

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Commerce Committee

BILL: PCS/SB 856

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Economic Development

DATE: March 20, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Pre-meeting
2.			TA	
3.			RC	
4.				
5.				
6.				

I. Summary:

PCS/SB 856 creates so-called “super enterprise zones” and gives the Office of Tourism, Trade, and Economic Development (OTTED) the ability to designate five of these zones in Florida for a 10-year period each. To qualify as a super enterprise zone an area must be located in an enterprise zone and meet specific economic criteria.

The proposed committee substitute does not name any specific areas of the state where the super enterprise zones could be located.

Designation as a super enterprise zone will provide certified businesses in the zone with a tax-free status. Certified businesses will be eligible for a 100-percent exemption from sales and discretionary tax on tangible personal property. In addition, retail sales made by certified businesses in a super enterprise zone are provided a 100-percent exemption on sales and discretionary tax for any tangible personal property item priced up to \$1,000.

The proposed committee substitute’s exemptions extend to state and local-option sales taxes.

PCS/SB 856 creates an application and approval process for super enterprise zones, requires annual reports, and provides for an interim and final review by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

It provides for repeal of this program on June 30, 2020.

PCS/SB 856 creates ss. 290.00681 and 290.00682, F.S., and amends ss. 212.02, 212.08, 290.0056, 290.0057, and 290.007, F.S.

II. Present Situation:

Enterprise zones in Florida

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 56 enterprise zones.

OTTED reports that between October 1, 2005 and September 30, 2006, new businesses numbering 122 moved into or were created in enterprise zones and 1,109 new jobs were created by businesses in enterprise zones.¹ More than \$33.2 million in state and local financial incentives were approved during that period.

Over the last 11 years since the program's last major revision, some 3,324 new businesses have moved into or were created in enterprise zones and 12,490 new jobs have been created.²

Sections 290.001-290.016, F.S., authorize the creation of the zones and sets forth criteria and goals for the program. Prior to submitting an application for a zone, a local government body must determine an area:

- Has chronic extreme and unacceptable levels of poverty, unemployment, physical deterioration, and economic disinvestment;
- Needs rehabilitation or redevelopment for the public health, safety, and welfare of the residents in the county or municipality; and
- Can be revitalized through the inducement of the private sector.

OTTED is responsible for approving applications for enterprise zones, and also approves changes in enterprise zone boundaries when authorized by the Florida Legislature. As part of the application process for an enterprise zone, the local county or municipality in which the designation will be located also is responsible for creating an Enterprise Zone Development Agency and an enterprise zone development plan.

As outlined in s. 290.0056, F.S., an Enterprise Zone Development Agency is required to have a board of commissioners of at least 8, and no more than 13, members. The agency has the following powers and responsibilities:

- Assisting in the development, implementation and annual review of the zone and updating the strategic plan or measurable goals;
- Identifying ways to remove regulatory burdens;
- Promoting the incentives to residents and businesses;
- Recommending boundary changes;
- Working with nonprofit development organizations; and
- Ensuring the enterprise zone coordinator receives annual training and works with Enterprise Florida, Inc.

¹ Florida Enterprise Zone Program Annual Report, October 1, 2005 - September 30, 2006. Available at <http://www.floridaenterprisezones.com/Zones/Org1/uploads/07REPORT.pdf>.

² Ibid.

Pursuant to s. 290.0057, F.S., an enterprise zone development plan (or strategic plan) must accompany an application. At a minimum this plan must:

- Describe the community's goal in revitalizing the area;
- Describe how the community's social and human resources—transportation, housing, community development, public safety, and education and environmental concerns—will be addressed in a coordinated fashion;
- Identify key community goals and barriers;
- Outline how the community is a full partner in the process of developing and implementing this plan;
- Describe the commitment from the local governing body in enacting and maintaining local fiscal and regulatory incentives;
- Identify the amount of local and private resources available and the private/public partnerships;
- Indicate how local, state, and federal resources will all be utilized;
- Identify funding requested under any state or federal program to support the proposed development; and
- Identify baselines, methods, and benchmarks for measuring success of the plan.

Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities. OTTED reports that \$23.4 million in state incentives was approved by the Department of Revenue (DOR), between October 1, 2005 and September 30, 2006, for all state enterprise zones. During the same time period, \$9.8 million in incentives was provided by local governing bodies. 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.

Available state sales tax incentives for enterprise zones include:

- **Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone:** Provides a refund for sales taxes paid on the purchase of certain building materials, up to \$5,000 or 97 percent of the tax paid.
- **Business Equipment Used in Enterprise Zones:** Provides a refund for sales taxes paid on the purchase of certain equipment, up to \$5,000 or 97 percent of the tax paid.
- **Rural Enterprise Zone Jobs Credit Against Sales Tax:** Provides a sales and use tax credit for 30 or 45 percent of wages paid to new employees who live within a Rural County.
- **Urban Enterprise Zone Jobs Credit Against Sales Tax:** Provides a sales and use tax credit for 20 or 30 percent of wages paid to new employees who live within the Enterprise Zone.
- **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, which is 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.

- **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.

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 for 30 or 45 percent of wages paid to new employees who live within a Rural County.
- **Urban Enterprise Zone Jobs Credit Against Corporate Income Tax:** Provides a corporate income tax credit for 15 or 20 percent of wages paid to new employees who live within the Enterprise Zone.
- **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 50 percent credit on Florida corporate income tax, or insurance premium tax for donations made to local community development projects.

III. **Effect of Proposed Changes:**

PCS/SB 856 creates s. 290.00681, F.S., establishing as many as five super enterprise zones in the state for a 10-year period each. Designation as a super enterprise zone will provide certified businesses in the zone with a tax-free status. Certified businesses will be eligible for a 100-percent exemption from sales and discretionary tax on tangible personal property. In addition, retail sales made by certified businesses in a super enterprise zone are eligible for a 100 percent exemption on sales and discretionary tax for any tangible personal property item priced up to \$1,000.

Section 1 amends s. 212.02, F.S., to add a definition for “certified business,” which means a business located in a super enterprise zone certified pursuant to s. 290.00682, F.S. This subsection is repealed June 30, 2020.

Section 2 amends s. 212.08, F.S., to add tax exemptions related to super enterprise zones. Certified businesses within super enterprise zones are exempt from paying tangible personal property tax on purchases for their exclusive use within the zone. Also, retail sales of tangible personal property from businesses located super enterprise zones are exempt from sales and use tax, under the following conditions:

- The exemption applies only to items priced at \$1,000 or less.
- The sale must be made at the physical location of the certified business and the items must be shipped from inside the zone. All qualified sales made by a certified business in a super enterprise zone shall be considered to have occurred in the zone, regardless of where the transfer of title or possession takes place.

New businesses certified on or after July 1, 2008, in a super enterprise zone qualify for the tax exemptions provided in this bill for a period not to exceed 10 years. Existing businesses located

in a super enterprise zone that become certified are eligible for tax exemptions provided in this bill for a period not to exceed 5 years after certification.

Section 3 amends s. 290.0056, F.S., to authorize the local Enterprise Zone Development agencies to recommend and submit applications to OTTED regarding super enterprise zone designations, and to coordinate with local governmental entities local tax exemptions. Where applicable, the local agencies also are directed to submit to OTTED a report, due December 1 of each year, information about the super enterprise zones within their jurisdictions. The report shall include the following information about the economic impact of the super enterprise zone:

- A list of businesses, and whether the businesses were new or from where they relocated;
- The number of jobs created;
- The percentage of employees employed by certified businesses who reside in the super enterprise zone, or in an enterprise zone within the same county;
- The extent of capital investment by the certified businesses; and
- The success of the super enterprise zone as measured by the strategic plan and methods identified in s. 290.0057(1)(i), F.S.

Both changes to s. 290.0056, F.S, expire on June 30, 2020.

Section 4 adds references to “super enterprise zones” in s. 290.0057, relating to development plans, and **Section 5** repeals those references effective July 1, 2020.

Section 6 creates s. 290.00681, F.S., to establish the super enterprise zone program, and specify the designation criteria and eligibility requirements. OTTED may designate up to five super enterprise zones.

