

## FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 287

**FINAL HOUSE FLOOR ACTION:**

116 Y's 0 N's

**SPONSOR:** Rep. Eisnaugle

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** CS/SB 506

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### **SUMMARY ANALYSIS**

CS/CS/HB 287 passed the House on May 2, 2011, and subsequently passed the Senate on May 5, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-182, Laws of Florida, and becomes effective July 1, 2011. The bill provides flexibility to local governments to authorize economic development ad valorem tax exemptions.

In 1980, the Florida electorate approved a constitutional amendment that allows local governments to grant economic development ad valorem tax exemptions (exemptions) following voter referendums, to new or expanding businesses. Authority to issue these exemptions are 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 revises and modifies the definition of "new business" and "expansion of an existing business" to include qualifying "organizations." The bill provides that any new jobs created by an eligible business or organization must pay a wage above the average wage of the locality. Further, eligibility is expanded to include Qualified Target Industry businesses.

The bill prescribes criteria for counties or municipalities to consider when reviewing applications for exemption and allows local governments to enter into a written agreement with the applicant to cover additional details or requirements.

The bill clarifies that counties and municipalities can authorize these new qualifications for exemptions pursuant to a voter approved referendum held after July 1, 2011.

The Revenue Estimating Conference estimated that this bill will have a negative indeterminate impact on local government revenues if local governments choose, after a locally approved voter referendum, to provide these additional exemptions.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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.<sup>1</sup>

There are a number of ad valorem tax exemptions permitted under Article VII, sections 3 and 6, of the State Constitution. These exemptions include but are not limited to exemptions for charitable, religious, or literary properties, homesteads, tangible personal property, and for economic development purposes.<sup>2</sup> 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<sup>3</sup> and limits for certain classes of property, and the amount by which the assessed value may increase in a given year.<sup>4</sup> After calculating the assessed value of the property, the appraiser subtracts the value of any exemptions to determine the taxable value. Generally, tax on real and tangible personal property is assessed annually on January 1<sup>st</sup>. Property owners receive their tax bills in November and payment is due by March 31<sup>st</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>1</sup> Fla. Const. VII.

<sup>2</sup> The definitions and enabling language for these exemptions are contained in ch. 196, F.S.

<sup>3</sup> Fla. Const. art. VII, s. 9.

<sup>4</sup> Fla. Const. art. VII, s. 4.

<sup>5</sup> Senate Joint Resolution No. 9-E was adopted as Article VII, section 3(c) of the Florida Constitution.

<sup>6</sup> 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.

## Eligibility

Under current law, eligibility is established through the definitions of “new business” and “expansion of an existing business”.

In general, an eligible new business 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
- 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
- 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.<sup>7</sup> 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.<sup>8</sup>

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,<sup>9</sup> then a 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.<sup>10</sup> Once approved, the authority to grant exemptions is valid for ten years and may be renewed through a succeeding referendum.<sup>11</sup>

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<sup>7</sup> Fla. Const. art. VII, s. 3(c).

<sup>8</sup> Section 196.1995(1)(a)(b), F.S.

<sup>9</sup> Section 196.1995(3), F.S.

<sup>10</sup> Section 196.1995(4), F.S.

<sup>11</sup> Fla. Const. art. VII, s. 3(c) and s. 196.1995(7), F.S.

## 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.<sup>12</sup> 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.<sup>13</sup> In addition, the appraiser must determine that the applicant has met all eligibility requirements.<sup>14</sup>

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.<sup>15</sup>

The board of county commissioners or municipal governing authority, at its discretion,<sup>16</sup> 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<sup>17</sup>:

- Improvements to real property made by or for the use of the new business; and
- Tangible personal property of the new business.

For the expansion of existing business, up to 100 percent of the assessed value of the following is exempt:<sup>18</sup>

- 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.<sup>19</sup>

### 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 (Department).

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<sup>12</sup> Fla. Const. art. VII, s. 3(c).

<sup>13</sup> Section 196.1995 (9)(a-c), F.S.

<sup>14</sup> Section 196.1995 (9)(d), F.S.

<sup>15</sup> Section 196.1995 (10), F.S.

<sup>16</sup> 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.

<sup>17</sup> Section 196.1995(5), F.S.

<sup>18</sup> Section 196.1995(5), F.S.

<sup>19</sup> Fla. Const. art. VII, ss. 9(b) and 12.

## Exemption Use

According to the Department, 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<sup>20</sup> and Georgia<sup>21</sup> 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

<sup>20</sup> Alabama Taxes and Incentives. Economic Development Partnership of Alabama, July 2010. On file with House Economic Development and Tourism Subcommittee.

<sup>21</sup> Georgia Department of Revenue. <https://etax.dor.ga.gov/> (last visited March 1, 2011). See: "freeport exemption" and "bond lease transaction."

<b>Statewide</b>	<b>\$747,713,331.00</b>
Includes exemptions under ss.196.1995, F.S.	

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

<b>2010</b>		
<b>County</b>	<b>City</b>	<b>Exemptions</b>
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
<b>Statewide</b>		<b>\$154,943,340.00</b>
Includes exemptions under ss.196.1995, F.S., and s.196.095, F.S.		

