

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.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: CS/SB 1460

INTRODUCER: Committee on Commerce and Tourism and Senator Bennett

SUBJECT: Energy Economic Zones

DATE: March 29, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Fav/CS
2.			CU	
3.			CA	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

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 final report on the pilot program recommended a number of changes to comprehensive planning statutes and creation or expansion of economic development incentives for businesses and property owners within the two communities.

CS/SB 1460 makes businesses within EEZs eligible for four sales tax exemptions and seven state tax refund or tax credit incentives. The total amount of these state incentives that can be claimed annually by eligible businesses is limited to \$300,000 per EEZ community, for a total of \$600,000.

CS/SB 1460 also adds EEZ communities to the list of counties and cities eligible for an alternative state review process of comprehensive planning activities.

The bill substantially amends ss. 163.32465, 212.08, 212.096, 220.181, 220.182, 220.183, 288.047, 288.063, 288.106, 445.003, and 377.809, F.S., and corrects a cross-reference in s. 220.191, F.S.

II. Present Situation:

EEZ Pilot Program

In 2009, the Legislature passed legislation¹ 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 greenhouse gas emissions, cultivate green economic development, encourage the generation of renewable electric energy, and promote manufacturing to create “green” products and jobs.²

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.

DCA selected the City of Miami Beach and Sarasota County, which offered two sites, to participate in the 2-year pilot project. The two local-governmental entities submitted to DCA their initial strategy plans in February 2010, and continued to work with DCA and OTTED to develop their individual plans. The Legislature, during its 2010 session, passed a bill directed DCA and OTTED to develop recommendations on which economic development incentives and statutory revisions were necessary to accomplish the pilot program’s goals.³ DCA and OTTED were directed to work with the communities and with clean technology companies on ideas and to consider, when developing their recommendations, the following:

- Fiscal and regulatory incentives;
- A jobs tax credit and corporate property tax credit pursuant to ch. 220, F.S.; and

¹ Chapter 2009-89, L.O.F. Section 7 includes the provisions for the EEZ pilot program.

² Ibid. Section 7 includes the provisions for the EEZ pilot program.

³ Chapter 2010-139, L.O.F. Section 15 includes the directives to DCA and OTTED.

- Refunds and exemptions from the sales and use tax in ch. 212, F.S., for job creation, building materials, business property, and products used for clean technology industries and investments within the designated EEZs.

In February 2011, DCA issued a final report⁴ that recommended making businesses and property owners within the two EEZs eligible for the same tax credit and tax refund incentives available in the state's 59 enterprise zones, which are distressed communities with pockets of high jobless and poverty rates.⁵

The final report also recommended:

- Amending s. 163.32465(2), F.S., to include areas within EEZs in the Alternate State Review Pilot Program for expedited comprehensive plan amendment review.
- Amending s. 163.3164(34), F.S., to provide that areas within EEZs have the same planning flexibility pertaining to transportation concurrency and exemptions from DRI regulations;
- Modifying Part II of ch. 163, F.S., to encourage and reward buildings and developments that are Leadership in Energy and Environmental Design (LEED)⁶ certified and use Low Impact Development Standards.
- Amending s. 163.3187, F.S., to allow comprehensive planning amendments for EEZs to be processed outside of the typical twice-yearly comp plan amendment cycle.
- Including EEZ transportation projects for funding consideration from the Economic Development Transportation Fund in s. 288.063, F.S.
- Encouraging local businesses to adopt streamlined permitting processes for businesses within EEZs.
- Modifying the current enterprise zone tax credits and tax refunds for use by businesses and property owners within EEZs.
- Amending s. 299.106, F.S., the Qualified Target Industry (QTI) tax refund program to remove certain wage requirements for businesses located in EEZs, and to allow local governments to add types of businesses that could qualify for the QTI program.
- Allowing businesses within EEZs to transfer their unused tax credits.
- Providing sales tax refunds for the purchase of products used in clean technology industries within an EEZ.

Pilot communities

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.

⁴ On file with the Senate Commerce and Tourism Committee.

⁵ Section 290.0058, F.S., specifies the criteria of enterprise zones.

⁶ The U.S. Green Building Council developed these industry-accepted guidelines. More information is available at: <http://www.usgbc.org/DisplayPage.aspx?CategoryID=19> Last visited March 22, 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 induce private investment that creates jobs and increases property values. There currently are 59 EZs, all of which were either created or reauthorized by the Legislature.

OTTED reports that between October 1, 2009, and September 30, 2010:⁷

- 7,559 businesses moved into or were created in enterprise zones;
- 6,073 jobs were created by businesses there;
- About \$67.6 million in state funds and nearly \$20 million in local-government financial incentives were approved during that same period; and
- \$54 million, or nearly 80 percent, of the state incentive funds went for state sales and use tax refunds for the purchase of building materials within enterprise zones).

