HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 287 Economic Development
SPONSOR(S): Eisnaugle
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 506

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N	Tecler	Kruse
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

In 1980, the Florida electorate approved a constitutional amendment that allows local governments to grant economic development ad valorem tax exemptions, following voter referendums, to new or expanding businesses. Authority to issue exemptions is valid for ten years and may be renewed through a succeeding referendum. Exemptions are issued by ordinance at the discretion of the board of county commissioners or a municipal governing authority. The bill changes business eligibility requirements for this exemption, revises the process by which local governments can issue exemptions for economic development purposes, and removes outdated limitations. The bill authorizes counties and municipalities that have already held or are in the process of holding referendums to issue exemptions under any future revision to the law without holding additional referendums.

The bill does not have an impact on state revenue, but could have a negative indeterminate impact on local government revenue if a local government chooses to provide additional ad valorem tax exemptions.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

Property Tax Assessments
Unless an exception or exemption is provided, all real and personal property in Florida is subject to ad valorem taxes (taxes based on the value of that property). As prescribed by the Florida Constitution, counties, municipalities, and other local governmental entities have the exclusive right to assess ad valorem taxes on real estate and tangible personal property.[1]

There are a number of ad valorem tax exemptions permitted under Article VII, sections 3 and 6, of the state Constitution. These include but are not limited to exemptions for charitable, religious, or literary properties, homesteads, tangible personal property, and for economic development purposes.[2] In addition, ch. 196, F.S., establishes other ad valorem tax exemptions not found in the state Constitution but enacted through general law.

For ad valorem tax purposes, the state Constitution requires property to be assessed at just value. Property appraisers determine a property's just valuation using certain requirements provided under s. 193.011, F.S. In addition to these requirements, the state Constitution establishes caps for millage rates[3] and limits, for certain classes of property, the amount by which the assessed value may increase in a given year.[4] After calculating the assessed value of the property, the appraiser subtracts the value of any exemptions to determine the taxable value. Tax on real and tangible personal property is levied on January 1st annually. Property owners receive their tax bills in November and payment is due by March 31st of the following year.

Ad Valorem Tax Exemptions for Economic Development
In 1980, the Florida electorate approved a state constitutional amendment that empowers local governments to grant economic development ad valorem tax exemptions (exemptions) to new or expanding businesses.[5] The amendment was adopted during a time of economic weakness and high unemployment. The purpose of the amendment was to provide county and municipal governments with an additional tool that would encourage job growth and counteract recessionary pressures in local economies. In order to implement the constitutional amendment, statutory provisions were created to define the eligibility requirements for new or expanding businesses and to provide a process by which local governments can issue exemptions for economic development purposes.[6]

Eligibility
Eligibility is established under current law through the definitions for qualified "new business" and qualified "expansion of an existing business".

In general, an eligible <u>new business</u> is defined as a:
- Manufacturer that creates 10 or more jobs in Florida;
- Business that creates 25 or more jobs and has a sales factor of less than .50 (the business derives less than half of its total sales from Florida);
- Corporation newly domiciled in Florida that opens an office with at least 50 employees;
- Business that begins operations in an enterprise zone or brownfield area; and a

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[1] Fla. Const. art. VII, s. 1.
[2] The definitions and enabling language for these exemptions are contained in ch. 196, F.S.
[3] Fla. Const. art. VII, s. 9.
[4] Fla. Const. art. VII, s. 4.
[5] Senate Joint Resolution No. 9-E was adopted as Article VII, section 3(c) of the Florida Constitution.
[6] Section 196.012(15-16), F.S., defines "new business" and "expansion of new business". Section 196.1995, F.S establishes requirements for the issuance of ad valorem tax exemptions for economic development purposes.

- Business situated on property annexed into a municipality and that, at the time of annexation, is receiving an ad valorem tax exemption from the county under s.196.1995, F.S.

