

# 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.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: SPB 7050

SPONSOR: For consideration by Commerce and Consumer Services Committee

SUBJECT: Florida Enterprise Zone Act

DATE: February 18, 2005 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Cooper</u>		<b>Pre-Meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

SPB 7050 reenacts and extends the Florida Enterprise Zone program, and it's related various state and local enterprise zone incentives, until 2015. Additionally, this proposed bill:

- Requires re-designation of existing enterprise zones, establishes a procedure for the designation of new zones (if an existing zone is not re-designated), and established a procedure for zone boundary changes;
- Revises jobs tax credits (against corporate income tax and state sales tax) to allow a new hire, rather than only a newly created job, to qualify for a credit;
- Expands the "Building Materials Used in an Enterprise Zone" and "Business Property Used in an Enterprise Zone" incentives; and
- Requires additional reporting requirements by enterprise zones.

This bill substantially amends the following sections of the Florida Statutes: 290.001, 290.004, 290.0055, 290.0056, 290.0057, 290.0058, 290.0065, 290.0066, 290.12, 290.016, 166.231, 193.077, 193.085, 195.073, 196.012, 205.022, 205.054, 212.02, 212.08, 212.096, 220.02, 220.03, 220.181, 220.182, and 370.28.

This bill repeals the following sections of the Florida Statutes: 290.00555, 290.0067, 290.00675, 290.0676, 290.00678, 290.00679, 290.0068, 290.00685, 290.00686, 290.00687, 290.00688, 290.00689, 290.0069, 290.00691, 290.00692, 290.00693, 290.00694, 290.00695, 290.00696, 290.00697, 290.00698, 290.00699, 290.00701, 290.00702, 290.00703, 290.00704, 290.00705, 290.00706, 290.00707, 290.00708, 290.00709, 290.009, and 290.015.

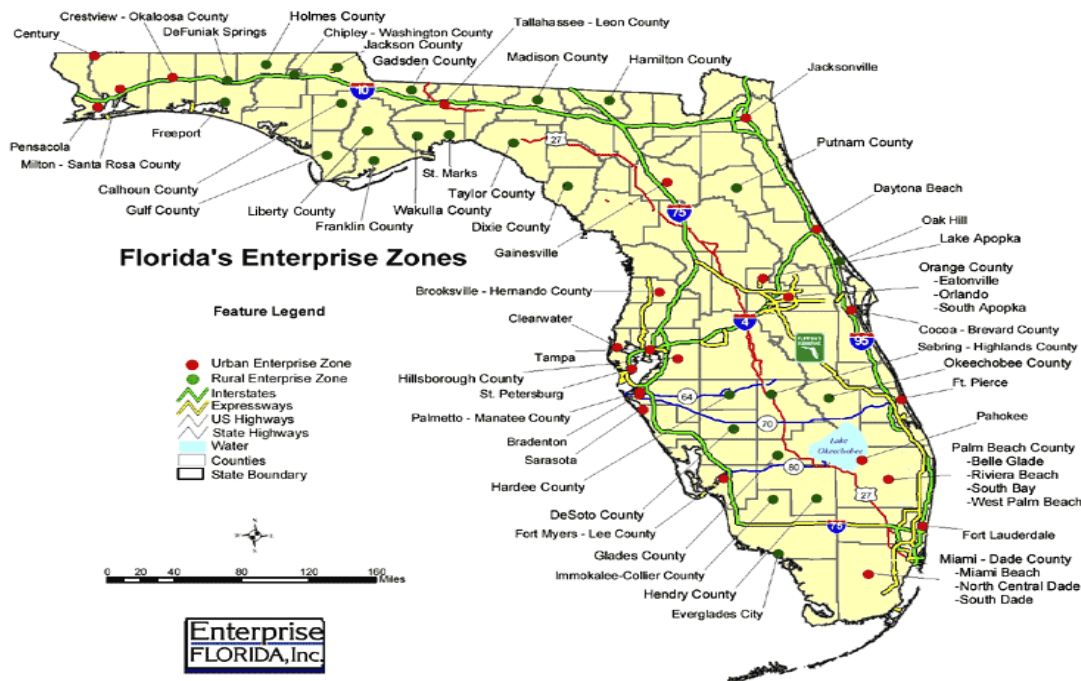
**II. Present Situation:**

**Florida Enterprise Zone Program**

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

to provide the necessary means 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.<sup>1</sup>

Under the act, areas of the state meeting specified criteria, including suffering from pervasive poverty, unemployment, and general distress, have been designated as enterprise zones. The act established a process for the nomination and designation of a maximum of 20 enterprise zones.<sup>2</sup> Subsequent to the 1994 act, however, the Legislature has designated additional zones. Currently, there are 51 state enterprise zones, including 26 rural zones and 25 urban zones. There are also three Federal Enterprise Communities and two Federal Empowerment Zones. Certain federal, state, and local incentives are authorized to induce private businesses to invest in these enterprise zones.



<sup>1</sup> Section 290.003, F.S.

<sup>2</sup> Sections 290.0055 and 290.0065, F.S.

### **State Incentives**

The program's incentives are as follows:

- Jobs credit against corporate income taxes: Businesses located in an enterprise zone which pay Florida corporate income taxes are authorized to receive a tax credit against their tax liability 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.<sup>3</sup>
- Jobs credit against sales tax: Businesses located within an enterprise zone which 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.<sup>4</sup>
- 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.<sup>5</sup>
- Sales tax refund for building materials: A refund is available for sales taxes paid on the purchase of building materials used in the rehabilitation of real property 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.<sup>6</sup>
- Sales tax refund for business property used in an enterprise zone: 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.<sup>7</sup>

### **Local Incentives**

The following are examples of local incentives:

- Sales tax exemption for electrical energy used in an enterprise zone: A sales tax exemption (state and local taxes) is available to qualified businesses located in an enterprise zone on the purchase of electrical energy. 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.<sup>8</sup>
- 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.<sup>9</sup>

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<sup>3</sup> Section 220.181, F.S.

<sup>4</sup> Section 212.096, F.S.

<sup>5</sup> Section 220.182, F.S.

<sup>6</sup> Section 212.08(5)(g), F.S.

<sup>7</sup> Section 212.08(5)(h), F.S.

<sup>8</sup> Sections 212.08(15) and 166.231(8), F.S.

<sup>9</sup> 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.<sup>10</sup>
- Local impact fee abatement or reduction, or low-interest or interest-free loans, or grants to businesses.<sup>11</sup>

**State Incentive Use and Job Creation**

The Office of Tourism, Trade, and Economic Development (OTTED) has reported the following regarding activity in enterprise zones:

FISCAL YEAR	NEW OR RELOCATED BUSINESSES	JOBBS CREATED	NUMBER OF ZONES	STATE INCENTIVES USED
2002-2003	2,268	5,057	51	\$5,401,583
2001-2002	1,244	5,630	47	\$6,739,551
2000-2001	654	6,394	34	\$4,746,396
1999-2000	766	5,141	34	\$5,458,835
1998-1999	776	5,305	32	\$5,170,899
1997-1998	151	3,572	31	\$4,495,218
1996-1997	434	4,573	30	\$4,449,941
1995-1996	128	2,188	19	\$3,437,344

As the chart shows, incentive use and job creation has not always increased as the number of zones has increased over time. Of note, in the 2002-2003 annual report, 14 of the 51 zones reported no incentive activity in their respective zones, although the Department of Revenue is unable to track use of the jobs tax credit or the property tax credit against corporate income tax.

**State Agencies**

The Governor’s Office of Tourism, Trade, and Economic Development (OTTED) administers the Florida Enterprise Zone Act; the Department of Revenue reviews and approves or denies a business’s application for enterprise zone tax credits; and Enterprise Florida, Inc., is responsible for marketing the act.

**Program Expiration**

The Florida Enterprise Zone Act (act) is scheduled for repeal on December 31, 2005, as provided by s. 37, ch. 94-136, L.O.F. Although most of the statutory authority for the act expires on December 31, 2005, some of the state tax incentives for the act are scheduled to expire on June 30, 2005. (See, for example, ss. 212.08(5)(q) and 220.181(9), F.S.)

**Senate Interim Project**

During the 2004-2005 interim, the Senate Committee on Commerce and Consumer Services conducted a review of the enterprise zone program and incentives and issued an interim project

<sup>10</sup> Section 205.054, F.S.

<sup>11</sup> Section 290.0057(1)(e), F.S.

report. After evaluating the program and the available incentives, the report recommended reenacting the program and the incentives for an additional 10 years. The report also recommended redesignation of the existing zones once those zones complete a redesignation procedure. Further, the report recommended a procedure for nomination and designation of new enterprise zones, if an existing zone is not redesignated.

The report also recommended programmatic changes to provide flexibility for rural and urban areas, and a local administrative process for boundary amendments that would be reviewed and approved by OTTED. Additionally, the report recommended changes to existing state incentives that may make them more useful to enterprise zone businesses.

### III. Effect of Proposed Changes:

SPB 7050 reenacts the Florida Enterprise Zone program, and it's related various state and local enterprise zone incentives, and extends them until 2015. This proposed bill also requires re-certification of existing zones, revises related jobs tax credits, expands related incentives, and requires additional zone reporting requirements.

**Section 1** renames the "Florida Enterprise Zone Act of 1994" as the "Florida Enterprise Zone Act."

**Section 2** deletes two definitions relating to the former Department of Commerce, and deletes the definition of the "interagency coordinating council," which no longer exists.

**Section 3** revises the local nominating procedure for enterprise zones in s. 290.0055, F.S., to apply only to the designation of *new* enterprise zones. This change coordinates with a procedure specified in **Section 7** that establishes a maximum number of enterprise zones, and only allows a new zone to be nominated if an existing zone is not redesignated.

This section also provides a boundary change process for enterprise zones that allows a governing body, upon recommendation by the enterprise zone development agency, to request a change once every three years, subject to review and approval by OTTED. The boundary change must comply with existing limitations on the size of enterprise zones. This procedure eliminates the necessity of seeking legislation to change a boundary.

This section also deletes obsolete language in the criteria for enterprise zone designation.

**Section 4** amends s. 290.0056, F.S., regarding the local enterprise zone development agency (EZDA). This section provides greater flexibility to a governing body regarding an appointment to a board of commissioners for an EZDA, while emphasizing the importance of choosing members from within the enterprise zone community, when possible. The powers and responsibilities of an EZDA are also revised:

- to require an annual review and update of the enterprise zone's strategic plan or measurable goals;
- to encourage the EZDA board members to assist in marketing the enterprise zone to enterprise zone residents and businesses;

- to make the EZDA responsible for recommending boundary changes to the governing body as appropriate;
- to encourage board members to work with three Florida universities who have established the “University Partnership for Community Development” on enterprise zone development issues; and
- to have the EZDA work with Enterprise Florida, Inc., and OTTED to ensure that an enterprise zone coordinator is properly trained on an annual basis.

This section also eliminates some extraneous notice and filing requirements regarding an annual report by an EZDA to its governing body, while continuing to provide public access to the report in the office of the EZDA.

**Section 5** amends s. 290.0057, F.S., by specifying that an enterprise zone strategic plan must be created by a governing body if the governing body submits a *new* application for enterprise zone designation.

