

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – The bill will allow a business to avail itself of a tax credit against the corporate income tax or sales and use tax, lowering its tax liability.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Florida Enterprise Zone Program

The Florida Enterprise Zone Act (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.¹

The Florida Enterprise Zone Act of 1994 was scheduled to be repealed on December 31, 2005, but was re-enacted as the Florida Enterprise Zone Act (act) by ch. 2005-287, L.O.F., for an additional ten years, and is now scheduled to be repealed December 31, 2015.

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 in 1994.² Subsequently, the Legislature has designated additional zones. Currently, there are 55 enterprise zones in the state. When the Enterprise Zone Act was re-enacted by ch. 2005-287, L.O.F., the 53 existing enterprise zones were allowed to apply for re-designation; 51 of 53 have been re-designated. Four of the 55 enterprise zones were created by ch. 2005-244, L.O.F.: City of Lakeland, Indian River County, Sumter County, and Orange County. 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.

State Incentives

The program's incentives are as follows:

- Jobs credit against sales or corporate income taxes: In order to be eligible, businesses must increase the number of full time jobs. The credit amount varies based on job location and wage of employee.³
- 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.⁴
- 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

¹ Section 290.003, F.S.

² Sections 290.0055 and 290.0065, F.S.

³ Sections 212.096 and 220.181, F.S.

⁴ Section 220.182, F.S.

percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or \$10,000.⁵

- 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 \$10,000.⁶

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.⁷
- 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.⁸
- 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.⁹
- Local impact fee abatement or reduction, or low-interest or interest-free loans, or grants to businesses.¹⁰

State Agencies

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

Transfer of Unused Credits under the Brownfields Act¹¹

An unused tax credit authorized under ss. 199.1055 or 376.30781, F.S., available for the entity that rehabilitates a brownfield site may be transferred to the surviving entity of a merger or acquisition in whole or in units of not less than 25 percent and remains subject to the limitations of the law providing the tax credits. The credits may not be subsequently transferred again but succeed to a surviving or acquiring entity subject to the law providing the tax credits.

Calculation of Jobs Credit Against Sales and Use or Corporate Income Tax

A business located in an enterprise zone and meeting the eligibility requirements of s. 212.096, F.S., may receive the following tax credits against the sales and use tax for the creation of new jobs:

- Twenty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in an enterprise zone;
- Thirty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in a rural enterprise zone;
- Thirty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in an enterprise zone if at least 20 percent of the employees are residents of the enterprise zone;

⁵ Section 212.08(5)(g), F.S.

⁶ Section 212.08(5)(h), F.S.

⁷ Sections 212.08(15) and 166.231(8), F.S.

⁸ Section 196.1995, F.S.

⁹ Section 205.054, F.S.

¹⁰ Section 290.0057(1)(e), F.S.

¹¹ Sections 376.77-376.85, F.S.

- Forty-five percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in a rural enterprise zone if at least 20 percent of the employees are residents of the enterprise zone; and
- If the new employee is in a welfare transition program, 40 percent for \$4 above the hourly federal minimum wage rate; 41 percent for \$5 above the federal minimum wage rate; 42 percent for \$6 above the federal minimum wage rate; 43 percent for \$7 above the federal minimum wage rate; and 44 percent for \$8 above the federal minimum wage rate.

A business located in an enterprise zone and meeting the eligibility requirements of s. 220.181, F.S., may receive the following tax credits against the corporate income tax for the creation of new jobs:

- Twenty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in an enterprise zone;
- Thirty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in a rural enterprise zone;
- Thirty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in an enterprise zone if at least 20 percent of the employees are residents of the enterprise zone;
- Forty-five percent of the actual monthly wages paid to a new employee, for up to 24 consecutive months, when a new job has been created for a business located in a rural enterprise zone if at least 20 percent of the employees are residents of the enterprise zone; and
- If the new employee is in a welfare transition program, 40 percent for \$4 above the hourly federal minimum wage rate; 41 percent for \$5 above the federal minimum wage rate; 42 percent for \$6 above the federal minimum wage rate; 43 percent for \$7 above the federal minimum wage rate; and 44 percent for \$8 above the federal minimum wage rate.

Effect of Proposed Changes:

The bill allows a business located in an enterprise zone that is eligible for jobs tax credits against the sales and use or corporate income taxes to transfer any unused jobs credits in whole or in units of not less than 25 percent to another entity. The transfer does not need to be associated with the merger or acquisition of the entity eligible for the credits.

The acquiring entity may use the credits subject to the requirements of ss. 212.096 (jobs credit against sales and use tax) or 220.181 (jobs credit against corporate income tax), F.S. Credits may only be transferred once but succeed to a surviving or acquiring entity.

C. SECTION DIRECTORY:

Section 1. Creates s. 290.007(9), F.S., authorizing the transfer of unused tax credits.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The Revenue Estimating Conference met on March 17 and made the following estimated impact of the bill on state revenue:

FY 06-07	FY 07-08
(\$3.3m)	(\$4.9m)

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS: None.

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:

- It appears that the intention of the sponsor is to limit application of the transfer of unused credits to the jobs tax credits against the corporate income and sale and use taxes. Line 14 of the bill could be clarified to reflect this limitation by replacing the term “any” with a reference to the controlling statutes (ss. 212.096 and 220.181, F.S.).
- In addition, the bill does not provide the Department of Revenue with rulemaking authority.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES