

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 Communications, Energy, and Public Utilities Committee

BILL: CS/ CS/SB 1460

INTRODUCER: Committee on Communications, Energy and Public Utilities, Committee on Commerce and Tourism, and Senator Bennett

SUBJECT: Energy Economic Zones

DATE: April 11, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pugh</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Wiehle</u>	<u>Carter</u>	<u>CU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>CA</u>	_____
4.	_____	_____	<u>BC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill makes all the incentives and benefits provided to enterprise zones pursuant to state law available to energy economic zones. To provide the incentives, a local governing body would have to adopt a local ordinance containing specified provisions. The bill specifies the available incentives and benefits; limits the total amount of state credits, refunds, and exemptions that may be provided by the governing body of each energy economic zone to eligible businesses for energy-economic-zone incentives is \$300,000 per designated energy economic zone in any state fiscal year; and provides the procedures for awarding an incentive or benefit. The bill also exempts a development in an energy economic zone from the requirements of section 380.06, on developments of regional impact.

The bill takes effect July 1, 2011.

The bill substantially amends ss. 377.809 and 380.06, F.S.

II. Present Situation:

EEZ Pilot Program

In 2009, the Legislature passed legislation 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.¹

DCA was designated the lead agency, but was directed to consult with the Department of Transportation in implementing the pilot program. The Governor’s Office of Tourism, Trade, and Economic Development (OTTED), and the Florida Energy and Climate Commission were to provide technical assistance.

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 directing DCA and OTTED to develop recommendations on which economic development incentives and statutory revisions were necessary to accomplish the pilot program’s goals.² 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
- 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.

¹ Section 7, Chapter 2009-89, Laws of Florida

² Section 15, Chapter 2010-139, Laws of Florida

In February 2011, DCA issued a final report³ 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.⁴

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)⁵ 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.

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

³ On file with the Senate Commerce and Tourism Committee.

⁴ Section 290.0058, F.S., specifies the criteria of enterprise zones.

⁵ 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.

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, 2010:⁶

- 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.
 - 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.

⁶ 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 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.⁷ 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.⁸ 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.

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.

⁷ Section 288.106, F.S.

⁸ 2011 Qualified Targeted Industries for Incentives list on file with the Senate Commerce and Tourism Committee.

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:

Section 1 amends s. 377.809, F.S., which created the EEZ pilot program. Beginning July 1, 2012, all the incentives and benefits provided to enterprise zones pursuant to state law are available to the energy economic zones designated by July 1, 2010, pursuant to s. 377.809. In order to provide incentives, no later than March 1, 2012, each local governing body having jurisdiction over an energy economic zone must, by local ordinance, establish boundaries of the energy

economic zone, specify applicable energy-efficiency standards, and determine eligibility criteria for application of state and local incentives and benefits in the energy economic zone. Boundaries may be revised by local ordinance.

The available incentives and benefits include those in ss. 220.181, 220.182, 212.08, 220.183, 624.5105, 212.096, and 288.106⁹ and the public utility discounts provided in s. 290.007(8). The exemption provided in s. 212.08(5)(c) must be for renewable energy as defined in s. 377.803(4). Any applicable requirements for employee residency for higher refund or credit thresholds must be based on employee residency in the energy economic zone or an enterprise zone. A business in an energy economic zone may also be eligible for funding under ss. 288.047 and 445.003, and a transportation project in an energy economic zone must be provided priority in funding under s. 288.063. Other projects shall be given priority ranking to the extent practicable for grants administered under state energy programs.

Effective July 1, 2012, the total amount of state credits, refunds, and exemptions that may be provided by the governing body of each energy economic zone to eligible businesses for energy-economic-zone incentives is \$300,000 per designated energy economic zone in any state fiscal year. A credit or refund that is applied for after each \$300,000 limit is reached must be disallowed. If the \$300,000 incentive cap is not fully used in any one state fiscal year, the unused amount may be carried forward for not more than 5 years. The local governing body having jurisdiction over the energy economic zone is responsible for allocating the incentives, for verifying that businesses receiving such incentives are eligible for the incentives provided, and for ensuring that the incentives provided do not exceed the cap for the state fiscal year.

Upon approving an incentive for an eligible business, the governing body having jurisdiction over the energy economic zone must provide the taxpayer with a certificate indicating the eligible businesses' name, federal identification number, date the incentive is provided, name of the energy economic zone, incentive type, and the incentive amount. The local governing body must certify to the Department of Revenue (DOR) or OTTED, whichever is applicable, which businesses or properties are eligible to receive any or all of the state incentives according to their statutory requirements. The governing body having jurisdiction over the energy economic zone must provide a copy of the certificate to DOR and OTTED as notification that such incentives were approved for the specific eligible business or property. For incentives to be claimed against the sales and use tax under chapter 212, DOR must send, within 14 days after receipt, written instructions to an eligible business on how to claim the credit on a sales and use tax return initiated through an electronic data interchange. Any credit against the sales and use tax must be deducted from any sales and use tax remitted by the dealer to DOR by electronic funds transfer and may be deducted only on a sales and use tax return initiated through an electronic data interchange. The dealer must separately state the credit on the electronic return. The net amount of tax due and payable must be remitted by electronic funds transfer. If the credit is larger than the amount owed on the sales and use tax return, the excess amounts may be carried forward for a period not to exceed 12 months following the date the credit is initially claimed.

⁹ To receive benefits provided under s. 288.106, a business must be a qualified target industry business under that section for state purposes.

If all conditions are deemed met, OTTED and DOR may adopt emergency rules pursuant to ss. 120.536(1) and 120.54 to administer these provisions. The emergency rules remain in effect for 6 months after they are adopted, and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

Section 2 amends s. 380.06, F.S., on developments of regional impact to exempt any development in an energy economic zone upon approval of its local governing body.

Section 3 provides that the bill takes 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 this bill. 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:

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/CS by Communications, Energy and Public Utilities on April 11, 2011:

- Streamlines the provisions for incentives, amending s. 377.809, F.S., to make all the incentives and benefits provided to enterprise zones available to energy economic zones as well.
- Exempts a development in an energy economic zone from the requirements of section 380.06, on developments of regional impact.

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.