

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 Community Affairs Committee

BILL: SB 506

INTRODUCER: Senator Bogdanoff

SUBJECT: Economic Development

DATE: February 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides new definitions for the terms “new business” and “expansion of existing business” for purposes of the ad valorem tax exemption for economic development provided in Article VII, section 3(c), of the Florida Constitution. The bill allows the board of county commissioners of a charter county to hold a referendum to grant such exemption upon receiving a petition in a charter county signed by the requisite number of electors prescribed in the county charter, including charters that require the signatures of less than 10 percent of the electors.

The bill also revises the current ballot language required in a referendum that determines whether an entity may grant an economic development exemption and the information that must be included in an application for such exemption. The bill provides economic criteria that the board or governing authority must consider in approving or denying the exemption and grants counties and municipalities with discretion to determine which new jobs should be incentivized by granting an economic development exemption.

The bill further allows counties and municipalities to enter into a written tax exemption agreement after approving an economic development exemption that includes certain criteria and requirements, and which authorizes the board or governing authority to revoke the exemption under certain circumstances.

This bill substantially amends sections 196.012 and 196.1995 of the Florida Statutes.

II. Present Situation:

Property Tax Assessments

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.¹ Section 193.011, F.S., requires property appraisers to consider eight factors in determining the property's just valuation.²

Article VII, section 4, of the Florida Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.³ The State Constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.⁴

Article VII, sections 3 and 6, of the Florida Constitution permits a number of tax exemptions. These include but are not limited to exemptions for homesteads and charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions. Section 196.195, F.S., outlines the statutory criteria that a property appraiser must consider in determining whether an applicant for a religious, literary, scientific, or charitable exemption is a nonprofit or profit-making venture.⁵ An application for exemption for the religious, literary, scientific or charitable use of property may not be granted until the property appraiser, or value adjustment board on appeal, determines that the applicant is nonprofit.⁶ Counties and municipalities are authorized by the Florida Constitution to grant economic development ad valorem tax exemptions for new and expanding businesses. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

Economic Development Ad Valorem Tax Exemption

Article VII, section 3(c), of the Florida Constitution, allows counties and municipalities to grant economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law.⁷ Section 196.012, F.S., defines the terms "new business" and "expansion of an existing business" as follows:

¹ See *Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

² See s. 193.011(1)-(8), F.S.

³ Section 196.185, F.S.

⁴ See FLA. CONST. art. VII, s. 4(d) & (g) (stating that the assessed value of homestead property may not increase over the prior year's assessment more than 3 percent or the percentage change in the Consumer Price Index, and levies for non-school tax purposes, the assessment of residential real property and non-residential real property may not increase more than 10 percent over the prior year.).

⁵ See s. 196.195(2)(a)-(e), F.S., for the list of statutory criteria that the property appraiser must consider.

⁶ Section 196.195(4), F.S.

⁷ FLA. CONST. art. VII, s. 3(c).

- (15) “New business” means:
- (a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant;
 2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15 (5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; or
 3. An office space in this state owned and used by a corporation newly domiciled in this state; provided such office space houses 50 or more full-time employees of such corporation; provided that such business or office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business.
- (b) Any business located in an enterprise zone or brownfield area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business.
- (c) A business that is situated on property annexed into a municipality and that, at the time of the annexation, is receiving an economic development ad valorem tax exemption from the county under s. 196.1995.⁸
- (16) “Expansion of an existing business” means:
- (a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or
 2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site colocated with a commercial or industrial operation owned by the same business, resulting in a net increase in employment of not less than 10 percent or an increase in productive output of not less than 10 percent.
- (b) Any business located in an enterprise zone or brownfield area that increases operations on a site colocated with a commercial or industrial operation owned by the same business.⁹

⁸ Section 196.012(15), F.S.

⁹ Section 196.012(16), F.S.

The economic ad valorem tax exemption may only be granted through a county or municipal ordinance that is previously approved by the electors of the participating county or municipality.¹⁰ The exemption applies to improvements to real property made by or for the use of a new or expanding existing business as well as to the tangible personal property of such businesses. The amount or limit on the exemption as well as the period of time for which the exemption may be granted is determined by general law. Pursuant to Article VII, section 3(c), of the Florida Constitution, the authority granting an ad valorem tax exemption shall expire 10 years after it is approved by the electors and may be renewed as provided by general law.