**Section 6** amends s. 290.0058, F.S., regarding the determination of pervasive poverty, unemployment, and general distress in an enterprise zone application. This section provides greater flexibility when determining the level of pervasive poverty in an area nominated to be a rural enterprise zone by allowing the poverty level in the entire county to be used when a particular census geographic block group does not meet the requirement of having a poverty level of 20 percent or greater. Additionally, this section exempts an area nominated to be a rural enterprise zone from the requirement of demonstrating a poverty level of 30 percent or greater in a certain number of census geographic block groups within an area nominated to be a rural enterprise zone.

**Section 7** amends s. 290.0065, F.S., to specify that the maximum number of zones authorized under this act is the number of zones with an effective date on or before January 1, 2005, which, according to OTTED staff, is 55. This number is subject to revision upward if the 2005-2006 Legislature designates any new zones during the legislative session.

This section also provides a procedure for redesignation of existing enterprise zones. (**Section 9** “sunsets” all existing zones, until redesignated pursuant to this section.) To be redesignated, the governing body for an existing enterprise zone must complete and submit to OTTED for review and approval:

- An updated zone profile for the enterprise zone based on the most recent census data;
- A resolution passed by the governing body requesting redesignation and explaining why the conditions of the zone merit redesignation; and
- Measurable goals for the enterprise zone developed by the enterprise zone development agency, which may be the goals established in the enterprise zone’s strategic plan.

The governing body may also submit a request for a boundary change in the same application to OTTED.

In consultation with Enterprise Florida, Inc., OTTED must determine, based on the information provided above, that the enterprise zone merits redesignation. OTTED may also review progress

made, if any, in the enterprise zone's strategic plan, and also may review the use of enterprise zone incentives during the life of the zone. If OTTED approves or denies redesignation, it must inform the governing body of its decision in writing. Any enterprise zone denied redesignation may not apply again for redesignation for one year from the date of denial. If an enterprise zone is redesignated, OTTED must determine if the measurable goals submitted by the governing body are reasonable, and must inform the governing body of its approval of the measurable goals.

If an existing enterprise zone was designated under a Federal act, it may seek redesignation for that zone from OTTED by following the same procedure as outlined above, without any limitation as to the size of the zone. (Some zones were allowed to be larger than existing limitations on enterprise zones to match the zones with the geographic sizes authorized in the Federal acts.)

This section also provides a procedure for designation of new enterprise zones. If an existing enterprise zone is not redesignated, a governing body may apply to fill the opening and request designation of an enterprise zone by OTTED. A governing body is required to follow the procedure outlined in s. 290.0055, F.S., (see **Section 3** above), a procedure that was completed by most of the existing enterprise zones when those zones were designated. OTTED, in consultation with Enterprise Florida, Inc., must rank the applications competitively based on the:

- pervasive poverty, unemployment, and general distress of the area;
- strategic plan, including local fiscal and regulatory incentives; and
- prospects for new investment and economic development in the area.

Each of these factors is weighted a certain percentage in the application. OTTED must then determine which applications for enterprise zones will be approved.

This section also removes a size categorization procedure for enterprise zones that was based on population, and instead references the same procedure located in s. 290.0055, F.S. Further, this section adds measurable goals in the guidelines that OTTED may establish when reviewing applications. Additionally, this section deletes several references to out-of-date boundary change procedures and specific enterprise zone and satellite zone designations.

**Section 8** amends s. 290.0066, F.S., to give OTTED additional authority to revoke an enterprise zone designation, by adding failure to make progress in or failure to comply with an enterprise zone's measurable goals.

**Section 9** amends s. 290.012, F.S., to specify a transition period for existing enterprise zones. This section provides that any enterprise zone with an effective date on or before January 1, 2005, continues to exist until December 31, 2005, and ceases to exist on that date. Any enterprise zone redesignated or designated on or after January 1, 2006, must do so in accordance with the Florida Enterprise Zone Act (see the procedures outlined in **Section 7**). A transition period is necessary in order to bring all zones under the procedures specified in the bill.

**Section 10** amends s. 290.016, F.S., to extend the expiration date for the Florida Enterprise Zone Act for a further 10 years, until December 31, 2015.

**Sections 11 through 18** amends the following provisions to extend the expiration date to the same date specified in **Section 10** above, which is December 31, 2015:

- Section 166.231, F.S., regarding the electrical energy exemption in an enterprise zone;
- Sections 193.077, F.S., 193.085, F.S., and 195.073, F.S., regarding the enterprise zone property tax credit;
- Section 196.012, F.S., regarding a definition of an enterprise zone in the exemption chapter of Title XIV Taxation and Finance;
- Sections 205.022, F.S., and 205.054, F.S., regarding a definition of an enterprise zone, and an exemption for engaging in business in an enterprise zone in the local occupational license taxes chapter; and
- Section 212.02, F.S., regarding a definition of an enterprise zone in the tax on sales, use, and other transactions chapter.

**Section 19** amends s. 212.08, F.S., to provide an enterprise zone resident or business up until September 1, after the rehabilitated property is first subject to assessment, to file a claim for the “building materials used in an enterprise zone” incentive. This change will provide more time to an enterprise zone resident or business to file for the refund. Additionally, this section allows a resident or business to use the incentive more than one time per parcel as long as the refund amount is a minimum of \$500.

This section also revises the “business property used in an enterprise zone” incentive by lowering the purchase threshold from \$5,000 to \$500, and specifies that the purchase is per *item*, instead of per *unit*, which, according to Department of Revenue staff, will clear up some confusion in filing for this incentive. The expiration dates for both of these incentives, and for the “electrical energy used in an enterprise zone” incentive, are also extended in this section to the same date specified in **Section 10** above, which is December 31, 2015.

This section also deletes a reference to a specific type of project that was authorized under the community contribution tax credit that related to a specific enterprise zone designated in s. 290.00675, F.S. The designation of that specific zone is repealed in **Section 26** of this bill. (This zone, like the other existing zones, may be redesignated as outlined in **Section 7** above.)

**Section 20** amends s. 212.096, F.S., by revising the “enterprise zone jobs tax credit against sales tax,” to allow a new hire, not just a new job created by a business, to qualify for the credit. This change is accomplished by deleting the following:

- the requirement that a business demonstrate that the total number of full-time jobs has increased from the average of the previous 12 months; and
- any reference to “new job has been created,” which was defined in s. 212.096, F.S.

This change may provide greater utility for the use of this incentive by enterprise zone businesses. Further, to prevent churning of enterprise zone residents who are employees, this section stops an enterprise zone business from claiming the credit for a new hire if the new hire



is replacing an employee for whom the business received the credit previously and that employee was employed by the business for less than one year.

This section also removes a restriction against claiming a tax credit for employees that own stock in the business. This allows employers to provide stock as part of a benefit package, provided the recipient is not a “majority” stockholder.

This section also extends the expiration date of this incentive to the same date specified in **Section 10** above, which is December 31, 2015.

**Sections 21** amend s. 220.02, F.S., regarding the legislative intent for the enterprise zone jobs tax credit against corporate income tax and the enterprise zone property tax credit, to extend the expiration date of those sections to the same date specified in **Section 10** above, which is December 31, 2015.

**Section 22** amends s. 220.03, F.S., regarding definitions in the corporate income tax code of ad valorem taxes paid, business, community contribution, emergency, enterprise zone, expansion of an existing business, local government, new business, new employee, project, and rebuilding of an existing business to extend the expiration date of those definitions to the same date specified in **Section 10** above, which is December 31, 2015.

This section also deletes the definition of “new job has been created,” and deletes a reference to a specific type of project that was authorized under the community contribution tax credit that related to a specific enterprise zone designated in s. 290.00675, F.S. The designation of that specific zone is repealed in **Section 26** of this bill. (This zone, like the other existing zones, may be redesignated as outlined in **Section 7** of this bill.)