PCS/SB 856 gives a local Enterprise Zone Development Agency the power to recommend and submit an application to OTTED for the designation of a super enterprise zone. An application must include a development plan and information on the community’s goals, the community’s approach to social and human resources, local and private support, written approval from any associated county office or mayor’s office, and methods for measuring success.

To qualify as a super enterprise zone an area must:

- Be located in an enterprise zone;
- Be no larger than 3 contiguous square miles;
- Have an average unemployment rate four times greater than the state average;
- Have a minimum of 40 percent of residents living below poverty level;
- Have “general distress” of business and residential property; and
- Demonstrate evidence of significant job loss or dislocation.

When determining eligibility for a super enterprise zone, OTTED must consider a number of factors:

- Priority of applications;
- Evidence of adverse economic conditions;
- Viability of the development plan;
- Public and private commitment;
- How the designation will relate to the community's plan as a whole;
- The level of demonstrated cooperation for surrounding communities;
- How the local regulatory burden will be eased;
- A commitment to improving real property; and
- Availability of infrastructure to support the development.

This section also creates s. 290.00682, F.S., which specifies how businesses are certified to participate in the program. To qualify as a certified business and receive a tax exemption certificate, a business is required to file an application with the local enterprise zone development agency. The business must also meet the following criteria:

- Operate and be located in the designated super enterprise zone;
- Create new employment in the zone while not causing unemployment elsewhere in the state;
- Have no outstanding state or federal tax obligations; and
- Demonstrate that no fewer than 20 percent of its employees are residents of the super enterprise zone or enterprise zone located within the same county.

Each year, the local enterprise zone development agency is required to submit a list of new and existing certified businesses to the local government entity, DOR, and OTTED. Also, DOR is required to annually issue each certified business a tax exemption certification. The certificate is good for one year only. SB 856 gives DOR and the local enterprise zone development agency the ability to disqualify a certified business from the super enterprise zone tax benefits if the business fails to continue to meet required criteria.

A business that makes a fraudulent claim for payment of any tax exemption is liable for penalties set forth in s. 212.085, F.S. This statute requires payment of the tax plus a mandatory penalty of 200 percent of the tax, liability for fines, and possible conviction of a felony of the third degree

The provisions in these new statutes expire June 30, 2020.

Section 7 amends s. 290.007, F.S. to add "super enterprise zones" and the tax incentives available to them, and **Section 8** repeals those changes effective July 1, 2020.

Section 9 directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an interim review of the program in 2013, and a final review of the program by 2019. The review by OPPAGA must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Subsection (b) of s. 18, Art. VII, State Constitution, provides that except upon approval of each house of the Legislature by 2/3 vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority exists as of February 1, 1989.

This bill proposes to provide certified businesses in designated super enterprise zones with a tax-free status. Certified businesses will be eligible for a 100-percent exemption from sales and discretionary tax on tangible personal property. In addition, retail sales made by certified businesses in a super enterprise zone are provided a 100-percent exemption on sales and discretionary tax for any tangible personal property item priced up to \$1,000.

This tax exemption will reduce the sales tax base of municipalities and counties, thereby reducing their revenue-raising authority. The Revenue Estimating Conference estimated that the fiscal impact of the bill on counties and municipalities is an estimated \$4.2 million in fiscal year 2007-08 and \$9.3 million in fiscal year 2008-09. Therefore, the measure will require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

On March 17, 2007, the Revenue Estimating Conference by consensus adopted an FY 207-2008 cash impact of \$22.9 million, of which \$18.7 million would be a loss to the State Treasury and \$4.2 million the potential local-option sales tax revenue losses to cities and counties. In FY 2008-2009, the negative impact was estimated at \$50.6 million, of which \$41.3 million would in state revenues and \$9.3 million in local-option sales tax revenues.

B. Private Sector Impact:

Indeterminate. However, the impact could be significant to the businesses that locate or already are within a super enterprise zone, because of the sales tax savings on all their purchases related to their operations. The general public also could benefit as consumers

who shop at businesses within the super enterprise zones to save state and, where applicable, local-option sales taxes. Job-seekers also could benefit from opportunities afforded them by businesses within the new zones.

C. Government Sector Impact:

OTTED indicates it can administer the super enterprise zone program without additional resources. DOR has not yet submitted an analysis on this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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