

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government – The bill marginally increases government through creation and empowerment of two urban revitalization task forces.

Lower Taxes – The bill provides for a complete exemption from sales, use and excise taxes for businesses located within a tax-free zone.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law does not currently permit the designation of urban revitalization tax-free zones or the creation of an urban revitalization task force. However, Florida law does permit the designations of Enterprise Zones, which are similar but not identical to an urban revitalization tax-free zone as proposed in HB 1543.

In 1980, Florida established one of the first enterprise zone programs in the country to encourage economic growth and investment in distressed areas. An enterprise zone is a specific geographic area targeted for economic revitalization.

The purpose of enterprise zones is to assist local communities, their residents, and the private sector in creating the environment to induce the investment of private resources in business enterprises located in severely distressed areas and to provide jobs for residents in the area. Under the Enterprise Zone Act of 1994 [ss.290.001-290.016, F.S.], areas of the state meeting specified criteria have been designated as enterprise zones.

According to the Office of Tourism, Trade, and Economic Development (OTTED), since July 1, 1995, the state has designated 55 enterprise zones. State and local incentives are authorized to induce businesses to invest in enterprise zone which, in turn, offers a number of tax advantages to such businesses willing to make such an investment. Based on data from OTTED, there are currently 27 rural enterprise zones statewide encompassing 1,214 square miles and 111,638 residents.

The Enterprise Zone Act expires on December 31, 2005.

State and Local Incentives Available to Businesses in Enterprise Zones

Below are incentives provided to encourage the revitalization of enterprise zones:

- Enterprise zone jobs credit provided in s. 220.181, F.S.
- Enterprise zone property tax credit provided in s. 220.182, F.S.
- Sales tax exemption for building materials used in the rehabilitation of real property in enterprise zones provided in s. 212.08(5)(g), F.S.
- Sales tax exemption for business property used in an enterprise zone provided in 212.08(5)(h), F.S.
- Sales tax exemption for electrical energy used in an enterprise zone provided in s. 212.08(15), F.S.
- Enterprise zone jobs credit against the sales tax provided in s. 212.096, F.S.
- Occupational license tax exemption in s. 205.054, F.S.
- Economic development ad valorem tax exemption in s. 196.1995, F.S.

Enterprise Zone Jobs Credit – Corporate Income Tax

Businesses located in an enterprise zone that 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. This section expires June 30, 2005]

Enterprise Zone Property Tax Credit - Corporate Income Tax

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 220.181, F.S. This section expires June 30, 2005]

Exemption for Building Materials Used in an Enterprise Zone – Sales Tax

A 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. This section expires December 31, 2005]

Exemption for Business Property Used in an Enterprise Zone – Sales Tax

A 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. This section expires December 31, 2005]

Exemption for Electrical Energy Used in an Enterprise Zone – Sales Tax

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 business. [Sections 212.08(15) and 166.231(8), F.S. This exemption expires December 31, 2005]

Enterprise Zone Jobs Credit – Sales Tax

Businesses located within an enterprise zone that collect and pay Florida sales and use tax are allowed a credit against their sales tax due 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 212.096, F.S. This section expires December 31, 2005]

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. This section expires December 31, 2005]

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.]

Enterprise Zones and Sales Tax Exemption

An incentive for all designated enterprise zones is a sales tax for building equipment used in an enterprise zone. Currently, businesses located within any enterprise zone are eligible for a sales tax refund if the unit value of the equipment is \$5,000 or more [section 212.08(5)(h)].

According to Enterprise Florida, Inc., small businesses make up the majority of businesses located in all enterprise zones. The sales tax refund as currently structured cannot be assessed by the majority of businesses considering locating to or expanding in an enterprise zone.

Enterprise Zone Designation Process and Criteria

Section 290.0055, F.S., prescribes the local procedures for the nomination of an enterprise zone. The governing bodies or body of a county and/or a municipality must adopt a resolution which:

1. Finds that an area exists in such a county or municipality, or in both the county and one or more municipalities, which chronically exhibit extreme and unacceptable levels of poverty, unemployment, and economic disinvestment;
2. Determines that the rehabilitation, conservation, or redevelopment of the area is necessary in the interest of the public health, safety, and welfare of the residents of the county or municipality, or the county and one or more municipalities; and
3. Determines that the revitalization of the area can occur only if the private sector can be induced to invest its own resources in productive enterprises that build or rebuild the economic viability of the area.

The governing body or bodies of a nominated area must also create an enterprise zone development agency and create and adopt an enterprise zone strategic plan prior to the submission of an application to OTTED.

The enterprise zone development agency created is responsible for assisting with the development and implementation of the enterprise zone strategic plan. The enterprise zone strategic plan is the community's plan for revitalizing the nominated area and contains commitments to enact and maintain local fiscal and regulatory incentives if the nominated area receives an enterprise zone designation.

Determination of Poverty, Unemployment, and General Distress

OTTED may designate the nominated area as an enterprise zone if the selected area suffers from pervasive poverty, unemployment, and general distress. To determine whether an area suffers from pervasive poverty, census data must show that the poverty rate for each census block within the nominated area is at least 20 percent. The poverty rate must also exceed 30 percent in at least 50 percent of the census geographic block groups within the nominated area.

If a census block group within a nominated area has no population, it is considered to have a 20-percent poverty rate. Unemployment is evidenced by data indicating that the unemployment rate is equal to or greater than the state's unemployment rate or by evidence indicating severe economic conditions for the area. General distress is evidenced by such factors as a high crime rate, abandoned structures, and deteriorated infrastructure or substantial population decline.

Proposed Changes

HB 1543 creates the "Urban Revitalization Tax-Free Zone Pilot Project" in Miami-Dade and Duval Counties. The bill creates two tax-free zones, located as follows:

1. Within a portion of Miami-Dade County, specifically the area bordered by Northwest 23rd Street to the north, Northwest 5th Street to the south, Northeast First Avenue to the east, and Northwest 8th Avenue to the west.
2. Within a portion of Duval County, specifically the area bordered by A. Phillip Randolph Boulevard to the north, Tallyrand Road to the south, Ninth Street to the west, and Union Street to the east.

Any business located in a designated "tax free-zone" shall be exempt from charging and paying a sales and use tax imposed by chapter 212, F.S., and from paying an excise tax on documents imposed by chapter 201, F.S. Any new business in the zone will receive the exemptions only by applying to a newly created Urban Revitalization Task Force. Applications must be filed by September 1 of the preceding tax year in which the business is seeking an exemption.

The application must describe the real and tangible personal property owned or leased by the business prior to its expansion and the net new or additional real and intangible personal property acquired to facilitate the new, expanded, or rebuilt business. For businesses established on or after July 1, 2005 in a zone, the term of the tax exemptions shall be 10 years. For existing businesses in the zones, the term of the exemptions will be five years.

The bill requires the task force to review the new business's application for tax free status to determine if the business meets the criteria to receive a tax credit. In addition to the inventory of real or tangible personal property, the business must be evaluated against "criteria related to comprehensive urban planning, neighborhood aesthetics and compatibility, and maximization of economic development and job creation opportunities."

The bill requires a business in the tax-free zone to declare that no less than 20 percent of its employees are residents of the tax-free zone or an enterprise zone located in the same county. A business may be exempt from the 20 percent requirement if it can demonstrate just cause to the task force. A business must fulfill the 20 percent requirement throughout each year in order to maintain its tax-free status unless exempted by the task force. The business must document the name and place of residence of each permanent employee in order to meet this requirement.

The bill provides that the tax exemptions in the zone shall expire and be void on June 30, 2013. No business shall be permitted to be exempt from the tax exemptions after that date.

The bill creates two Urban Revitalization Task Forces in Miami-Dade and Duval Counties, comprised of seven members. Members of the task force include: a business owner and a resident of the tax-free zone appointed by the Governor; a member of the Senate and a member of the House of Representatives, each residing in Miami-Dade County and appointed by their respected leaders; a Dade County Commissioner appointed by the County Mayor; a Miami City Commissioner appointed by the City Mayor; a Duval County councilperson appointed by the Major of Jacksonville and a councilperson appointed by the president of the Jacksonville consolidated city council, and the Director of the Office of Tourism, Trade, and Economic Development. The bill provides that the terms of task force members shall be for four years (except for Legislative appointees which shall be for 2 years), and that the task force must meet at least on a quarterly basis. Subject to funding from the local governments, the task force may employ staff, including an executive director, technical experts, and legal staff.

The bill requires the task force to file with the Clerk of Miami-Dade County and the Clerk of Duval County, on or before March 31 of each year, an activities report, including a complete financial statement. The task force shall also file an activities report with the Governor and the Legislature by

February 15 of each year. The bill requires the Office of Program Policy Analysis and Government Accountability to review and evaluate the effectiveness and viability of the pilot project and submit a report to the Legislature by January 15, 2015.

The bill becomes effective on January 1, 2006, is repealed on June 30, 2015, and any designation made pursuant to the act becomes revoked on that date.

C. SECTION DIRECTORY:

Section 1. Provides a popular name.

Section 2. Provides definitions of "business" and "tax-free zone," and "urban revitalization task force."

Section 3. Provides for an exemption from sales, use and excise taxes for businesses located in a tax-free zone; provides for certification of businesses and for expiration of the section.

Section 4. Creates Urban Revitalization Task Forces in Miami-Dade and Duval Counties; provides for membership; requires a report.

Section 5. Requires review by OPPAGA of the pilot project.

Section 6. Provides for repeal of the law on June 30, 2015.

Section 7. Provides for an effective date of January 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has not been reviewed by the Revenue Estimating Conference.

2. Expenditures:

The bill does not appear to require expenditure of state funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill has not been reviewed by the Revenue Estimating Conference.

2. Expenditures:

The bill does not appear to require expenditure of local government funds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow businesses located in a tax free zone to avoid sales, use and excise tax. Because the benefit authorized by the bill inures to each business in the zone, as opposed to transactions in the zone, the affected businesses will be able to operate on a tax free basis with respect to any transactions they are involved in that might generate sales, use or excise tax liability. For consumers of goods and services provided by businesses in the tax free zones, there will be a reduction in cost of goods and services due to the tax exemption. This may spur business activity within the zones.

D. FISCAL COMMENTS:

The bill will likely result in a reduction in state sales, use and excise tax revenue and in local option sales tax revenue, but the amount of the reduction has not been estimated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a certification process through the task forces and requires them to apply certain criteria to the businesses that apply for certification without specifying what those criteria are. If the sponsor's intent is to allow any business within the zone to be eligible for the exemptions, the criteria should be limited to proof that the business is in the zone and that 20 percent or more of its employees live in the zone.

The bill does not specify the tax years for which the exemptions will apply.

The bill provides for repeal of the tax exemptions in 2013. This is inconsistent with the bill's repeal date of 2015.

The bill provides an exemption to the business located in the zone. This appears to allow any affected business to operate on a tax-free basis with respect to any transaction that it is involved in, regardless of whether the transaction occurs in the zone.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES