

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1186
 SPONSOR: Senator Clary
 SUBJECT: Rural Economic Development
 DATE: February 18, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>CA</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>FT</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>AGG</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

Senate Bill 1186:

- Expands the eligibility of sales tax refunds on purchases of business property for use in an enterprise zone by reducing the minimum purchase price of eligible business property from \$5,000 to \$500;
- Expands the group of individuals or entities eligible to receive grants from the Rural Infrastructure Fund by eliminating a requirement that recipients of grants be applicants to federal government programs for infrastructure funding;
- Expands the purposes for which grants from the Rural Infrastructure Fund may be used to include: fostering job-retention; improving existing infrastructure that has resulted in regulatory action prohibiting economic growth; and reducing the costs to community users of proposed infrastructure improvements that exceed such costs in other comparable communities; and
- Creates the Rural Economic Development Account within the Economic Development Trust Fund, consisting of the funding appropriated for the Rural Community Development Revolving Loan Fund, the Rural Infrastructure Fund, and the Regional Rural Development Grants Program. Unexpended appropriations and accrued interest of the Rural Economic Development account do not revert to the General Revenue Fund.

This bill substantially amends the following sections of the Florida Statutes: 212.08, 288.0655, and 288.095.

II. Present Situation:

Enterprise Zones

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

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

Section 290.003, F.S. Under the act, areas of the state meeting specified criteria -- including suffering from pervasive poverty, unemployment, general distress, or other considerations -- have been designated as enterprise zones. There are 34 enterprise zones, including 11 rural and 14 urban zones, and 9 other areas that were designated as zones to assist them in recovering from the effects of a 1994 constitutional ban on the use of certain fishing nets. Office of Program, Policy, and Government Analysis (OPPAGA) Program Review Report No. 99-43, *Use of Enterprise Zone Incentives Has Increased, but Challenges Continue*, March 2000, p. 2. To induce private business to invest in these enterprise zones, the use of the following state and local incentives is authorized:

State Incentives

- *Enterprise zone jobs credit:* Businesses located in an enterprise zone who pay Florida corporate income taxes are authorized to receive a tax credit against their corporate income tax based on the amount of wages paid to new employees who are either residents of an enterprise zone or participants in a welfare transition program. Section 220.181, F.S.
- *Enterprise zone jobs credit against sales tax:* Businesses located within an enterprise zone who collect and pay Florida sales and use taxes are allowed a credit against their sales tax due based on the amount of wages to new employees who are either residents of an enterprise zone or participants in a welfare transition program. Section 212.096, F.S.
- *Enterprise zone property tax credit:* New, expanded, or rebuilt businesses located within an enterprise zone are allowed a credit on their Florida corporate income tax based on the amount of property taxes paid. Section 220.182, F.S.
- *Sales tax refund for building materials:* A tax refund is available for sales taxes paid on the purchase of building materials used in the rehabilitation of real property used in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or \$5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or \$10,000. Section 212.08(5)(g), F.S.
- *Sales tax refund for business property used in an enterprise zone:* A tax refund is available for sales taxes paid on the purchase of business property with a purchase price of \$5,000 or more purchased by and for use in a business located in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or \$5,000, or, if 20 percent or more of the business's employees reside

in an enterprise zone, the lesser of 97 percent of the sales taxes paid or \$10,000. Section 212.08(5)(h), F.S.

Local Incentives

- *Sales tax exemption for electrical energy used in an enterprise zone:* A sales tax exemption is available to qualified businesses located in an enterprise zone on the purchase of electrical energy. The amount of the exemption is equal to 50 percent of the sales taxes otherwise due or 100 percent of the sales taxes otherwise due if 20 percent or more of the business’s employees reside in an enterprise zone. This exemption is only available if the municipality in which the business is located has passed an ordinance to exempt the municipal utility taxes on such businesses. Sections 212.08(15) and 166.231(8), F.S.
- *Economic development ad valorem tax exemption:* Up to 100 percent of the assessed value of improvements to real or tangible property of a new or expanded business located in an enterprise zone may be exempted from property taxes if the voters of a municipality authorize the governing body of the municipality to grant such exemptions. Section 196.1995, F.S.
- *Occupational license tax exemption:* By ordinance the governing body of a municipality may exempt 50 percent of the occupational license tax for businesses located in an enterprise zone. Section 205.054, F.S.
- *Local impact fee abatement or reduction, or low-interest or interest-free loans or grants to businesses.* Section 290.0057(1)(e), F.S.,