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:

- Sales and use tax refunds:
 - 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.
 - 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 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 in enterprise zones.
- Sales and use tax credits:
 - Rural Enterprise Zone Jobs Credit against Sales Tax: Provides a tax credit for 20 percent, 30 percent, or 45 percent of wages paid to new employees, depending on where they live.

⁷ Florida Enterprise Zone Program Annual Report, dated October 1, 2009 – September 30, 2010. On file with the Senate Commerce and Tourism Committee. Prepared by OTTED with information provided by the state Department of Revenue and the 59 local enterprise zone coordinators.

- 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.
- 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 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 located in enterprise zones.
- Sales tax exemptions:
 - 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.

As mentioned above, the local incentives provided by cities and counties during the same 12-month period was close to \$20 million. 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.

QTI tax refund program

The QTI Tax Refund Incentive Program was created in 1994 as part of a retooling of Florida's economic development efforts.⁸ The QTI program was designed to encourage the recruitment or creation of higher-paying, higher-skilled jobs for Floridians, by awarding eligible businesses refunds of certain state or local taxes paid in exchange for creating jobs.

Eight industry sectors have been designated as "targeted industries": Clean Tech; Life Sciences; Information Technology; Aviation/Aerospace; Homeland Security/Defense; Financial/Professional Services; Emerging Technologies; and Other Manufacturing.⁹ Within each sector are several specific types of target businesses.

The amount of the refund is based on the wages paid, number of jobs created, and where in the state the eligible business chooses to locate or expand, but the basic refund is \$3,000 per employee over the term of the incentive agreement signed by the business and the Governor's Office of Tourism, Trade and Economic Development (OTTED). The per-employee refund amount can be as high as \$11,000, if multiple conditions are met.

⁸ Section 288.106, F.S.

⁹ 2011 Qualified Targeted Industries for Incentives list on file with the Senate Commerce and Tourism Committee.

The QTI incentive is a refund against seven state taxes and the local ad valorem tax paid by eligible businesses. Most commonly, businesses have used the QTI to obtain reimbursements for ad valorem, state sales tax, and state corporate income tax liabilities.

A key feature of the QTI incentive is that the business must agree to pay at least 115 percent of the average private-sector wage of the state, the county or the standard metropolitan area in which the business is or will be located, but exceptions may be granted under specific criteria. Typically, a cash or in-kind match is required from the local government, although this can be waived for rural counties or under other circumstances.

As a cash refund, the QTI incentive is paid by OTTED only after the yearly agreement conditions have been met. The duration of a QTI agreement is 3 to 4 years.

As of June 30, 2009, some 880 business projects have been recommended for the QTI incentive; 848 have been approved by the former Department of Commerce or OTTED; and 730 have entered into QTI agreements with the state. Of those 730 projects, 260 remain “active,” meaning they are eligible to receive tax refunds through the QTI program. These 260 projects have committed to create 45,043 jobs, paying an average wage of \$44,916.

As noted above, for FY 10-11, the Legislature appropriated \$12.23 million to OTTED for use as tax refunds to Qualified Defense Contractor and Space Flight Business (QDSC) and Qualified Target Industry (QTI) tax refund program recipients.

Transportation Economic Development Fund

Section 288.063, F.S., provides state grants to improve transportation access and infrastructure for businesses that are planning to relocate or expand. This is commonly referred to as the “road fund.” OTTED awards the grants to local governments where the businesses are located, to contract for the transportation improvements. OTTED considers a number of factors in selecting the projects, including:

- Jobs to be created by the business,
- Wages to be paid, and
- Whether the transportation improvement is necessary to induce the business to locate or expand in a particular community.

In FY 10-11, the Legislature appropriated \$20 million for economic development transportation projects, of which \$16.3 million was specifically earmarked, leaving \$3.7 for general projects under OTTED’s discretion.

Comprehensive Planning Requirements

Adopted by the 1985 Legislature, the Local Government Comprehensive Planning and Land Development Regulation Act - also known as Florida’s Growth Management Act - requires all of Florida’s 67 counties and 410 municipalities to adopt Local Government Comprehensive Plans that guide future growth and development.

Comprehensive plans contain chapters that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements.

A key component of the growth management act is its concurrency provision that requires many types of facilities and services, such as transportation systems, to be available concurrent with the impacts of development. In general, local governments must use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring that transportation facilities and services are available, or “concurrent” with the impacts of development.

To carry out transportation concurrency, local governments must define what constitutes an adequate level of service (LOS) for its transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. In 1992, Transportation Concurrency Management Areas were authorized, allowing an area-wide LOS standard (rather than facility-specific) to promote urban infill and redevelopment and provide greater mobility in those areas through alternatives such as public transit systems.

Subsequently, two additional relaxations of concurrency have been authorized: Transportation Concurrency Exception Areas (TCEA) and Long-term Transportation Concurrency Management Systems. Specifically, the TCEA is intended to reduce the adverse impact transportation concurrency may have on urban infill and redevelopment by exempting certain areas from the concurrency requirement. Long-term Transportation Concurrency Management Systems are intended to address significant backlogs of transportation projects.

Another aspect of growth management in Florida is the development of regional impact (DRI) review process. Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. Over the years several types of projects, or projects that meet certain thresholds, have been exempted from the DRI review process.

A third growth-management tool is the relatively new “density bonus.” It was authorized by the Legislature in 2006 to encourage local governments to promote the building of affordable housing. One form a density bonus may take is allowing developers to build additional residential units in exchange for the provision of affordable housing. The amount of the bonus would be different for different local governments, and even different projects within each jurisdiction. Several Florida communities have proposed amendments to their comprehensive plans, for DCA review, to allow density bonuses.

The newest tool is the Alternative State Review Process, created in s. 163.32465(2) F.S. In 2007, the Legislature created the pilot program to provide an alternate, expedited process for plan amendments with limited state-agency review. The alternative state review process shortens the statutorily prescribed timeline for comprehensive plan amendments process from 136 days to 65 days.

Currently, Pinellas and Broward counties and the municipalities within those counties, plus the cities of Jacksonville, Miami, Tampa and Hialeah are statutorily named as participants in the pilot program.

III. Effect of Proposed Changes:

CS/SB 1460 makes businesses within EEZs eligible for 11 state tax exemptions, state tax refunds, and state tax credits that are used as economic development incentives. The bill also adds EEZ communities created under s. 377.809, F.S., to the list of local government entities that can participate in the state's Alternate State Review Process for comprehensive plan amendments, potentially reducing by half the review time.

Section 1: Amends s. 163.32465(2), F.S., to add EEZ communities created under s. 377.809, F.S., to the list of local government entities that can participate in the state's Alternate State Review Process for comprehensive plan amendments.

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

- Machinery and equipment used in the production of renewal energy within an EEZ.
- Building materials used in the construction or rehabilitation of energy-efficient structures of real property within an EEZ. The building materials must meet LEED standards. The language related to the processes of claiming the tax refund and most of the definitions are nearly identical to the existing sales and use tax exemption for building materials used in enterprise zones.
- Business property purchased for use in an EEZ, to be taken as refund. Again, the language is nearly identical to an exemption for business property used within a ch. 290, F.S., enterprise zone.
- Electrical energy used by a qualified business in an EEZ.

Section 3: Amends s. 212.096, F.S., to extend the enterprise zone jobs tax credit against sales and use tax to businesses in the EEZs that meet the eligibility criteria.

Section 4: Amends s. 220.181, F.S., to extend the enterprise zone jobs tax credit against corporate income tax liability accrued by businesses within the EEZ that meet the eligibility criteria.

Section 5: Amends s. 220.182, F.S., to extend the enterprise zone property tax credit against corporate income tax liability to businesses within the EEZs that meet the eligibility criteria.

Section 6: Amends s. 220.183, F.S., to extend eligibility to sponsor projects for the Community Contribution Tax Credit to local governing boards which has an EEZ within its jurisdiction.

Section 7: Amends s. 288.047, F.S., to add EEZs to the list of designated communities where businesses are eligible for a special set-aside of Quick Response Training funds. The other designated communities are enterprise zones and brownfield areas.

Section 8: Amends s. 288.063, F.S., to add to the list of selection criteria for "road fund" incentive dollars the location of an economic development project in an EEZ.

Section 9: Amends s. 288.106, F.S., the QTI tax refund incentive program, to make changes applicable to projects within EEZs. This section:

- Defines EEZs as designated pursuant to s. 377.809, F.S.;
- Exempts a target industry business within an EEZ from having to meet the state target industry business criterion of being “market and resource independent,” pursuant to the current s. 288.106(1)(t)4., F.S.;
- Adds targeted industry businesses within EEZs eligible to earn double the per-employee tax refund, and to receive higher tax refund subsidies, as do businesses in enterprise zones, annually and over the long-term;
- Waives the minimum wage requirement of at least 115 percent of the average area private sector wage for businesses in EEZs; and
- Waives the requirement for EEZ businesses that to receive a prorated QTI tax refund, the business must pay its employees wages of at least 115 percent of the average area private sector wage.

