

Expiration Date for Enterprise Zone Act (Section 10)

The bill amends s. 290.016, F.S., to extend the expiration date for the Florida Enterprise Zone Act for a further 10 years, until December 31, 2015.

Extension of Enterprise Zone Act Tax Incentives (Sections 12 through 20, 23 and 27)

The bill amends the following provisions to extend the expiration date to the same date specified in section 10 above, which is December 31, 2015:

- Section 166.345, F.S., encouraging private enterprise;
- Section 166.231, F.S., regarding the electrical energy exemption in an enterprise zone;
- Sections 193.077, F.S., 193.085, F.S., and 195.073, F.S., regarding the enterprise zone property tax credit;
- Section 193.085, F.S., expiration of listed property;
- Section 195.073, F.S., expiration of classification of property;
- Section 196.012, F.S., regarding a definition of an enterprise zone in the exemption chapter of Title XIV Taxation and Finance;
- Sections 205.022, F.S., and 205.054, F.S., regarding a definition of an enterprise zone, and an exemption for engaging in business in an enterprise zone in the local occupational license taxes chapter;
- Sections 212.02, F.S., regarding a definition of an enterprise zone in the tax on sales, use, and other transactions chapter; and
- Section 220.02, F.S., and 212.08, F.S., regarding the legislative intent for the enterprise zone jobs tax credit against corporate income tax and the enterprise zone property tax credit; and
- Section 220.182, F.S., regarding the enterprise zone property tax credit.

Building Materials Tax Incentive (Section 19)

The bill amends s. 212.08, F.S., to provide an enterprise zone resident or business up until September 1, after the rehabilitated property is first subject to assessment, to file a claim for the "building materials used in an enterprise zone" incentive. This change will provide more time to an enterprise zone resident or business to file for the refund.

This section preserves the "business property used in an enterprise zone" incentive purchase threshold at \$5,000. The expiration dates for both of these incentives, and for the "electrical energy used in an enterprise zone" incentive, are also extended in this section to the same date specified in section 10 above, which is December 31, 2015.

This section also deletes a reference to a specific type of project that was authorized under the community contribution tax credit that related to a specific enterprise zone designated in s. 290.00675,

F.S. The designation of that specific zone is repealed in section 26 of this bill. (This zone, like the other existing zones, may be redesignated as outlined in section 7 above.)

Enterprise Zone Jobs Tax Credit (Section 20)

- The bill continues s. 212.096, F.S., the “enterprise zone jobs tax credit against sales tax,” to allow a new job created by a business to qualify for the credit.

This section restricts tax credits for employees that own stock in the business. This section also extends the expiration date of this incentive to the same date specified in section 10 above, which is December 31, 2015.

Enterprise Zone Jobs Credit Against Corporate Income Tax (Section 23)

This section includes a restriction against claiming a tax credit for any new employee who is an owner, partner, or majority stockholder of an eligible business. This is consistent with the current and proposed restriction against claiming sales tax credits in s. 212.096(6), F.S. (section 20 of the bill.)

Net Ban Enterprise Zones (Section 25)

The bill amends s. 370.28, F.S., regarding enterprise zones designated due to adverse impacts from the net ban, to provide a transition period. This section specifies that any enterprise zone designated under this statute, with an effective date on or before January 1, 2005, continues to exist until December 31, 2005, and ceases to exist on that date. Further, any enterprise zone that was originally designated under this statute, if it is to be redesignated on or after January 1, 2006, must do so in accordance with the Florida Enterprise Zone Act (see the redesignation procedures in section 7 above).

Repeals (Section 26)

The bill repeals numerous references to past enterprise zone designations and boundary changes that were authorized by the Legislature since 1994.

This section repeals s. 290.009, F.S., which created the Enterprise Zone Interagency Coordinating Council. OTTED recommended this section be repealed, as the council has not met regularly since 1994.

This section also repeals s. 290.015, F.S., which is an outdated reference to a review of the enterprise zone program that was to be conducted by the Office of Program Policy Analysis and Government Accountability prior to the 2000 legislative session, and a review that was to be conducted by the appropriate legislative committees prior to the 2001 legislative session.

Technical and Conforming Changes (Sections 2 and 22)

The bill deletes two definitions relating to the former Department of Commerce, and deletes the definition of the “interagency coordinating council,” which no longer exists.

The bill amends s. 220.03, F.S., regarding definitions in the corporate income tax code of ad valorem taxes paid, business, community contribution, emergency, enterprise zone, expansion of an existing business, local government, new business, new employee, project, and rebuilding of an existing business to extend the expiration date of those definitions to the same date specified in section 10 above, which is December 31, 2015.

The bill also deletes the definition of “new job has been created,” and deletes a reference to a specific type of project that was authorized under the community contribution tax credit that related to a specific enterprise zone designated in s. 290.00675, F.S. The designation of that specific zone is repealed in

section 26 of this bill. (This zone, like the other existing zones, may be redesignated as outlined in section 7 of this bill.)