In fiscal year 1996-97, local and state incentives approved under the Enterprise Zone Program totaled \$11.2 million; in FY 1997-98, local and state incentives totaled \$13 million. Following are enterprise zone statistics for FY 1998-99 and FY 1999-00. Office of Tourism, Trade, and Economic Development (OTTED), *Enterprise Zone Program Annual Report: October 1, 1999-September 30, 2000*, p. 5, March 1, 2001.

CATEGORY	1999/2000	1998/1999	DIFFERENCE
New Businesses in a Zone	766	776	- 10
New Jobs Created in a Zone	5,141	5,305	- 164
State Incentives Approved	\$5,458,835	\$5,170,899	+ \$287,936
Local Incentives Provided	\$10,135,65	\$18,839,076	- \$10,255,879
Total State and Local Incentives Approved	\$15,594,492	\$24,009,975	- \$10,931,560

The Florida Enterprise Zone Act of 1994 is scheduled for repeal on December 31, 2005, as provided by s. 37, ch. 94-136, L.O.F.

Sales Tax Refunds/Business Property

Sales tax refunds are available for purchases of business property by businesses located within an enterprise zone, if the business property is used in the enterprise zone and has a sales price of over \$5,000 per unit. Section 212.08(5)(h), F.S. Business property is defined as “recovery

property” in s. 168(c) of the Internal Revenue Code of 1954, as amended.¹ Section 212.08(5)(h)9, F.S. The maximum sales tax refund is the lesser of 97 percent of the sales taxes paid by a business or \$5,000. However, if 20 percent or more of the business’s employees are residents of an enterprize zone, the maximum sales tax refund is the lesser of 97 percent of the sales tax paid by the business or \$10,000. Section 212.08(5)(h)5., F.S. No refunds are available unless the amount to be refunded exceeds \$100 in sales tax paid on purchases made within a 60-day time period. *Id.*

Applications for these sales tax refunds must be made on forms EZ-E and DR-26S available from the Department of Revenue. Form EZ-E requires an applicant for a refund to: attach the invoices for the business property purchased; list the names and addresses of employees; and obtain the signature of the enterprize zone coordinator. Form DR-26S requires general business information including: the amount of refund; identification numbers of the applicant; and the collection period of the taxes paid.

During the past few years, sales tax refunds approved by the Department of Revenue on the purchase of business property for use in and by a business located in an enterprise zone were as follows: FY 1995-1996, \$242,303; FY 1996-1997, \$521,443; FY 1997-1998, \$1,288,160; FY 1998-1999, \$1,739,385; and FY 1999-2000, \$2,188,606. Office of Tourism, Trade, and Economic Development, *Florida Enterprise Zone Program Annual Report: October 1, 1999-September 30, 2000*, p. 6, March 1, 2001.

Rural Infrastructure Fund

The Rural Infrastructure Fund is located within the Office of Tourism, Trade, and Economic Development to provide infrastructure grants to rural areas which are applicants for federal infrastructure funding programs. Section 288.0655, F.S. Grants may be awarded for up to 30 percent of the total infrastructure project cost. Section 288.0655(1)(b), F.S.

Eligible projects must be related to specific job-creating opportunities. Eligible uses of funds shall include improvements to public infrastructure for industrial or commercial sites and upgrades to or development of public tourism infrastructure.

Id.

