

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 506

INTRODUCER: Committee on Community Affairs and Senator Bogdanoff

SUBJECT: Economic Development

DATE: April 22, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Fav/CS
2.	Pugh	Cooper	CM	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| 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:

Pursuant to Art. VII, s. 3(c), of the Florida Constitution, and ch. 196, F.S., a county or municipal government can grant, after a favorable referendum and passage of an ordinance, ad valorem tax relief from its respective levy to new or expanding businesses that meet certain job-creation and other requirements. The tax relief ordinances expire after 10 years, but can be renewed under specific statutory circumstances. Fifteen counties and 33 municipalities have approved economic development exemptions on real and tangible personal property valued at nearly \$903 million.

CS/SB 506 makes a number of changes to the requirements that a new or expanding business must meet in order to be eligible for this local economic development exemption. A major change is redefining the terms “new business” and “expansion of existing business” to remove the current minimum thresholds for the number of jobs that a business must create in order to receive the ad valorem tax relief.

CS/SB 506 also:

- Makes nonprofit entities eligible to receive the economic development exemption;
- Specifies that a charter county governing board can hold a referendum to grant an economic development exemption upon receiving a petition 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;
- Revises the current ballot language required in a referendum to reflect the substantive changes in the amended statutes;
 - Provides economic criteria that the board or governing authority must consider in approving or denying the exemption;
 - Gives counties and municipalities the discretion to determine which businesses should receive an economic development exemption; and
 - 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.

CS/SB 506 substantially amends ss. 196.012 and 196.1995, F.S.

II. Present Situation:

Property Assessments

Article VII, s. 4, of the Florida Constitution (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

This same section of the constitution also 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 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 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

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.

use of property may not be granted until the property appraiser, or value adjustment board on appeal, determines that the applicant is nonprofit.⁶

The constitution additionally authorizes counties and municipalities 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 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:

- (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 0.05 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

⁶ Section 196.195(4), F.S.

⁷ FLA. CONST. art. VII, s. 3(c).

⁸ Section 196.012(15), F.S.

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 0.05 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

The economic development 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 Although charter counties are not specifically mentioned in the statute, the law has been construed to include them because of use of the phrase “any county.”

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 Art. VII, s. 3(c), of the 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 criteria that implement the constitutional tax exemption for economic development. Pursuant to this section, a board of county commissioners or municipal governing authority must “call” (or schedule) a referendum to determine whether to grant an economic development ad valorem tax exemption under the 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 determining whether to grant an economic development ad valorem tax exemption pursuant to the constitution may be called only once in any 12-month period.¹² Subsections (2) and (3) of s. 196.1995, F.S., provide 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

⁹ Section 196.012(16), F.S.

¹⁰ FLA. CONST. art. VII, s. 3(c).

¹¹ Section 196.1995(1)(a)(b), F.S.

¹² Section 196.1995(4), F.S.

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.

Amount of the 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
- 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. It 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

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 expanded 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 expanded existing business, as defined in s.196.012(15) or (16), F.S.; and
- Other information deemed necessary by the Department of Revenue (DOR).¹⁷

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

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 board of county commissioners or municipal governing authority must deliver a copy of the application to the county property appraiser, who must review the application and 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 amount 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 if the actual amount of lost revenue cannot be determined;
- An estimate of the revenue that would be lost to the county or municipality during the current fiscal year if the exemption applied for were granted and the property for which the exemption is requested otherwise had 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 the property appraiser must attach to the front of the application. If requested by the property appraiser, DOR must provide available information to assist him or her in making this determination.¹⁸

The ordinance

A county or municipal ordinance granting an economic development ad valorem tax exemption must be adopted in the same manner that the local government 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

¹⁸ Section 196.1995(9)(a)-(d), F.S.

¹⁹ Section 196.1995(10)(a)-(d), F.S.

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 4-year term: a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of circuit court.²¹

Florida has 20 charter counties.²² Three of them – Brevard, Miami-Dade, and Palm Beach – offer the ad valorem economic development exemption.

Enterprise zones and brownfields

Florida has created two designations for communities that encounter hurdles when attempting to attract economic development, either because they are in blighted, poverty-stricken areas; because their soil and groundwater have been contaminated by chemicals from industrial activities; or a combination of both.

Florida's *enterprise zone program*, ss. 290.001-290.016, F.S., was created by the Legislature in 1982 to provide tax incentives to induce private development in blighted, poor, or economically distressed communities. Businesses are eligible for seven state incentives, some of which require the businesses to hire persons who live within the zone. Residential property owners also access one of the incentives, a sales tax credit for building materials, when repairing their homes within an enterprise zone.²³

In 1997, the Legislature enacted the *Brownfields Redevelopment Act*, to provide various incentives to the private sector to encourage cleanup and reuse of abandoned or underused properties, the development of which was complicated by real or perceived environmental contamination.²⁴ As of June 2010, there were 252 designated brownfield areas in 96 communities across the state. A variety of state tax refunds and federal funds are available to eligible businesses or property owners who try to restore brownfield areas.

