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LOCAL GOVERNMENT Enterprise Zone Employment Act of 1997: Provide for the Creation and Comprehensive Regulation of Enterprise Zones Within Municipalities and Counties; Provide for Legislative Findings and Intent; Provide Definitions; Provide for Municipal and County Tax Credits and Exemptions or Abatements for Qualified Businesses Within an Enterprise Zone; Provide for Procedures, Conditions, and Limitations; Provide for Powers, Duties, and Authority of the Department of Community Affairs

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LOCAL GOVERNMENT

Enterprise Zone Employment Act of 1997: Provide for the Creation and Comprehensive Regulation of Enterprise Zones Within Municipalities and Counties; Provide for Legislative Findings and Intent; Provide Definitions; Provide for Municipal and County Tax Credits and Exemptions or Abatements for Qualified Businesses Within an Enterprise Zone; Provide for Procedures, Conditions, and Limitations; Provide for Powers, Duties, and Authority of the Department of Community Affairs

CODE SECTIONS: O.C.G.A. §§ 36-88-1 to -10 (new)
BILL NUMBER: HB 663
ACT NUMBER: 447
GEORGIA LAWS: 1997 Ga. Laws 1481
SUMMARY: The Act provides municipal and county governments the authority to create Enterprise Zones to provide financial incentives for businesses to create or expand operations in those zones and create new jobs. The economic incentives are in the form of a graduated schedule for reduced property taxes, and other tax exemptions and abatements. Areas applying for the Enterprise Zone designation must meet strict criteria to show an economic need for development. The criteria includes disinvestment, underdevelopment, or economic decline resulting in general poverty and unemployment. The creation of new jobs is intended to assist the state in welfare reform.

EFFECTIVE DATE: July 1, 1997

History

Local government leaders in Georgia met in the spring of 1996 to discuss, among other common issues and problems, methods to revitalize economically depressed areas.¹ One idea, already implemented in Georgia, was the use of “enterprise zones” in areas meeting criteria of economic need in which businesses would be granted preferential tax treatment, among other economic incentives, to attract new jobs to those areas.² Both the City of Atlanta and Fulton County

1. See Telephone Interview with Bruce Green, Georgia Municipal Association (Apr. 16, 1997) [hereinafter Green Interview].

2. See *id.*

had successfully established enterprise zones, and the City of Atlanta also participated in the federal "Empowerment Zone" program that provides tax incentives and loans with the intent of creating new jobs in economically challenged areas.³

Enterprise zones are a relatively new tool aimed at creating economic development. In the 1980s, Great Britain introduced the concept of enterprise zones, but the idea did not take hold in the United States until 1993.⁴ By 1994, thirty-seven states and the District of Columbia had implemented enterprise zone incentives.⁵ The incentives vary, and so too may the results that they achieve.⁶

In the fall of 1996, Senator Steve Thompson proposed a resolution that put the issue of a constitutional amendment to create enterprise zones on the general election ballot.⁷ The citizens of Georgia approved the constitutional amendment allowing state, local, and municipal governments to create enterprise zones that would give them more opportunity to direct business development and provide economic relief to distressed areas.⁸ Representative Jeanette Jamieson had seen her own downtown area become "depressed" and sponsored HB 663 to create the enabling legislation that would meet the requirements of the constitutional amendment.⁹

HB 663

Introduction

HB 663, as introduced, provided for the creation of state and local enterprise zones, created economic incentives, provided detailed requirements for determining eligibility, and required governing bodies to outline the goals for revitalization.¹⁰ The Georgia General Assembly referred HB 663 to the House Committee on State Planning and Community Affairs.¹¹ The Committee deleted state enterprise zones from the bill¹² as well as provisions requiring localities to define goals

3. *See id.*

4. *See* Michael H. Schill, *Assessing the Role of Community Development Corporations in Inner City Economic Development*, 22 N.Y.U. REV. L. & SOC. CHANGE 753, 763 (1996-1997).

5. *See* Tom Redburn, *A City in the Enterprise Zone*, N.Y. TIMES, May 18, 1994, at B2.

6. *See* Schill, *supra* note 4, at 763.

7. *See id.*

8. *See* Telephone Interview with Rep. Jeannette Jamieson, House District No. 22 (Apr. 17, 1997) [hereinafter Jamieson Interview].

9. *Id.*

10. HB 663, as introduced, 1997 Ga. Gen. Assem.

11. *See* Final Composite Status Sheet, Mar. 28, 1997; *see also* HB 663, as introduced, 1997 Ga. Gen. Assem.