### Qualified Target Industries

Chapter 288.106, F.S., states the Legislature finds that retaining and expanding existing businesses in the state, encouraging the creation of new businesses in the state, attracting new businesses from outside the state, and generally providing conditions favorable for growth of target industries creates high-quality, high-wage employment opportunities for residents of the state and strengthens the state’s economic foundation. Section 288.106(2), F.S., defines “Qualified Target Industry Business” as a target industry business approved by the Governor’s Office of Tourism, Trade, and Economic Development (OTTED). This section further defines a “target industry business” as either a corporate headquarters or any business that is engaged in one of the target industries identified by the OTTED and Enterprise Florida (EFI) as meeting the six statutory criteria in s. 288.106(2)(t), F.S.

The statutory criteria are as follows:

1. Future Growth- Industry forecasts should indicate expectations for strong future growth in both employment and output, according to the most recent available data. Special consideration should be given to businesses that export goods to, or provide services in,

- international markets and businesses that replace domestic and international imports of goods or services.
2. **Stability-** The industry should be stable, not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather, and relatively resistant to recession, so that the demand for its products or services is not necessarily subject to decline during an economic downturn.
  3. **High Wage-** The industry should pay relatively high wages compared to statewide or area salary averages.
  4. **Market and Resource Independent-** The industry should be both market and resource independent. In other words, the business should not be reliant on Florida consumers to purchase its products or services in order to be profitable, nor should it rely on Florida resources.
  5. **Industrial Base Diversification and Strengthening-** The industry should contribute toward diversifying, strengthening, or expanding the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products, building regional industrial clusters, or developing strong industrial clusters that include defense and homeland security businesses.
  6. **Economic Benefits-** The industry should have strong positive impacts on or benefits to the state and regional economies.

The “target industry” list is published in EFI’s annual Incentives Report and is attached to OTTED’s annual legislative budget request. Originally, the list of target industries was approved by the Legislature, but since 1996 the list has been developed by OTTED, in consultation with EFI and other stakeholders. The Legislature recently required that the list be reviewed, and if appropriate, revised every third year. The 2011 targeted industry list was recently approved by OTTED and includes six major categories; Cleantech, Life Sciences, Infotech, Aviation/Aerospace, Homeland Security/Defense, and Financial/Professional Services. There is also an “Emerging Technologies” category, which includes global logistics.<sup>22</sup>

Specifically excluded as “target” industries are the following: any business engaged in retail activities; any electrical utility company; any phosphate or other solid-minerals severance, mining, or processing operation; any oil or gas exploration or production operation; or any business subject to regulation by the state Division of Hotels and Restaurants. Implicitly excluded is agriculture.

### **Changes Made By the Bill**

The bill makes changes to the requirements for qualifying and issuing exemptions. Under the proposed changes in the bill, eligibility is expanded, potentially allowing more businesses and organizations to qualify for exemptions. The bill also 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**

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<sup>22</sup> Qualified Target Industries for Incentives, [http://www.eflorida.com/IntelligenceCenter/download/PSR/SI\\_Targeted\\_Industries.pdf](http://www.eflorida.com/IntelligenceCenter/download/PSR/SI_Targeted_Industries.pdf) (accessed March 31, 2011)

The bill revises the definitions for “new business” and “expansion of existing business” by requiring businesses or organizations that establish 10 or more new jobs to also pay an average wage for such new jobs that is above the average wage in the area. Further, the board of county commissioners or municipal governing authority will have the option to incentivize not only businesses that manufacture, process, compound, fabricate, or produce tangible personal property, but also businesses or organizations that engage in Qualified Target Industry operations pursuant to s. 288.106(2), F.S.

#### Enterprise Zones and Brownfields

The bill revises references to either business or organization activity in an enterprise zone or brownfield area in 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 either business or organization activities in and outside an enterprise zone or brownfield area. This change will not prevent business or organization activity in an enterprise zone or brownfield area from being eligible for an exemption. Further, this revision will not preclude the board of county commissioners or municipal governing authority from restricting exemptions to an enterprise zone or brownfield area as prescribed in s. 196.1995(3), F.S.

#### **Referendum Process**

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 their county 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. 196.1995, F.S., are expected to create new, full-time jobs, in the county, municipality, or both.

#### **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 new jobs, the average wage of such jobs, whether the jobs are full-time or part-time, the expected time schedule for job creation, and any information deemed necessary and appropriate by the county or municipality.

#### Approval Process

The bill amends s. 196.1995(10), F.S., establishing 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 net new jobs created by the applicant;
- The average wage of the new jobs;
- Capital investment made by the applicant;
- Whether the business or operation qualifies as an industry targeted by the locality;

- The environmental impact of the proposed business or operation;
- Extent to which the applicant intends to source supplies and materials from the local area; and
- Any other economic-related characteristics or criteria deemed to be necessary by the county or municipality.

Further, the bill clarifies that an exemption may not to exceed ten years, as expressed in the local ordinance granting 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 the average wage of such jobs.

The bill provides an effective date of July 1, 2011. The bill will only apply to exemptions granted pursuant to referenda held on or after the effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

None.

**2. Expenditures:**

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

The Revenue Estimating Conference estimated that this bill will have a negative indeterminate impact on local government revenues if local governments choose, after a locally approved voter referendum, to provide these additional exemptions.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Eligibility standards provided in this bill may allow more businesses and organizations to benefit from exemptions. The exemption is administered and approved at the local level; therefore, the direct impact of this bill will vary greatly depending on the specific county or municipality.

**D. FISCAL COMMENTS:**

None.