An eligible expansion of an existing business is generally defined as a:
- Manufacturer that creates 10 or more jobs in Florida;
- Business that creates 25 or more jobs and has a sales factor of less than .50 (the business derives less than half of its total sales from Florida) provided that the business increases net employment or output by at least 10 percent at the expanding facility; and a
- Business that expands operations in an enterprise zone or brownfield area.

Referendum Process
The state Constitution allows a county or municipality to hold a referendum to determine if such county or municipality will have the authority to issue exemptions.[7] A referendum on the question is required if one of the following occurs:
- The board of county commissioners or municipal governing authority votes to hold the referendum; or
- The board of county commissioners or municipal governing authority receives a petition signed by 10 percent of the registered electors that calls to hold the referendum.[8]

A county or municipal referendum on this issue must use the specific ballot question that is provided in s. 196.1995 (2), F.S. However, if the board of county commissioners or municipal governing authority votes to limit the ballot question to an enterprise zone or a brownfield area,[9] then the specific ballot question provided in s. 196.1995(3), F.S., is used. A referendum may be called only once in any 12-month period.[10] Once approved, the authority to grant exemptions is valid for ten years and may be renewed through a succeeding referendum.[11]

Issuing an Exemption
In any county or municipality that is authorized by its electors to grant exemptions for economic development purposes, the state Constitution requires the issuance of the exemption to be done by ordinance.[12] Prior to the board of county commissioners or municipal governing authority approving an exemption by ordinance, the property appraiser must provide the board or governing authority a fiscal analysis that includes the following: the total revenue from all ad valorem tax sources, the total revenue lost due to previously granted exemptions, and the fiscal impact of the proposed ordinance.[13] In addition, the appraiser must determine that the applicant has met all eligibility requirements.[14]

An ordinance granting an exemption must be adopted in the same manner as any other ordinance and include the name and location of the business, the expiration date of the exemption, and the findings of the property appraiser.[15]

The board of county commissioners or municipal governing authority, at its discretion,[16] by ordinance may exempt ad valorem taxes for new or expanding businesses. For a new business, up to 100 percent of the assessed value of the following is exempt[17]:
- Improvements to real property made by or for the use of the new business; and
- Tangible personal property of the new business.

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[7] Fla. Const. art. VII, s. 3(c).
[8] Section 196.1995(1)(a)(b), F.S.
[9] Section 196.1995(3), F.S.
[10] Section 196.1995(4), F.S.
[11] Fla. Const. art. VII, s. 3(c) and s. 196.1995(7), F.S.
[12] Fla. Const. art. VII, s. 3(c).
[13] Section 196.1995 (9)(a-c), F.S.
[14] Section 196.1995 (9)(d), F.S.
[15] Section 196.1995 (10), F.S.
[16] Opinions issued by the Office of the Attorney General indicate that counties and municipalities have broad discretion in approving or not approving an applicant. See: Advisory Legal Opinions AGO 81-46 and AGO 84-89.
[17] Section 196.1995(5), F.S.

For the expansion of existing business, up to 100 percent of the assessed value of the following is exempt: [18]

- Improvements to real property made to facilitate the expansion of an existing business; and
- Total net increase in all tangible personal property acquired to facilitate an expansion.

The exemption does not apply to taxes levied for the payment of bonds or taxes authorized by referendum.[19]

Application for an Exemption

An applicant must submit a written application to the board of county commissioners or municipal governing authority in the year the ad valorem tax exemption is desired to take effect. Section 196.1995(8), F.S., requires the following: the name and location of the business, a description and construction date of improvements to real property, a description and purchase date of eligible tangible personal property, proof of eligibility as defined by s. 196.012(15-16), F.S., and any other information deemed necessary by the Department of Revenue.

Exemption Use

According to the Department of Revenue, 15 counties are currently offering exemptions totaling approximately $747.7 million. In addition, the Department indicated that 33 cities throughout the state are currently offering $154.9 million in exemptions.

Location plays a role in the use of exemptions. According to county economic development officials in Florida's panhandle, exemptions are more attractive in this part of the state due to the proximity to Alabama[20] and Georgia[21] where similar exemptions are offered. This may, in part, account for the high concentration of use in the northern part of the state.

Economic development ad valorem tax exemptions issued by county governments in 2010:

2010	
County	**Exemptions**
Bay	$232,133,541.00
Brevard	$28,762,380.00
Calhoun	$517,421.00
Dade	$67,568,325.00
Escambia	$279,392,755.00
Gulf	$362,894.00
Hardee	$27,542,457.00
Hendry	$2,246,960.00
Jackson	$49,419,465.00
Liberty	$30,932,427.00
Madison	$598,608.00
Palm Beach	$7,424,114.00
St. Lucie	$17,756,979.00
Santa Rosa	$2,613,424.00
Washington	$441,581.00
Statewide	**$747,713,331.00**
Includes exemptions under ss.196.1995, F.S.	

[18] Section 196.1995(5), F.S.
[19] Fla. Const. art. VII, ss. 9(b) and 12.
[20] Alabama Taxes and Incentives. Economic Development Partnership of Alabama, July 2010. On file with House Economic Development and Tourism Subcommittee.
[21] Georgia Department of Revenue. https://etax.dor.ga.gov/ (last visited March 1, 2011). See: "freeport exemption" and "bond lease transaction."

Economic development ad valorem tax exemptions issued by municipal governments in 2010:

2010		
County	**City**	**Exemptions**
Bay	Lynn Haven	$3,807,978.00
	Panama City	$43,122,287.00
Brevard	Cocoa	$308,770.00
	Melbourne	$14,238,900.00
	Palm Bay	$1,580,720.00
	Rockledge	$1,024,310.00
	Titusville	$227,960.00
Dade	Hialeah	$4,694,901.00
	Miami	$31,283,502.00
	Miami Beach	$7,284,508.00
	Miami Gardens	$3,609,474.00
	Miami Springs	$1,184,696.00
	Palmetto Bay	$146,580.00
Escambia	Pensacola	$8,091,198.00
Hendry	Clewiston	$503,640.00
	La Belle	$193,900.00
Hernando	Brooksville	$4,552,157.00
Holmes	Bonifay	$277,180.00
Lee	Fort Myers	$1,293,033.00
Leon	Tallahassee	$2,221,482.00
Osceola	Kissimmee	$333,600.00
Palm Beach	Pahokee	$103,870.00
St. Lucie	Fort Pierce	$820,100.00
	Port St. Lucie	$9,432,416.00
Sarasota	Sarasota	$252,400.00
Taylor	Perry	$287,880.00
Volusia	Daytona Beach	$9,279,779.00
	Deland	$680,296.00
	Holy Hill	$778,086.00
	Orange City	$1,492,211.00
	Ormond Beach	$1,525,775.00
	South Daytona	$293,751.00
Washington	Sunny Hills	$16,000.00
Statewide		**$154,943,340.00**
Includes exemptions under ss.196.1995, F.S., and s.196.095, F.S.		

Changes Made By the Bill

The bill makes several changes to the requirements for qualifying and issuing exemptions. Under the proposed changes in this bill, eligibility is expanded, potentially allowing more business types and non-profit organizations to qualify for exemptions. Second, the proposed changes will provide local governments with more discretion in selecting and approving exemptions. Third, the bill establishes several accountability measures, including authorizing local governments to establish binding contracts with approved applicants that set the terms for qualifying and maintaining an exemption.

Eligibility

The bill revises the definitions for "new business" and "expansion of existing business" by making eligibility requirements more flexible and removing outdated limitations. Eligibility requirements that limit exemptions to manufacturing businesses or to businesses that provide a certain level of employment, sales factor, or output are eliminated. The board of county commissioners or municipal governing authority will have the option to incentivize any new or expanding business or non-profit organization that creates new full-time jobs or demonstrates a net increase in full-time jobs.

