

**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.)

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Prepared By: The Professional Staff of the Commerce Committee

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BILL: SB 2644

INTRODUCER: Senator Bennett

SUBJECT: Energy Economic Zones

DATE: April 6, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	<b>Pre-meeting</b>
2.			CU	
3.			CA	
4.			GA	
5.			WPSC	
6.				

## I. Summary:

The Legislature in 2009 directed the Department of Community Affairs (DCA) to implement a 2-year Energy Economic Zone Pilot Program to develop a model of sustainable, energy-efficient land-use development that could be replicated by other Florida communities. The legislation did not name the initial participants in the pilot program; DCA later selected the City of Miami Beach and two isolated locations within Sarasota County. A brief interim report on the status of the pilot program, dated February 15, 2010, indicated that a variety of state agencies have been meeting with the two local governments to collect and organize data, and to evaluate their initial plans on how they would prefer to proceed.

SB 2644 creates six state tax incentives, similar to ones offered in enterprise zones, to businesses that locate or expand in the two designated pilot energy economic zones. Additionally, development within the pilot areas would be exempt from development of regional impact (DRI) review and transportation concurrency requirements, and potentially be eligible for higher densities per acre.

SB 2644 amends ss. 212.08 and 377.809, F.S.

## II. Present Situation:

### EEZ Pilot Program

In 2009, the Legislature passed a transportation-related bill<sup>1</sup> that included creation of the Energy Economic Zone Pilot Program to select at least one local governmental entity interested in

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<sup>1</sup> Ch. 2009-89, L.O.F. (HB 5013).

developing and implementing strategies for energy-efficient land-use patterns, reduce greenhouse gas emissions, cultivate green economic development, encourage the generation of renewable electric energy, and promote manufacturing to create “green” products and jobs. DCA was designated the lead agency, but was directed to collaborate with the Department of Transportation, the Governor’s Office of Tourism, Trade, and Economic Development (OTTED), and the Florida Energy and Climate Commission in implementing the pilot program.

Applicants were required to submit to DCA the following information:

- Identification of the proposed “energy economic zone” (EEZ);
- A proposed strategic plan for development and redevelopment in the EEZ;
- An explanation of how the strategic plan would be consistent with the existing local comprehensive plan or include proposed plan amendments necessary to achieve consistency; and
- A list of the necessary comprehensive plan amendments.

The legislation specified that the strategic plan must integrate mixed-used and transportation facilities with the local government’s land-use and development patterns to:

- Reduce reliance on automobiles as a form of transportation;
- Encourage certified green building developments and renewable energy systems;
- Encourage the creation of green jobs; and
- Demonstrate how local financial and regulatory incentives would be used in the EEZ.<sup>2</sup>

DCA selected the City of Miami Beach and Sarasota County, which offered two sites, to participate in the 2-year pilot project. The entities have developed and submitted to DCA their initial strategy plans,<sup>3</sup> and are continuing to work with state officials to fine-tune their proposals.

The City of Miami Beach, which is a compact, dense, built-out urban area with 13,400 residents per square mile, is interested in using the EEZ to improve intermodal, energy-efficient transportation in the city and to explore opportunities to re-use or re-purpose existing infrastructure.

Sarasota County’s two sites are the opposite of Miami Beach: one is a 1,000-acre undeveloped site and the other is its Central County solid waste complex, where the county plans to build a methane gas-to-energy conversion plant.

In a February 15, 2010, letter<sup>4</sup> to the Governor and legislative leaders, DCA Secretary Tom Pelham summarized the progress the two local governments and state agencies have made in implementing the EEZ pilot program over the last 10 months, but noted that “at this early date, (DCA) does not deem statutory changes as appropriate.” A final report on the pilot program is due February 15, 2011.

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<sup>2</sup> The legislation does not mention state incentives.

<sup>3</sup> Both plans are on file with the Senate Commerce Committee.

<sup>4</sup> A copy of the letter is on file with the Senate Commerce Committee.