Grants may also be awarded for infrastructure feasibility studies, design and engineering activities, or other infrastructure and planning activities. Section 288.0655(1)(c), F.S. Funds may be advanced to certain projects to be reimbursed with funds awarded through federal programs. Section 288.0655(1)(d), F.S. Funds may also be provided to local governments for the identification and preclearance review of land which is suitable for preclearance review. Section 288.0655(1)(e), F.S.

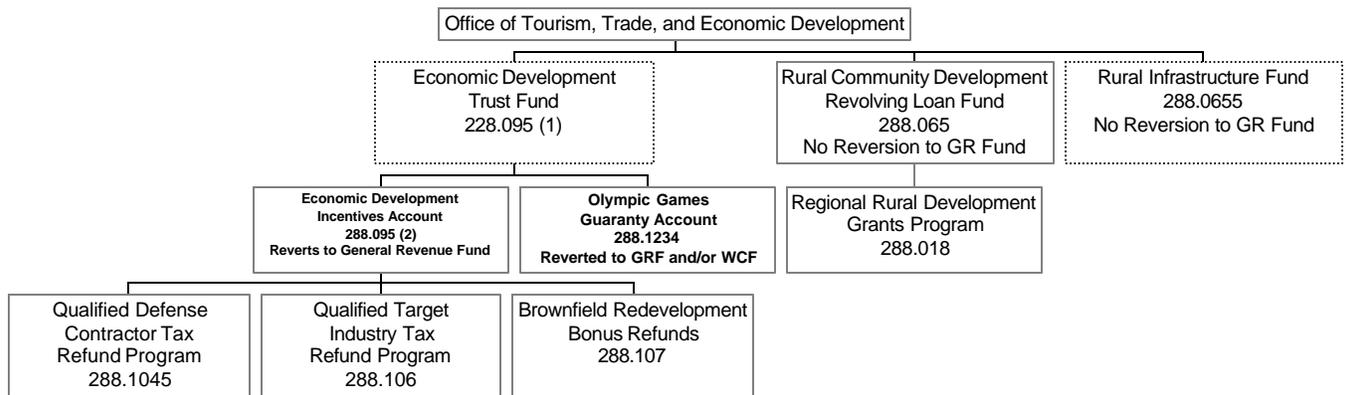
¹ The concept of “recovery property” was removed from the Internal Revenue Code of 1954, as amended in 1986. See the “Related Issues” section of this analysis.

Unexpended appropriations to the Rural Infrastructure Fund do not revert to the General Revenue Fund. However, accrued interest within the Rural Infrastructure Fund reverts to the General Revenue Fund.

Other Accounts, Funds, and Trust Fund Created by Chapter 288, F.S.

There are several funds, including the Rural Infrastructure Fund, accounts, and a trust fund created by ch. 288, F.S., that provide incentives for economic development. (See Exhibit 1 for a graphical representation of the inter-relation of accounts, funds, and trust funds created by ch. 288, F.S.)

Exhibit 1. Current Economic Development Fund Structure



Economic Development Trust Fund

The Economic Development Trust Fund was created within OTTED by s. 288.095(1), F.S. Within the Economic Development Trust Fund are two accounts: the Economic Development Incentives Account, and the Olympic Games Guaranty Account.

Economic Development Incentives Account

The Economic Development Incentives Account provides funding for the Qualified Defense Contractor Tax Refund Program, the Qualified Target Industry Tax Refund Program, and the Brownfield Redevelopment Bonus Refunds. Section 288.095(2), F.S. Unexpended appropriations to the Economic Development Incentive Account revert to the General Revenue Fund pursuant to the provisions of s. 216.301(1)(a), F.S.

Olympic Games Guaranty Account

The Olympic Games Guaranty Account was created within the Economic Development Trust Fund to indemnify against any net financial deficit resulting from the Olympic Games if they were awarded to the City of Tampa. Section 288.1234, F.S. Upon the failure of the City of Tampa to be selected as the host city for the Olympic Games, any funds within the Olympic Games Guaranty Account reverted to the Working Capital Fund and/or the General Revenue Fund. Section 288.1234(8) and (9), F.S.

