

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 414

INTRODUCER: Commerce Committee and Senator Bullard

SUBJECT: Super Enterprise Zone

DATE: April 13, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Fav/CS
2.			CA	
3.			FT	
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Florida has 57 enterprise zones, which are designed to encourage economic development and restoration in blighted or economically depressed communities. A combination of state and local tax exemptions or tax credits is intended to incentivize economic activity in these areas.

CS/SB 414 creates six pilot “super enterprise zones”: two of them in Miami-Dade County, one in incorporated Fort Myers, one in the area of Immokalee, and the remaining two in undesignated areas of Florida. To qualify as a super enterprise zone, an area must be recommended by the local enterprise zone development agency, meet certain criteria, and be designated by the Office of Tourism, Trade, and Economic Development (OTTED). The designation is for 10 years.

The local enterprise zone development agency will certify businesses within its super enterprise zone, based on a number of criteria. Certified businesses will be eligible for a 100-percent exemption from state sales and local discretionary taxes on purchases of tangible personal property. In addition, retail sales made by certified businesses to customers will have a 100-percent exemption on state sales and local discretionary taxes for any tangible personal property item priced up to \$1,000.

Businesses can begin to be certified on or after July 1, 2011.

CS/SB 414 creates an application and approval process for the super enterprise zone, requires annual reports, and provides for an interim and final review by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

This pilot program is repealed on June 30, 2023.

CS/SB 414 creates ss. 290.00681 and 290.00682, F.S., and amends ss. 212.02, 212.08, 290.0056, 290.0057, and 290.007, F.S.

II. Present Situation:

Basic statistics

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 57 enterprise zones.

OTTED reports that between October 1, 2008, and September 30, 2009, new businesses numbering 3,104 moved into or were created in enterprise zones and 9,073 new jobs were created by businesses in enterprise zones.¹ More than \$45 million in state and nearly \$11.6 million in local-government financial incentives were approved during that same period.

Over the last 5 years, 17,325 new businesses have moved into or were created in enterprise zones and 54,000 new jobs have been created.²

Designation process

Sections 290.001-290.016, F.S., authorize the creation of enterprise zones and establish criteria and goals for the program. Prior to submitting an application for an enterprise zone, a local government body must determine that an area:

- Has chronic extreme and unacceptable levels of poverty, unemployment, physical deterioration, and economic disinvestment;
- Needs rehabilitation or redevelopment for the public health, safety, and welfare of the residents in the county or municipality; and
- Can be revitalized through the inducement of the private sector.

OTTED is responsible for approving applications for enterprise zones, and also approves changes in enterprise zone boundaries when authorized by the Florida Legislature. As part of the application process for an enterprise zone, the county or municipality in which the designation will be located also is responsible for creating an Enterprise Zone Development Agency and an enterprise zone development plan.

¹ Florida Enterprise Zone Program Annual Report, October 1, 2008 - September 30, 2009. Published March 1, 2010. On file with the Senate Commerce Committee.

² Ibid, page 3.

As outlined in s. 290.0056, F.S., an Enterprise Zone Development Agency is required to have a board of commissioners of at least eight, and no more than 13, members. The agency has the following powers and responsibilities:

- Assisting in the development, implementation and annual review of the zone and updating the strategic plan or measurable goals;
- Identifying ways to remove regulatory burdens;
- Promoting the incentives to residents and businesses;
- Recommending boundary changes;
- Working with nonprofit development organizations; and
- Ensuring the enterprise zone coordinator receives annual training and works with Enterprise Florida, Inc.

Pursuant to s. 290.0057, F.S., an enterprise zone development plan (or strategic plan) must accompany an application. At a minimum this plan must:

- Describe the community's goal in revitalizing the area;
- Describe how the community's social and human resources—transportation, housing, community development, public safety, and education and environmental concerns—will be addressed in a coordinated fashion;
- Identify key community goals and barriers;
- Outline how the community is a full partner in the process of developing and implementing this plan;
- Describe the commitment from the local governing body in enacting and maintaining local fiscal and regulatory incentives;
- Identify the amount of local and private resources available and the private/public partnerships;
- Indicate how local, state, and federal resources will all be utilized;
- Identify funding requested under any state or federal program to support the proposed development; and
- Identify baselines, methods, and benchmarks for measuring success of the plan.

Available incentives

Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities. As noted above, OTTED reported that \$45.3 million in state incentives was approved by the Department of Revenue (DOR), between October 1, 2008, and September 30, 2009, for all state enterprise zones. During that same time period, \$11.5 million in incentives was provided by local governing bodies, half of the FY 07-08 total. Examples of local incentives include: utility tax abatement, reduction of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.³

Available state sales-and-use tax incentives for enterprise zones include:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone: Provides a refund for taxes paid on the purchase of certain building materials, up to \$5,000 or 97 percent of the tax paid, whichever is less. For projects where at least 20

³ Ibid, page 11.

- percent of the employees live in the enterprise zone, the refund is the lesser of \$10,000 or 97 percent of the tax paid.
- Business Equipment Used in Enterprise Zones: Provides a refund for taxes paid on the purchase of certain equipment, up to \$5,000 or 97 percent of the tax paid, whichever is less. For projects where at least 20 percent of the employees live in the enterprise zone, the refund is the lesser of \$10,000 or 97 percent of the tax paid.
 - Rural Enterprise Zone Jobs Credit against Sales Tax: Provides a tax credit for either 20 percent, 30 percent, or 45 percent of wages paid to new employees, depending on where they live.
 - Urban Enterprise Zone Jobs Credit against Sales Tax: Provides a tax credit for 20 percent or 30 percent of wages paid to new employees, depending on where they live.

Summary of state incentives offered in the Florida Enterprise Zone Program⁴

CATEGORY	FY 08-09	FY 07-08	FY 06-07	FY 05-06	FY 04-05	FY 03-04	FY 02-03	FY 01-02
Jobs Tax Credit (SUT)	\$5,227,245	\$5,732,605	\$6,087,843	\$6,777,250	\$4,729,834	\$2,579,512	\$1,444,543	\$970,148
Jobs Tax Credit (CIT)	\$5,072,555	\$5,507,311	\$5,919,236	\$4,253,621	\$2,080,397	\$1,086,747	\$800,029	\$1,965,920
Property Tax Credit (CIT)	\$1, 910,708	\$2,184,036	\$2,291,961	\$1,267,999	\$1,668,168	\$507,022	\$272,942	\$303,542
Building Materials (SUT Refund)	\$30,994,860	\$25,665,025	\$18,855,129	\$7,415,711	\$3,878,421	\$1,356,462	\$533,673	\$456,551
Business Equipment (SUT Refund)	\$1,139,066	\$1,269,955	\$1,771,396	\$2,940,864	\$1,618,721	\$1,182,582	\$1,874,145	\$2,813,601
Electrical Energy (SUT exempt)	\$1,007,007	\$606	\$793,179	\$778,090	\$84,516	\$488,937	\$476,251	\$229,789
Total Value of State Incentives	\$45,351,441	\$40,359,538	\$35,718,744	\$23,433,535	\$14,060,057	\$7,201,262	\$5,401,583	\$6,739,551
# of EZs	56 ⁵	56	56	55	53	51	51	47

Available state corporate income tax incentives for enterprise zones include:

- Rural Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit equal to either 20 percent, 30 percent, or 45 percent of wages paid to new employees, depending on where they live.
- Urban Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 20 percent or 30 percent of wages paid to new employees, depending on where they live.

⁴ Information compiled from several editions of the Florida Enterprise Zone Program annual report.

⁵ Ocala's enterprise zone designation wasn't approved by OTTED until January 2010, so its activity will be displayed next year.

- Enterprise Zone Property Tax Credit: Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
- Community Contribution Tax Credit: Provides a 50-percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects.

Miami-Dade County has an existing enterprise zone, with three segments – in the City of Miami Beach, in north-central Dade County within the city of Miami, and in south Dade County. From October 1, 2008-September 30, 2009, businesses within the Miami-Dade County EZ received at least \$24 million in refunds through the state sales and use tax credits;⁶ information about the amount of corporate income tax credits is confidential and not released by DOR.