Section 10: Amends s. 377.809, F.S., which created the EEZ pilot program. CS/SB 1460 modifies the statute to:

- Specifies that beginning July 1, 2011, and after the adopting of a local ordinance by the local governing board for an EEZ, qualified businesses within the EEZ:
 - Are eligible for the 11 state financial incentives specified in earlier sections of the bill, but the bill elsewhere specifies the incentives cannot be claimed on tax forms until July 1, 2012; and
 - Are eligible to benefit from changes in the state growth management law related to expedited review of plan amendments and density and intensity bonuses for development.
- Reiterates that comp plan amendments related to EEZ projects are not subject to the twice-yearly window of review.
- Specifies that the application of ch. 163, F.S., provisions in this section prevail if there is a conflict with similar provisions elsewhere in statute.
- Specifies that any agency or judicial review of a comp plan amendment for a development within an EEZ is limited to the extent with which the amendment furthers the goals expressed in s. 377.809, F.S.
- Specifies that, notwithstanding any law to the contrary, a public utility (as defined in s. 366.02(1), F.S.), may grant discounts of up to 50 percent on tariffed rates to small businesses within an EEZ, for a period not to exceed 5 years.
- Gives projects located in an EEZ priority ranking, to the extent practicable, for grants administered by the Florida Energy and Climate Commission, other state incentive programs related to renewable or clean energy, or for grants from other sources such as qualified energy conservation bonds.
- Defines the terms “energy-efficiency development” and “clean technology industries and businesses” is broadly defined as encompassing a “diverse range of products, services, and processes that harness renewable materials and energy sources and reduce the use of natural resources, reduce greenhouse gas emissions, and result in energy conservation.”
- Requires local governing boards whose jurisdictions includes an EEZ to adopt an ordinance in order for EEZ businesses to be able to access state incentives and use the alternate comp planning processes.
- Specifies content of the EEZ ordinance, and allows the local governing board to revise the boundaries of its EEZ with DCA’s approval.

- Effective July 1, 2012, specifies that the total amount of tax credits, tax refunds, and tax exemptions that may be granted to businesses within each EEZ is capped at \$300,000 per year per EEZ, for a total of \$600,000 per year. Unused credits may be carried forward 5 years, and used by the business to defray future tax liability.
- The local governing board with jurisdiction over an EEZ must track and account for all levels of credits and refunds granted, and for credit amounts carried over from a previous year.
- Allows an eligible EEZ business, with approval from OTTED, to transfer any of the unused state tax credits it has received under the program, except for the premium insurance tax credit allowed under the community contribution tax credit program in s. 624.5105, F.S. Specifically:
 - Unused credits may be transferred no later than 5 years after being awarded, at which point they expire.
 - OTTED is directed to notify DOR of taxpayer elections and transfers.
 - An eligible business with unused credits may transfer any unused sales and use tax credits one time to one entity, and may transfer unused corporate income tax credits one time to up to four entities.
 - Entities receiving transferred credits have the same rights and limitations as the industry or business located in an EEZ that was awarded the tax credits, except that they may not subsequently transfer the tax credits.
- Requires a report from DCA and OTTED to the Governor, President of the Senate, and Speaker of the House of Representatives by February 15, 2015, evaluating whether the pilot program has demonstrated success. Current law requires that report by February 15, 2012.

Section 11: Amends s. 445.003, F.S., to make businesses within EEZs eligible for federal workforce grants.

Section 12: Amends s.220.191, F.S., to correct a cross-reference.

Section 13: This act shall take effect July 1, 2011.

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 Revenue Estimating Conference (REC) has not evaluated CS/SB 1460. However, in April 2010, the REC met to evaluate the fiscal impact of a nearly identical bill filed during the 2010 legislative session. 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 EEZs, 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:

None.

VII. Related Issues:

Section 10 of the bill creates the ability of EEZ businesses to transfer their unused credits over a period of 5 years, but does not establish a process for how and when this is done. Existing statutory provisions on tax-credit transfers are much more specific.

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 Commerce and Tourism Committee on March 29, 2011:

The committee adopted three amendments, which:

- Deleted a provision that would allow a business within an Economic Energy Zone that is not, for state purposes, a qualified target industry business to receive the QTI benefit if it meets the local ordinance's definition of a target industry for EEZ purposes;
- Clarified that the tax credits available to businesses within an Energy Economic Zone may be claimed on their tax returns beginning on July 1, 2012; and
- Clarified that businesses or projects within EEZs shall have priority, to the extent practicable, for state economic development incentives related to renewable or clean energy.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