Section 196.1995, F.S., provides the statutory criterion that implements the constitutional tax exemption for economic development. Pursuant to this section, a board of county commissioners or municipal governing authority shall call a referendum to determine whether to grant an economic development ad valorem tax exemption under Article VII, section (3)(c), of the Florida Constitution, if one of the following occurs:

- The board of county commissioners or municipal governing authority votes to hold the referendum; or
- The board of county commissioners or municipal governing authority receives a petition signed by 10 percent of the registered electors in the respective jurisdiction, calling to hold such referendum.¹¹

A.) Referendum

A referendum determining whether to grant an economic development ad valorem tax exemption under Article VII, section 3(c), of the Florida Constitution, may only be called once in any 12-month period.¹²

Subsections (2) and (3) of s. 196.1995, F.S., provides the specific ballot language that must be used in a county or municipal referendum to determine whether its respective jurisdiction may grant a property tax exemption for economic development.¹³ Subsection (3) of s. 196.1196, F.S., also allows counties and municipalities to limit the effect of the referendum to new businesses and expansions of existing businesses that are located in an enterprise zone or brownfield area, as defined in s. 376.79(4), F.S. This subsection provides a separate ballot language format that must be followed should a county or municipality vote to limit the referendum to an enterprise zone or brownfield area.

B.) Amount of Exemption

If a majority of the voters approve the economic development exemption, then the board of county commissioners or municipal governing authority has the discretion to provide the exemption by ordinance. Subsection (5), of s. 196.1995, F.S., permits a county or municipal ordinance to exempt up to:

- 100 percent of the assessed value from ad valorem taxation for all improvements to real property made by or for the use of a new business and for all tangible property of such new business, or

¹⁰ FLA. CONST. art. VII, s. 3(c).

¹¹ Section 196.1995(1)(a)(b), F.S.

¹² Section 196.1995(4), F.S.

¹³ See s. 196.1995(2), F.S., for the specific ballot language format.

- 100 percent of the assessed value of all added improvements to real property that are made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business.¹⁴

The ad valorem tax exemption only applies to taxes that are levied by the county or municipality granting the exemption, and does not apply to “taxes levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution.”¹⁵

C.) Exemption Application

Any person, firm, or corporation may file a written application with the board of county commissioners or municipal governing authority to receive an economic development ad valorem tax exemption.¹⁶ The application shall request the adoption of an ordinance granting the exemption and must include the following information:

- The name and location of the new business or the expansion of an existing business;
- A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements;
- A description of the tangible personal property for which an exemption is requested and the dates when such property was or is to be purchased;
- Proof, to the satisfaction of the board of county commissioners or the governing authority of the municipality, that the applicant is a new business or an expansion of an existing business, as defined in s. 196.012(15) or (16), F.S.; and
- Other information deemed necessary by the department.¹⁷

The board of county commissioners or municipal governing authority must deliver a copy of the application to the county property appraiser, who shall report the following information:

- The total revenue available to the county or municipality for the current fiscal year from ad valorem tax sources, or an estimate of such revenue if the actual total revenue available cannot be determined;
- Any revenue lost to the county or municipality for the current fiscal year by virtue of exemptions previously granted under this section, or an estimate of such revenue if the actual revenue lost cannot be determined;
- An estimate of the revenue which would be lost to the county or municipality during the current fiscal year if the exemption applied for were granted had the property for which the exemption is requested otherwise been subject to taxation; and
- A determination as to whether the property for which an exemption is requested is to be incorporated into a new business or the expansion of an existing business, as defined in s. 196.012 (15) or (16), F.S., or into neither, which determination the property appraiser shall also affix to the face of the application. Upon the request of the property appraiser,

¹⁴ See s. 196.1995(5), F.S. Note, that “[p]roperty acquired to replace existing property shall not be considered to facilitate a business expansion”. *Id.*

¹⁵ Section 196.1995(5), F.S.

¹⁶ Section 196.1995(8), F.S.

¹⁷ Section 196.1995(8)(a)-(e), F.S.

the department shall provide to him or her such information as it may have available to assist in making such determination.¹⁸

D.) Ordinance

A county or municipal ordinance granting an economic development ad valorem tax exemption must be adopted in the same manner that the respective entity adopts other ordinances, and must include the following information:

- The name and address of the new business or expansion of an existing business to which the exemption is granted;
- The total amount of revenue available to the county or municipality from ad valorem tax sources for the current fiscal year, the total amount of revenue lost to the county or municipality for the current fiscal year by virtue of economic development ad valorem tax exemptions currently in effect, and the estimated revenue loss to the county or municipality for the current fiscal year attributable to the exemption of the business named in the ordinance;
- The period of time for which the exemption will remain in effect and the expiration date of the exemption; and
- A finding that the business named in the ordinance meets the requirements of s. 196.012(15) or (16), F.S.¹⁹

Charter Counties

Article VII, section 1(g), of the Florida Constitution provides that:

Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.²⁰

Although a non-charter county can be established through general law, a county charter can only be adopted, amended, or repealed through a special election by the electors in that county. Unless otherwise provided in a county charter or special law, the electors of each county must elect the following constitutional officers for a four-year term: a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of circuit court.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 196.012, F.S., to redefine the terms “new business” and “expansion of an existing business.”

¹⁸ Section 196.1995(9)(a)-(d), F.S.

¹⁹ Section 196.1995(10)(a)-(d), F.S.

²⁰ FLA. CONST. art. VIII, s. 1(g).

²¹ FLA. CONST. art. VIII, s. 1(d).

Section 2 amends s. 196.1995, F.S., to amend the current statutory criteria administering the economic development ad valorem tax exemption. Specifically, the bill requires the board or governing body to call a referendum determining whether to grant an ad valorem tax exemption for economic development if the board of a charter county receives a petition or initiative signed by the required percentage of registered electors as provided in the procedures established in the county's charter for the enactment of ordinances or for approval of charter amendments. The bill provides that this provision also applies to counties whose county charter requires signatures from less than 10 percent of its registered electors, which petition or initiative calls for the holding of such referendum.

This section also amends the statutorily required ballot question that must be used in such referendums to apply to new businesses and expansions of existing businesses that are expected to create new, full-time jobs and have been evaluated as being of economic interest to the community. The bill states that the board of county commissioners does not need to call or hold another referendum, if a referendum is called or held on or before the effective date of any amendment to s. 196.1995, F.S.

The bill revises the information that must be included in an application for an economic development tax exemption to include the number of jobs the applicant expects to create along with the average and median wage of the jobs and whether the jobs are full-time or part-time, as well as the expected time schedule for job creation.

The bill also provides economic criteria that the board or governing authority must consider when deciding whether to grant an economic development tax exemption, which includes:

- Total number of new jobs to be created by the applicant.
- Average wage and median wage of the new jobs.
- Capital investment to be made by the applicant.
- Whether the business or operation qualifies as an industry that the board or governing authority may target.
- Environmental impact of the proposed business or operation.
- Extent to which the applicant intends to source its supplies and materials within the applicable jurisdiction.

The bill states Legislature intent to vest counties and municipalities with as much discretion as legally permissible to determine which new jobs should be incentivized through the granting of these exemptions, and clarifies that an exemption may not exceed 10 years as provided in the Florida Constitution.

The bill allows the county or city to enter into a written tax exemption agreement with an applicant upon approval of an exemption application. The bill states that the written tax exemption agreement may include performance criteria and that it must be consistent with the requirements of s. 196.1995, F.S., and other applicable laws. The written agreement must require the applicant to report the actual number of new, full-time jobs created and their actual average and median wage, at a specific time before the exemption expires. The written agreement may also grant the county or city with the power to revoke, in whole or in part, the tax exemption, if the applicant fails to meet the expectations and representations described in subsection (8), of s. 196.1995, F.S.

Section 3 provides that this act shall take effect on 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:

None.

B. Private Sector Impact:

Non-profit organizations will be able to apply for the economic development ad valorem tax exemption provided in Article VII, section 3(c), of the Florida Constitution.

Applicants applying for an economic development tax exemption will be required to include additional information in their tax exemption applications.

C. Government Sector Impact:

Counties and municipalities will be provided more discretion in granting economic development ad valorem tax exemptions. Counties and municipalities will also be authorized to enter into written tax exemption agreements with approved applicants and as a result of such, may revoke an exemption if an applicant fails to meet the expectations and representations provided in s. 196.1995 (8), F.S.