III. Effect of Proposed Changes:

CS/SB 506 makes a number of significant changes to the county and municipal economic development exemption in s. 196.1995, F.S., where new businesses or expanding existing businesses can receive breaks on their ad valorem tax liabilities from the local governments' respective levies if they meet certain criteria. The changes give local government officials more discretion in selecting which businesses may be offered the incentives, and potentially makes it

²⁰ FLA. CONST. art. VIII, s. 1(g).

²¹ FLA. CONST. art. VIII, s. 1(d).

²² For a list, see http://www.fl-counties.com/pages/About_Floridas_Counties/Charter_County_Information.aspx.

²³ The "Florida Enterprise Zone Program Annual Report," dated October 1, 2009-September 30, 2010, and published by the Governor's Office of Tourism, Trade, and Economic Development, includes the history and usage of the program. A copy is on file with the Senate Commerce and Tourism Committee.

²⁴ More information about the brownfields program can be found in a recent annual report, prepared by the state http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/AnnualReport/2009/2009_FDEP.pdf. Last visited Feb. 20, 2011.

easier for more businesses to qualify. But it also gives local governments the clear authority to revoke an exemption if the recipient business is not complying with the terms of its agreement. The legislation also clearly specifies a process for charter counties to have referenda for public support of awarding these incentives.

Section 1 amends s. 196.012, F.S., to redefine the terms “new business” and “expansion of an existing business.” Specifically, CS/SB 506 removes the minimum job-creation requirements in the current definitions for new or expanding businesses that are not located within enterprise zones or brownfields, specifying only that the businesses which are being considered for the exemptions must create new, full-time jobs. Also, nonprofit organizations are added to the definitions, making them eligible for the exemptions.

Section 2 amends s. 196.1995, F.S., to substantially amend the current statutory criteria administering the economic development ad valorem tax exemption.

CS/SB 506 directs the board of a charter county to call a referendum determining whether to grant an ad valorem tax exemption for economic development if the board 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. This new provision also applies to any charter county whose charter requires signatures from less than 10 percent of its registered electors, whose or initiative calls for the holding of a referendum.

Also amended is the statutorily required ballot question that must be used in such referendums to apply to new businesses and expansions of existing businesses, to add the phrase “that are expected to create new, full-time jobs and have been evaluated as being of economic interest to the community.”

Additionally, CS/SB 506 specifies that the changes proposed to s. 196.1995, F.S., do not require a county commission that has held or called a referendum for a local-economic development tax exemption to schedule a new one if this legislation becomes law.

The CS 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;
- The average and median wage of the jobs;
- Whether the jobs are full-time or part-time; and
- The expected time schedule for creating the jobs.

The local government board or governing authority must consider the following criteria, at a minimum, when deciding whether to grant an economic development tax exemption:

- 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; and the
- Extent to which the applicant intends to purchase its supplies and materials within the applicable jurisdiction.

CS/SB 506 expresses legislative 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.

CS/SB 506 also allows the county or city to enter into a written tax exemption agreement with an applicant upon approval of an exemption application. It specifies that the written tax-exemption agreement may include performance criteria and that it must be consistent with the requirements elsewhere in 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 an effective date of 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:

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

At its Feb. 25, 2011, meeting, the state Revenue Estimating Conference adopted by consensus an indeterminate negative impact on local governments.

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.

Also, applicants for an economic development tax exemption will be required to include additional information in their tax exemption applications, related to the number of jobs expected to be created, their average and median wages, whether the jobs will be full-time or part-time, and a timetable on when the jobs will be created.

C. Government Sector Impact:

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., if CS/SB 506 becomes law.

VI. Technical Deficiencies:

Lines 171-174 state that:

“If a referendum is called or held on or before the effective date of any amendment to this section, the board of county commissioners does not need to call or hold another referendum.”

It is unclear what this sentence means. The sentence could be interpreted to allow local governments to modify a previously adopted ad valorem economic development ordinance to incorporate the program changes resulting from enactment of this or future legislation without having to seek voter approval, which may raise legal issues. A clarifying amendment may be necessary to clearly express the sponsor’s intent.

VII. Related Issues:

According to the Department of Revenue, 15 counties in the State of Florida offer the economic development exemption on properties valued at approximately \$747.7 million. The department further indicated that 33 cities throughout the state offer the economic development exemption on properties valued at approximately \$154.9 million.²⁵ Both sets of property values are as reported on county and municipal tax rolls in January 2010. The charts below offer the details.

²⁵ 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).

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

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
	TITUSVILLE	\$ 227,960.00
DADE	HIALEAH	\$ 4,694,901.00
	MIAMI	\$ 31,283,502.00
	MIAMI BEACH	\$ 7,284,508.00
	MIAMI GARDENS	\$ 3,609,474.00
	MIAMI SPRINGS	\$ 1,184,696.00
	PALMETTO BAY	\$ 146,580.00
ESCAMBIA	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.)

CS by Community Affairs Committee on February 21, 2011:

Amends the definitions for “new business” and “expansion of an existing business” to re-insert businesses in an enterprise zone or brownfield area in order to make the definitions consistent with Section 2 of the CS.

- B. **Amendments:**

None.