Rural Community Development Revolving Loan Fund

The Rural Community Development Revolving Loan Fund is established within OTTED to provide loans or loan guarantees to local government or economic development organizations in rural counties. Section 288.065, F.S. Unexpended appropriations within the Rural Community Development Revolving Loan Fund do not revert to the General Revenue Fund. Section 288.065(4), F.S. However, the interest earned on the balance within the Rural Community Development Revolving Loan Fund does revert to the General Revenue Fund. Grants are authorized to be made from the Rural Community Development Revolving Loan Fund for the Regional Rural Development Grants Program to build the professional capacity of rural economic development organizations. Section 288.018, F.S.

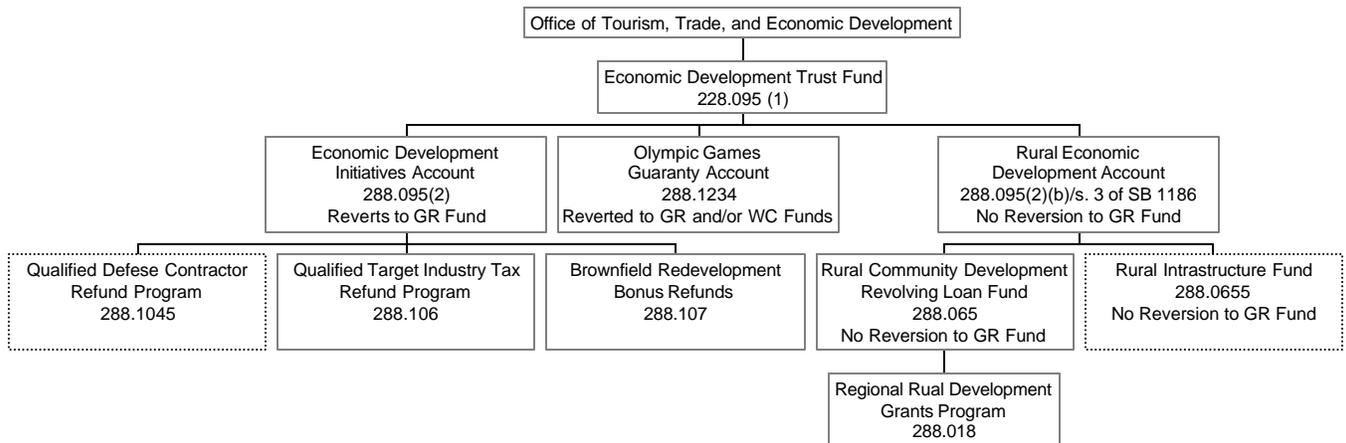
III. Effect of Proposed Changes:

Section 1 of the bill expands the eligibility of sales tax refunds on purchases of business property for use in an enterprise zone by reducing the minimum purchase price of eligible business property from \$5,000 to \$500.

Section 2 of the bill expands the eligibility to receive grants from the Rural Infrastructure Fund by eliminating a requirement that grant recipients be applicants to federal programs for infrastructure funding. Section 2 also expands the purposes for which grants from the Rural Infrastructure Fund may be used to include: fostering job-retention; improving existing infrastructure that has resulted in regulatory action prohibiting economic growth; and reducing the costs to community users of proposed infrastructure improvements that exceed such costs in other comparable communities.

Section 3 of the bill creates the Rural Economic Development Account within the Economic Development Trust Fund consisting of the funding appropriated for the Rural Community Development Revolving Loan Fund, the Rural Infrastructure Fund, and the Regional Rural Development Grants Program. Unexpended appropriations and accrued interest of the Rural Economic Development Account do not revert to the General Revenue Fund. (See Exhibit 2 for a graphical representation of the proposed inter-relation of accounts, funds, and trust funds created by ch. 288, F.S., as envisioned by this bill.)

Exhibit 2. Proposed Economic Development Fund Structure



Section 4 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill initially falls under subsection (b) of s. 18 of Art. VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. By expanding the eligibility for a sales exemption (paid as a refund) on the purchase of business property purchased by and for use in a business located in an enterprise zone, this bill has the effect of expanding an exemption to the local option county sales surtax. However, because the annual local revenue loss is estimated to be less than \$1.6 million, this bill will be exempt from the requirements of subsection (b) due to the insignificant negative fiscal impact as permitted under subsection (d) of s. 18 of Art. VII. (See subsection (d) of s. 18, Art. VII, Florida Constitution, for various types of general laws, including those with insignificant fiscal impact.)

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Section 1 of SB 1712 is identical to Section 3 of SB 1186, creating the Economic Development Incentives Account within the Economic Development Trust Fund. According to Senate Bill Drafting, the Rural Economic Development Account may constitute a trust fund as described in subsection (f) of s. 19 of Art. III, Florida Constitution. Therefore, the language creating the account also was prepared in a separate bill (SB 1712) to comply with constitutional provisions governing the creation of trust funds.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates the fiscal impact of this bill to be a FY 2002-03 General Revenue loss of \$0.5 million with an annualized first-year loss of \$1.0 million, and a FY 2002-03 local government loss of \$100,000 with an annualized first-year loss of \$200,000.

Issue/Fund	Fiscal Year 2002-2003							
	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
SB 1186	\$ (0.5)	\$ (1.0)	(*)	(*)	\$ (0.1)	\$ (0.2)	\$ (0.6)	\$ (1.2)

* Insignificant (less than \$50,000)

B. Private Sector Impact:

By reducing the minimum purchase price of eligible business property from \$5,000 to \$500 for sales tax refunds to businesses located in an enterprise zone, the Department of Revenue is authorized to pay more sales tax refunds to those businesses.

Because interest accrued within the Rural Economic Development Account would not revert to the General Revenue Fund, more funds might be available for economic development programs that benefit the private sector.

C. Government Sector Impact:

By expanding the purposes and the eligible individuals for which the Rural Infrastructure Fund may be used, OTTED may have added expenses of evaluating additional grant proposals.

By expanding the eligibility for sales tax refunds on the purchase of business property used in an enterprise zone, the Department of Revenue may have added expenses of processing more applications for sales tax refunds.

Because interest accrued within the Rural Economic Development Account does not revert to the General Revenue Fund, OTTED may have more funds available for economic development programs that benefit the private sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Pursuant to s. 212.08(5)(h), F.S. (2001), sales tax refunds are available for purchases of “business property” for use in an enterprise zone. The term “business property,” according to s.

212.08(9), F.S. (2001), means property defined as “recovery property” in s. 168(c) of the Internal Revenue Code of 1954, as amended. However, the “recovery property” concept was removed from the Internal Revenue Code in 1986. As a result, the definition of “business property” is not readily available, and the Legislature may wish to consider revising that definition.

As a general rule of statutory construction, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute. *See, e.g., Golf Channel v. Jenkins*, 752 So. 2d 561, 565 (Fla. 2000); Preface to the *Florida Statutes* (2001) at viii.

Accordingly, to determine the definition of “business property,” one must first determine when the cross reference to the definition of “recovery property” in s. 168(c) of the Internal Revenue Code was created. To determine when the cross-reference to s. 168(c) of the Internal Revenue Code was created, one must review all amendments to s. 212.08, F.S. (2001), until one finds the date that the chapter law creating the cross reference became a law. Section 212.08, F.S. (2001), has been amended numerous times since its creation in 1949. After determining the date that the cross-reference was created, one must locate a copy of the Internal Revenue Code that was effective on that date.

In this instance, the cross-reference to s. 168(c) of the Internal Revenue Code was created on June 25, 1984, by ch. 84-356, L.O.F. Therefore, the term “business property” means “recovery property” as defined in s. 168(c) of the Internal Revenue Code as it existed on June 25, 1984.

VIII. Amendments:

None.