The Florida Department of Revenue will need to amend Form DR-418 (Economic Development Ad Valorem Property Tax Exemption), to include the new information requirements in s. 196.1995, F.S., provided as a result of this bill.

VI. Technical Deficiencies:

Section 1 of the bill deletes the references to businesses located in an enterprise zone or brownfield area in the existing definitions for “new business” and “expansion of an existing business”; however, Section 2 of the bill still provides the ballot language for city or county referendums that limit the outcome of the referendum to businesses located in an enterprise zone or brownfield area.

VII. Related Issues:

According to the Department of Revenue, 15 counties in the State of Florida offer the economic development exemption totaling approximately \$747.7 million. The Department further indicated that 33 cities throughout the state offer the economic development exemption totaling approximately \$154.9 million.²²

The following information addresses the number of *counties* in Florida that currently offer the economic development tax exemption:

2010	
County Name	ECON DEV EXEMPTION
	196.1995
Bay	\$ 232,133,541.00
Brevard	\$ 28,762,380.00
Calhoun	\$ 517,421.00
Dade	\$ 67,568,325.00
Escambia	\$ 279,392,755.00
Gulf	\$ 362,894.00
Hardee	\$ 27,542,457.00
Hendry	\$ 2,246,960.00
Jackson	\$ 49,419,465.00
Liberty	\$ 30,932,427.00
Madison	\$ 598,608.00
Palm Beach	\$ 7,424,114.00
Saint Lucie	\$ 17,756,979.00
Santa Rosa	\$ 2,613,424.00
Washington	\$ 441,581.00
Statewide	\$ 747,713,331.00

²² Email from Lynne Moeller of the Florida Department of Revenue, to Dana Gizzi of the Senate Committee on Community Affairs (Feb. 18, 2011) (on file with the Senate Committee on Community Affairs).

²³ *Id.*

The following information addresses the number of *cities* in Florida that currently offer the economic development tax exemption:

2010		
County Name	City Name	ECON DEV EXEMPTION 196.1995 & LIC CHILD CARE FACILITY 196.095
BAY	LYNN HAVEN	\$ 3,807,978.00
	PANAMA CITY	\$ 43,122,287.00
BREVARD	COCOA	\$ 308,770.00
	MELBOURNE	\$ 14,238,900.00
	PALM BAY	\$ 1,580,720.00
	ROCKLEDGE	\$ 1,024,310.00
DADE	TITUSVILLE	\$ 227,960.00
	HIALEAH	\$ 4,694,901.00
	MIAMI	\$ 31,283,502.00
	MIAMI BEACH	\$ 7,284,508.00
	MIAMI GARDENS	\$ 3,609,474.00
ESCAMBIA	MIAMI SPRINGS	\$ 1,184,696.00
	PALMETTO BAY	\$ 146,580.00
	PENSACOLA	\$ 8,091,198.00
HENDRY	CLEWISTON	\$ 503,640.00
	LA BELLE	\$ 193,900.00
HERNANDO	BROOKSVILLE	\$ 4,552,157.00
HOLMES	BONIFAY	\$ 277,180.00
LEE	FORT MYERS	\$ 1,293,033.00
LEON	TALLAHASSEE	\$ 2,221,482.00
OSCEOLA	KISSIMMEE	\$ 333,600.00
PALM BEACH	PAHOKEE	\$ 103,870.00
SAINT LUCIE	FORT PIERCE	\$ 820,100.00
	PORT ST. LUCIE	\$ 9,432,416.00
SARASOTA	SARASOTA	\$ 252,400.00
TAYLOR	PERRY	\$ 287,880.00
VOLUSIA	DAYTONA BEACH	\$ 9,279,779.00
	DELAND	\$ 680,296.00
	HOLY HILL	\$ 778,086.00
	ORANGE CITY	\$ 1,492,211.00
	ORMOND BEACH	\$ 1,525,775.00
	SOUTH DAYTONA	\$ 293,751.00
WASHINGTON	SUNNY HILLS	\$ 16,000.00
Statewide		\$ 154,943,340.00

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

²⁴ *Id.*

B. Amendments:

None.

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