III. Effect of Proposed Changes:

CS/SB 414 creates s. 290.00681, F.S., establishing a pilot “super enterprise zone” program. OTTED is directed to designate six areas as super enterprise zones. Two of the six must be in specified areas of Miami-Dade County: the Overtown neighborhood, and a region bordered by Northwest 23rd Street, Northwest 5th Street, Northeast 1st Avenue, and Northwest 8th Avenue. A third must be in the unincorporated area of Fort Myers and a fourth must in the area of Immokalee. The other two are undesignated.

The designation will provide existing certified businesses in the zone with a tax-free status for 5 years, and new certified businesses with tax-free status for 10 years. Certified businesses will be eligible for a 100-percent exemption from sales and discretionary tax on tangible personal property.

In addition, retail sales made by certified businesses in a super enterprise zone are eligible for a 100 percent exemption on sales and discretionary tax for any tangible personal property item priced up to \$1,000.

The super enterprise zone pilot program is repealed on June 30, 2023.

Section 1 amends s. 212.02, F.S., to add a definition for “certified business,” which means a business located in a super enterprise zone certified pursuant to s. 290.00682, F.S. This subsection is repealed June 30, 2023.

Section 2 amends s. 212.08, F.S., to create exemptions to the state sales-and-use tax and to the local-option discretionary sales tax for super enterprise zones.

Certified businesses within super enterprise zones are exempt from paying tangible personal property tax on purchases for their exclusive use within the zone. Also, retail sales of tangible personal property from certified businesses located within super enterprise zones are exempt from sales and use tax, under the following conditions:

- The exemption applies only to items priced at \$1,000 or less.

⁶ Supra FN 1, page 9.

- The sale must be made at the physical location of the certified business and the buyer takes possession of the items there, or the items must be shipped from inside the zone.
- All qualified sales made by a certified business in a super enterprise zone shall be considered to have occurred in the zone, regardless of where the transfer of title or possession takes place.

New businesses certified on or after July 1, 2011, in a super enterprise zone qualify for the tax exemptions provided in CS/SB 414 for a period not to exceed 10 years. Existing businesses located in a super enterprise zone that become certified are eligible for these tax exemptions for a period not to exceed 5 years after certification.

Section 3 amends s. 290.0056, F.S., to authorize the local enterprise zone development agencies to recommend and submit applications for super enterprise zone designations to OTTED, and to coordinate with local governmental entities regarding local tax exemptions.

Where applicable, the local agencies also are directed to submit to OTTED a report, due December 1 of each year, about the super enterprise zones within their jurisdictions. The report shall include the following information about the economic impact of the super enterprise zone:

- A list of certified businesses, and whether the businesses were new or from where they relocated;
- The number of jobs created;
- The percentage of employees employed by certified businesses who reside in the super enterprise zone, or in an enterprise zone within the same county;
- The extent of capital investment by the certified businesses; and
- The success of the super enterprise zone as measured by the strategic plan and methods identified in s. 290.0057(1)(i), F.S.

Both changes to s. 290.0056, F.S., expire on June 30, 2023.

This section also specifies that the super enterprise zones provisions of this amended section, s. 290.0056, F.S., act are not subject to the December 31, 2015, repeal of the current Florida Enterprise Zone program, in ss. 290.001-290.014, F.S.

Section 4 adds references to “super enterprise zones” in s. 290.0057, F.S., relating to development plans.

Section 5 creates s. 290.00681, F.S., to establish the super enterprise zone program, and specify the designation criteria and eligibility requirements. OTTED is directed to designate six areas as pilot super enterprise zones:

- One specifically described as being “bordered by Northwest 23rd Street to the north, Northwest 5th Street to the south, Northeast 1st Avenue to the east, and Northwest 8th Avenue to the west,” in Miami-Dade County;
- The second one in the “Overtown area” of Miami-Dade;
- The third in the unincorporated area of the City of Fort Myers;
- The fourth in the area of Immokalee in Collier County; and

- Two more super enterprise zones in undesignated areas of the state.

CS/SB 414 also includes specific eligibility criteria for an area to qualify as a super enterprise zone, in addition to the geographic description:

- Be located in an enterprise zone;
- Be no larger than 3 contiguous square miles;
- Have an average unemployment rate four times greater than the state average;
- Have a minimum of 40 percent of residents living below poverty level;
- Have “general distress” of business and residential property, as specified by a resolution passed by the local governing body; and
- Demonstrate evidence of significant job loss or dislocation.