**Section 23** amends s. 220.181, F.S., to revise the “enterprise zone jobs credit against corporate income tax,” to allow a new hire, not just a new job created by a business, to qualify for the credit. This change is accomplished by deleting the following:

- the requirement that a business demonstrate that the total number of full-time jobs has increased from the average of the previous 12 months; and
- any reference to “new job has been created,” which was defined in s. 220.03, F.S.

This change may provide greater utility for the use of this incentive by enterprise zone businesses. Further, to prevent churning of enterprise zone residents who are employees, this section stops an enterprise zone business from claiming the credit for a new hire if the new hire is replacing an employee for whom the business received the credit previously and that employee was employed by the business for less than one year.

This section also includes a restriction against claiming a tax credit for any new employee who is an owner, partner, or majority stockholder of an eligible business. This is consistent with the current and proposed restriction against claiming sales tax credits in s. 212.096(6), F.S. (**Section 20** of the bill.)

This section also extends the expiration date of this incentive to the same date specified in **Section 10** above, which is December 31, 2015.

**Section 24** amends s. 220.182, F.S., to extend the expiration date for the *enterprise zone property tax credit* to the same date specified in **Section 10** above, which is December 31, 2015.

**Section 25** amends s. 370.28, F.S., regarding enterprise zones designated due to adverse impacts from the net ban, to provide a transition period. This section specifies that any enterprise zone designated under this statute, with an effective date on or before January 1, 2005, continues to exist until December 31, 2005, and ceases to exist on that date. Further, any enterprise zone that was originally designated under this statute, if it is to be redesignated on or after January 1, 2006, must do so in accordance with the Florida Enterprise Zone Act (see the redesignation procedures in **Section 7** above).

**Section 26** repeals numerous references to past enterprise zone designations and boundary changes that were authorized by the Legislature since 1994.

This section repeals s. 290.009, F.S., which created the Enterprise Zone Interagency Coordinating Council. OTTED recommended this section be repealed, as the council has not met regularly since 1994.

This section also repeals s. 290.015, F.S., which is an out of date reference to a review of the enterprise zone program that was to be conducted by the Office of Program Policy Analysis and Government Accountability prior to the 2000 legislative session, and a review that was to be conducted by the appropriate legislative committees prior to the 2001 legislative session.

**Section 27** specifies that this bill shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

Preliminary estimates indicate that the reenactment of the Florida Enterprise Zone program will have an estimated \$7.2 million annual impact on state and local revenues.

The change to the building materials used in an enterprise zone incentive, which allows the incentive to be used more than one time per parcel as long as the refund sought is greater than \$500, is anticipated to have a negative fiscal impact. However, the impact is indeterminate at this time. (**Section 19**)

The change to the business property used in an enterprise zone incentive, which lowers the purchase threshold from \$5,000 to \$500 per item, is anticipated to have a negative fiscal impact. However, the impact is indeterminate at this time. (**Section 19**)

The change to the jobs tax credit against corporate income tax and the jobs tax credit against sales tax, to allow a new hire, not just a new job created by an enterprise zone business, to qualify for the credit is anticipated to have a negative fiscal impact. However, the impact is indeterminate at this time. (**Sections 20 and 23**)

**B. Private Sector Impact:**

An enterprise zone business may be able to utilize the incentives revised in this bill to a greater degree than was possible previously, which, in turn, may mean more enterprise zone residents may be hired by those businesses and more investments may be made in the enterprise zone by those businesses.

**C. Government Sector Impact:**

The Department of Revenue may receive a greater number of applications for the various incentives revised by this bill, which may require more staff time to process the applications.

OTTED may have to revise some of its forms to account for the changes in the incentives made by this bill, and to account for the new redesignation procedures specified in this bill.

Additionally, a governing body of an enterprise zone will have more flexibility when making appointments to its enterprise zone development agency.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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