C. SECTION DIRECTORY:

- Section 1. Amends s. 290.001, F.S., relating to the name of the Enterprise Zone Act.
- Section 2. Amends s. 290.004, F.S., relating to definitions used in the Act.
- Section 3. Amends s. 290.0055, F.S., relating to the local nominating procedure for an enterprise zone.
- Section 4. Amends s. 290.0056, F.S., relating to the enterprise zone development agency.
- Section 5. Amends s. 290.0057, F.S., relating to the enterprise zone development plan.
- Section 6. Amends s. 290.0058, F.S., relating to the determination of pervasive poverty, unemployment and general distress.
- Section 7. Amends s. 290.0065, F.S., relating to the state designation of enterprise zones.
- Section 8. Amends s.290.0066, F.S., relating to the revocation of an enterprise zone designation.
- Section 9. Amends s. 290.012, F.S., relating to the enterprise zone transition period.
- Section 10. Amends s. 290.014, F.S., relating to the annual report.
- Section 11. Amends s. 290.016, F.S., relating to repeal of the Act.
- Section 12. Amends s. 166.345, F.S., relating to encouragement of private enterprise.
- Section 13. Amends s. 166.231, F.S., relating to a public service tax exemption.
- Section 14. Amends s. 193.077, F.S., relating to notice of new, rebuilt or expanded property.
- Section 15. Amends s. 193.085, F.S., relating to the listing of real property.
- Section 16. Amends s. 195.073, F.S., relating to the enterprise zone property tax credit.
- Section 17. Amends s. 196.012, F.S., relating to the definition of an enterprise zone.
- Section 18. Amends s. 205.022, F.S., relating to the definition of an enterprise zone.
- Section 19. Amends s. 205.054, F.S., relating to the repeal of an occupational license tax exemption.
- Section 20. Amends s. 212.02, F.S., relating to the definition of an enterprise zone.
- Section 21. Amends s. 212.08, F.S., relating to the repeal of the business materials and business property tax exemptions; repeal of an electrical energy tax exemption and the community contribution tax credit program.
- Section 22. Amends s. 212.096, F.S., relating to the enterprise zone jobs credit against tax incentive.
- Section 23. Amends s. 220.02, F.S., relating to the repeal of the enterprise zone jobs credit and property tax credit.
- Section 24. Amends s. 220.03, F.S., relating to the repeal of tax incentives.
- Section 25. Amends s. 220.181, F.S., relating to the enterprise zone jobs credit.
- Section 27. Amends s. 220.182, F.S., relating to the enterprise zone property tax credit.
- Section 28. Amends s. 370.28, F.S., relating to enterprise zone designation in net ban counties.
- Section 29. Repeals ss. 290.0055, 290.0067, 290.00675, 290.00676, 290.00678, 290.00679, 290.0068, 290.00685, 290.00686, 290.00687, 290.00688, 290.00689, 290.0069, 290.00691, 290.00692, 290.00693, 290.00694, 290.00695, 290.00696, 290.00697, 290.00698, 290.00699, 290.0701, 290.00702, 290.00703, 290.00704, 290.00705, 290.00706, 290.00707, 290.00708, 290.00709, 290.009 and 290.015, F.S.
- Section 30. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference considered the bill on March 11 and found the following state impact:

General Revenue Fund	<u>FY 2005-06</u> (\$5.3m)	<u>FY 2006-07</u> (\$12.6m)
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2. Expenditures:

According to the Department of Revenue, the change in the business property tax exemption will result in an increase of 1,149 claims. The Department requests appropriation for two Tax Auditor II positions to handle the increased workload. The costs are as follows:

<u>Expenditures</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
(recurring)	\$60,530	\$96,848
<u>(non-recurring)</u>	<u>\$9,122</u>	<u>0</u>
Total State Expenditures	\$69,652	\$96,848

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference considered the bill on March 11 and found the following local impact:

<u>Local Revenue</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
Revenue Sharing	(\$0.1 m)	(\$0.3 m)
Local Gov't Half Cent	(\$0.3 m)	(\$0.8 m)
Local Option	(\$0.3 m)	(\$0.8 m)
<u>Municipal Utility</u>	<u>(\$0.3 m)</u>	<u>(\$0.8 m)</u>
Total Local Impact	(\$1.0 m)	(\$2.7 m)

2. Expenditures:

The bill appears not to have a significant impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may incentivize business relocation to or expansion within an enterprise zone, thereby creating jobs within a zone.

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 reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create or require any rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Finance and Tax Committee heard the bill on March 7, 2005 and adopted a Strike-all amendment which reduced the business property tax exemption threshold from \$5000 to \$500; added tax carryover language for enterprise zone tax incentives; and made technical and conforming changes.