CS/SB 414 gives a local enterprise zone development agency the power to recommend and submit an application to OTTED for the designation of a super enterprise zone. The application must:

- Briefly describe the community’s goals for revitalization and include a development plan;
- Describe the ways in which the community’s approach to economic development, social and human services, transportation, housing, community development, public safety, and educational and environmental concerns will be addressed in a coordinated fashion;
- Identify and describe key community goals and the barriers that restrict the community from achieving those goals;
- Identify the amount of local and private support, and the resources that will be available;
- Identify baselines, methods, and benchmarks for measuring success; and
- Include written approval from any associated county office or mayor’s office.

Section 5 also creates s. 290.00682, F.S., which specifies how businesses are certified to participate in the program. To qualify as a certified business and receive a tax exemption certificate, a business must:

- File an application with the local enterprise zone development agency;
- Operate and be located in the designated super enterprise zone;
- Create new employment in the zone while not causing unemployment elsewhere in the state;
- Have no outstanding state or federal tax obligations; and
- Demonstrate that no fewer than 20 percent of its employees are residents of the super enterprise zone or of an enterprise zone located within the same county. This requirement may be waived by the local enterprise zone development agency for good cause.

Each year, the local enterprise zone development agency is required to submit a list of new and existing certified businesses to the local government entity, DOR, and OTTED. Also, DOR is required to annually issue each certified business a tax exemption certification. The certificate is good for 1 year only.

CS/SB 414 gives DOR and the local enterprise zone development agency the ability to disqualify a certified business from the super enterprise zone tax benefits if the business fails to continue to meet the required criteria.

A business that makes a fraudulent claim for payment of any tax exemption is liable for penalties set forth in s. 212.085, F.S. This statute requires payment of the tax plus a mandatory penalty of 200 percent of the tax, liability for fines, and possible conviction of a felony of the third degree.

The provisions in both of these new statutes expire June 30, 2023.

Section 6 amends s. 290.007, F.S., to add “super enterprise zones” and the tax incentives available to them.

Section 7 directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an interim review and evaluation of the program prior to the 2017 Legislative Session. OPPAGA is directed to specifically evaluate whether relief from the specified taxes caused or induced within the super enterprise zones:

- New investment and development;
- Increased the number of jobs created or retained;
- Renovation, rehabilitation, restoration, improvement, or new construction of businesses or housing; or
- Contributed to the economic viability and profitability of business and commerce.

OPPAGA’s interim report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2016. A final report on the pilot program from OPPAGA is due by December 1, 2022.

Section 8 specifies this act shall take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has not evaluated CS/SB 414.

However, a nearly identical bill filed in 2007,⁷ which created only 1 pilot super enterprise zone, was evaluated by the REC, which adopted a negative impact of (\$2.7 million) in state general revenue and a negative impact of (\$700,000) in local tax revenues.

B. Private Sector Impact:

Indeterminate. However, the impact could be significantly positive to the businesses that locate or already are within the super enterprise zone, because of the sales tax savings on all their purchases related to their operations.

Conversely, businesses in adjacent areas, or businesses that would lose sales because consumers bought items in the zone and shipped them to areas outside the zone, could experience a proportionate loss in sales.

The general public also could benefit as consumers who shop at businesses within the super enterprise zone to save state and, where applicable, local-option sales taxes. Job-seekers also could benefit from opportunities afforded them by businesses within the new zone.

C. Government Sector Impact:

Indeterminate, but likely minimal.

VI. Technical Deficiencies:

Lines 86-92 of CS/SB 414 specify that businesses certified on or after July 1, 2011, are eligible for the sales tax incentives created in the bill. For clarity, it may be necessary to add elsewhere in the bill that the tax exemptions cannot be claimed until July 1, 2011.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce on April 13, 2010:

A strike-all amendment adopted by the committee made one change: increasing from four to six the number of potential super enterprise zones that OTTED may designate. The two addition super enterprise zones must be located in the unincorporated area of Fort Myers and in the Immokalee area in Collier County.

⁷ CS/SB 856

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