### The Florida Enterprise Zone Program

The Legislature created the enterprise zone program in 1982 to encourage economic development in economically distressed areas of the state by providing tax incentives designed to induce private investment that creates jobs and increases property values. There currently are 57 EZs, all of which were either created or reauthorized by the Legislature.

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 there.<sup>5</sup> More than \$45 million in state (more than \$30 million of that was for sales and use tax refunds for the purchase of building materials within enterprise zones) 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.<sup>6</sup>

Sections 290.001-290.016, F.S., authorize the creation of enterprise zones; establish criteria and goals for the program; require a strategic plan; require annual reporting to OTTED; and establish state incentives for businesses.

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 were approved by the Department of Revenue (DOR), between October 1, 2008, and September 30, 2009, for all the enterprise zones.

During that same time period, \$11.5 million in incentives were 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.<sup>7</sup>

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 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.

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<sup>5</sup> Florida Enterprise Zone Program Annual Report, October 1, 2008 - September 30, 2009. Published March 1, 2010. On file with the Senate Commerce Committee.

<sup>6</sup> Ibid, page 3.

<sup>7</sup> Ibid, page 11.

- 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.
- Business Property Used in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain business property, up to \$5,000 or 97 percent of the tax paid per parcel of property, whichever is less. The property also must have been used exclusively in an enterprise zone for at least 3 years.
- Community Contribution Tax Credit: Provides 50-percent sales tax refund for donations made to local community development projects.
- Electrical Energy Used in an Enterprise Zone: Provides 50-percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy.

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.
- 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.

For the purposes of defining “new employee” for rural EZ incentives, the workers are required only to live in the county where the EZ is located for the employing business to receive the jobs tax credits, pursuant to s. 290.00677, F.S.

#### Growth management issues

Adopted by the 1985 Legislature, the Local Government Comprehensive Planning and Land Development Regulation Act - also known as Florida’s Growth Management Act - requires all of Florida’s 67 counties and 410 municipalities to adopt Local Government Comprehensive Plans that guide future growth and development. Comprehensive plans contain chapters that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements.

A key component of the growth management act is its concurrency provision that requires many types of facilities and services, such as transportation systems, to be available concurrent with the impacts of development. In general, local governments must use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring that transportation facilities and services are available, or “concurrent” with the impacts of development.

To carry out transportation concurrency, local governments must define what constitutes an adequate level of service (LOS) for its transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. In 1992, Transportation Concurrency Management Areas were authorized, allowing an area-wide LOS standard (rather than facility-specific) to promote urban infill and redevelopment and provide greater mobility in those areas through alternatives such as public transit systems. Subsequently, two additional relaxations of concurrency have been authorized: Transportation Concurrency Exception Areas (TCEA) and Long-term Transportation Concurrency Management Systems. Specifically, the TCEA is intended to reduce the adverse impact transportation concurrency may have on urban infill and redevelopment by exempting certain areas from the concurrency requirement. Long-term Transportation Concurrency Management Systems are intended to address significant backlogs of transportation projects.

Another aspect of growth management in Florida is the development of regional impact (DRI) review process. Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. Over the years several types of projects, or projects that meet certain thresholds, have been exempted from the DRI review process.

A third growth-management tool is the relatively new “density bonus.” It was authorized by the Legislature in 2006<sup>8</sup> to encourage local governments to promote the building of affordable housing. One form a density bonus may take is allowing developers to build additional residential units in exchange for the provision of affordable housing. The amount of the bonus would be different for different local governments, and even different projects within each jurisdiction. Several Florida communities have proposed amendments to their comprehensive plans, for DCA review, to allow density bonuses.

### **III. Effect of Proposed Changes:**

SB 2644 creates six state tax-refund or tax-credit incentives that would be available to businesses that locate or expand in the pilot EEZs. It also exempts development within the pilot EEZs from state DRI and transportation concurrency laws, and provides so-called “density bonuses” for developments in the EEZs, meaning more housing units could be built per acre than is allowed under the local governments’ current comprehensive plan. These incentives would be available to businesses in the City of Miami Beach and in Sarasota County’s two identified EEZs.