Enterprise Zones and Brownfields
The bill strikes references to business activity in an enterprise zone or brownfield area from s. 196.012(15), F.S., and s. 196.012(16), F.S. The revised definitions for "new business" and "expansion of existing business" encompass business activities in and outside of enterprise zones and brownfields. Therefore, this change will not prevent business activity in an enterprise zone or brownfield area from being eligible for an exemption. Further, this change will not preclude the board of county commissioners or municipal governing authority from restricting exemptions to an enterprise zone or a brownfield area as prescribed in s. 196.1995(3), F.S.

Referendum Process
Under current law, if initiated by petition, a call for a referendum on whether a county should have the authority to issue exemptions requires the signature of 10 percent of the registered electors. The bill amends s. 196.1995(1) (b), F.S., authorizing charter counties to set the threshold for meeting the signature requirement at the percentage established in the charter. The percentage established in the county charter will be considered valid even if such percentage is less than 10 percent.

Ballot Questions
The bill revises the statutorily required ballot questions in s. 196.1995(2-3), F.S., to clarify to the voter that any exemptions issued under s. 1996.1995, F.S., are expected to create new, full-time jobs, and have been evaluated as being of economic interest to the community.

Issuing an Exemption
In order to strengthen accountability, the bill modifies the application and approval process and authorizes counties and municipalities to establish binding contracts with approved applicants.

Application for Exemption
The bill amends 196.1995(8), F.S., providing that an application include the following: the expected number of jobs created, the average and median wage of such jobs, whether the jobs are full-time or part-time, and the expected time schedule for job creation. The Department of Revenue has indicated that Form DR-418 will need to be revised. This online form can be revised at no cost to the Department.

Approval Process
The bill amends s. 196.1995(10), F.S., establishing a minimum economic criteria that must be considered by the board of county commissioners or a municipal governing authority to before issuing an exemption. In general, the minimum economic criteria are the following:

- The total number of jobs created by the applicant;
- The average and median wage of the new jobs;
- Capital investment made by the applicant;
- Whether the business or operation is an industry targeted by the locality;
- The environmental impact of the proposed business or operation; and
- Extent to which the applicant intends to source supplies and materials from the local area.

Further, the bill clarifies that an exemption may not to exceed ten years and that it is the intent of the Legislature to vest counties and municipalities with as much discretion as legally permissible in determining whether to approve or not approve an exemption.

Contract Agreement
The bill creates s. 196.1995(12), F.S., which authorizes the board of county commissioners or a municipal governing authority to enter into a written tax agreement with approved applicants. The written tax agreement may contain performance criteria and an option to revoke the exemption if the applicant fails to meet expectations established s. 196.1995(8), F.S. However, the written agreement

must require the applicant to report, before the exemption expires, the number of full-time jobs created and their average and median wage.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Amends 196.012, F.S., revising the definitions of "new business" and "expansion of an existing business."

Section 2. Amends 196.1995, F.S., revising the referendum process and ballot questions; providing requirements for issuing an exemption; creating an option for a written tax agreement.

Section 3. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference estimates that the bill will have no impact on state revenue.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference estimates that the bill could have a negative indeterminate impact on local government revenues if a local government chooses to offer exemptions.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Eligibility standards provided in this bill will allow potentially more businesses and non-profit organizations to benefit from exemptions. As a result, a previously ineligible business or non-profit organization may receive a lower tax liability. However, the exemption is administered and approved at the local level; therefore, the direct impact of this bill will vary by county and municipality.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Article VII, section 3(c) of the state Constitution authorizes a county or municipality to hold a referendum to determine if such county or municipality will have the authority to issue ad valorem tax exemptions for an economic development purpose. Under the provisions of the bill, a county or municipality that previously held or is in the process of holding a referendum to issue exemptions under this section is not required to hold a new referendum or revise the ballot question if a future Legislature amends this section of law.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.