**Section 1** amends s. 377.809, F.S., to allow EEZ pilot communities to access state tax incentives created especially for them, to be implemented by local ordinance. The purposes of these incentives are expressed as a means to “cultivate green economic development, encourage renewable electric energy generation, manufacture products that contribute to energy conservation and green jobs, develop energy-efficient land use patterns, and reduce greenhouse gas emissions.”

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<sup>8</sup> Section 420.615, F.S.

In order for a pilot community to use the state incentives, the local governing board must designate the EEZ as an amendment to the future land-use map component of its local comprehensive plan and its implementing land-use regulations, and certify to DCA and OTTED that its developments are eligible to receive the incentives.

The new incentives created in this section for businesses approved by the pilot EEZs' governing boards are:

- The jobs tax credit in s. 220.181, F.S., for ch. 290, F.S., enterprise zones against corporate income tax liability also will apply to pilot EEZs for renewable energy manufacturers, zero-emissions manufacturers and assemblers, and other industries that contribute to energy conservation and the reduction of greenhouse gases;
- The property tax credit in s. 220.182, F.S., for ch. 290, F.S., enterprise zones against corporate income tax liability also will apply to pilot EEZs for eligible clean technology industries and technologies, as defined elsewhere in this bill; and
- The jobs tax credit in s. 212.096, F.S., for ch. 290, F.S., enterprise zones against sales and use tax liability also will apply to all businesses in the pilot EEZs that meet eligibility criteria specified elsewhere in the bill.

Three other sales and use tax exemptions for pilot EEZ businesses are created in **Section 2** of this bill.

This section also specifies that “all other statutory reporting and accountability requirements relating to the incentives under this subsection shall also apply to energy economic zones,” presumably meaning that the wage, length of employment, and employee residential requirements of the enterprise incentives also apply to the EEZ businesses.

Additionally, this section specifies that:

- Designated EEZs are considered transportation concurrency exception areas;
- Development within the EEZs is exempt from DRI review; and
- Density and intensity bonuses for energy-efficient developments within the designated EEZs shall not be calculated as part of the amount of land required to accommodate growth for the purposes of comprehensive growth-management planning under ch. 163, F.S.

The term “clean technology industries and technologies” is broadly defined as encompassing a “diverse range of products, services, and processes” that, for example, harness renewable materials and energy sources, and significantly reduces the use of natural resources, greenhouse gas emissions, and waste, and lists several examples.

Finally, this section directs the pilot community EEZs to work with a number of state agencies to develop and test methods of promoting energy-efficient land use.

**Section 2** amends s. 212.08, F.S., to create three sales and use tax exemptions for purchases made by businesses within EEZs. They are:

- Building materials used in the construction or rehabilitation of energy-efficient structures of real property within an EEZ. The building materials must meet the Leadership in

- Energy and Environmental Design (LEED) standards. The language related to the processes of claiming the tax refund and most of the definitions are nearly identical to the existing sales and use tax exemption for building materials used in enterprise zones.
- Business property purchased for use in an EEZ, to be taken as refund. Again, the language is nearly identical to an exemption for business property used within a ch. 290, F.S., enterprise zone.
  - Clean technology and manufacturing products used in an EEZ. The governing board of the EEZ must submit a list of eligible products to the Department of Revenue, so that it can determine when the exemption is justified.

**Section 3** provides that this act shall take effect upon becoming law.

#### **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:

Unknown, but potentially significant. To the extent that the City of Miami Beach and Sarasota County use these six incentives, there will be a corresponding loss to the state's General Revenue Fund. The bill was not submitted to the Revenue Estimating Conference (REC), although a proposed strike-all amendment with caps on the individual incentives and on each pilot community was submitted and evaluated by the REC.

B. Private Sector Impact:

Indeterminate, but likely positive, to the extent that the City of Miami Beach and Sarasota County use these incentives to successfully recruit businesses to their EEZ, or expand existing businesses, that will create jobs.

C. Government Sector Impact:

Indeterminate. DOR likely will incur some costs in modifying its computer software to track, record, and refund these new tax credits.

**VI. Technical Deficiencies:**

None.

**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.)

None.

**B. Amendments:**

None.

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

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