12. *See* Jamieson Interview, *supra* note 8. The Governor's office wanted to delay

for zones¹³ before the bill passed on the House floor.¹⁴ After the bill was transferred to the Senate, it was referred to the Senate Economic Development, Tourism, and Cultural Affairs Committee, which relaxed the requirement for determining “underdevelopment” by allowing the development activity to only be lower than that in the general area instead of twenty-five percent lower.¹⁵ The Act’s language reflects many compromises between those interested in broadening the requirements for approving areas as enterprise zones and those interested in preventing potential abuse by restricting enterprise zone designations to only those areas that truly need the assistance.¹⁶ Additionally, the Act specifically excludes the state from creating enterprise zones, even though the constitutional amendment allows for such action.¹⁷

Definitions

The Act defines “enterprise zones” as “one or more geographic areas . . . [where] local ad valorem taxes, occupation taxes, license fees, and other local fees and taxes, except local sales and use taxes or any combination thereof, may be exempted or reduced from applying to qualified business and service enterprises”¹⁸ “A qualifying business or service enterprise is an enterprise which increased employment by five or more new full-time job equivalents in an area designated as an enterprise zone.”¹⁹ The quality of the economic benefit is to be determined by the local authority on a case-by-case basis, and where possible, “10 percent of such new employees shall be low-income or moderate-income individuals.”²⁰ The Act further defines “full-time job equivalent” as “a job or jobs with no predetermined end date, with a regular work week of 30 hours or more”²¹

Originally, the bill included the term “state enterprise zone”²² and the House Committee version deleted the term in an effort to address

state participation in the program until the economic impact of previous tax deductions on the state’s revenue was determined. *See id.*

13. Compare HB 663, as introduced, 1997 Ga. Gen. Assem., with HB 663 (HCS), 1997 Ga. Gen. Assem.

14. See Final Composite Status Sheet, Mar. 28, 1997.

15. Compare HB 663 (HCS), 1997 Ga. Gen. Assem. with HB 663 (SCS), 1997 Ga. Gen. Assem.

16. See Green Interview, *supra* note 1.

17. See *id.*; Jamieson Interview, *supra* note 8.

18. O.C.G.A. § 36-88-5 (Supp. 1997).

19. *Id.* § 36-88-4(b).

20. *Id.* The Act defines what constitutes a “low-income and moderate-income individual” in O.C.G.A. § 36-88-3(6)(A) to (H) (Supp. 1997).

21. *Id.* § 36-88-3(5).

22. HB 663, as introduced, 1997 Ga. Gen. Assem.

concerns from the Executive Branch that the lost revenue to the state would follow too closely to the reduction in the sales tax on groceries enacted in 1996.²³ The term was deleted by the House Committee on State Planning and Community Affairs,²⁴ although it may be added to a future bill when the state is fiscally able to absorb any lost revenue that may result.²⁵

Qualification as an Enterprise Zone

The Act requires that an area applying for designation as an enterprise zone meet at least three of the four criteria specified in subsections (b) through (e) that outline the requirements to show an area suffers from pervasive poverty, unemployment, general distress, or underdevelopment.²⁶ "Pervasive poverty is evidenced by showing that poverty is widespread throughout the nominated area" and the Act relies upon U.S. Bureau of Census data in calculating income-to-poverty ratios for comparison to the required minimum.²⁷ "Unemployment" is evidenced by Georgia Department of Labor statistics showing that "the average rate of unemployment for the nominated area for the preceding calendar year is at least 10 percent higher than the state average unemployment" or if there is "significant job dislocation within the nominated area" that caused adverse economic conditions.²⁸ "General distress" is shown by adverse conditions, excluding pervasive poverty and unemployment, and includes such examples as: "a high incidence of crime, abandoned or dilapidated structures, deteriorated infrastructure, and substantial population decline."²⁹ An area may also use "underdevelopment" to satisfy one element of the selection criteria, and that exists when data shows "that the level of development in the nominated area is at least 20 percent lower than development activity within the local governing body's jurisdiction."³⁰ The criteria for an area obtaining enterprise zone status was carefully worded to limit the areas that would be eligible to those truly in need of economic assistance and reduce the possibility that undeserving areas would use the designation and reduce revenue in those areas.³¹

23. See Jamieson Interview, *supra* note 8. Compare HB 663, as introduced, 1997 Ga. Gen. Assem. with HB 663 (HCS), 1997 Ga. Gen. Assem.

24. Compare HB 663, as introduced, 1997 Ga. Gen. Assem., with HB 663 (HCS), 1997 Ga. Gen. Assem.

25. See Green Interview, *supra* note 1.

26. O.C.G.A. § 36-88-6(b) to (e) (Supp. 1997).

27. *Id.* § 36-88-6(b)(1) to (5).

28. *Id.* § 36-88-6(c).

29. *Id.* § 36-88-6(d).

30. *Id.* § 36-88-6(e).

31. See Green Interview, *supra* note 1.

The local enterprise zones already in existence in the City of Atlanta and in Fulton County are unaffected by the Act and may continue as they currently exist or may take advantage of the new enterprise zone incentives created by the Act.³² Additionally, those areas participating in the existing federal "Empowerment Zone" program are unaffected by the Act, and qualified areas may concurrently participate in the incentives created by the Act.³³

Available Incentives

The Act requires the governing body creating an enterprise zone to include in the provision an exemption for state, county, and municipal ad valorem taxes according to a graduated schedule that provides for a one-hundred percent exemption for the first five years and no exemption after ten years.³⁴ "In addition to other incentives, the local governing body or bodies creating an enterprise zone may include in the creating ordinance an exemption or abatement from occupation taxes, regulatory fees, building inspection fees, and other fees that would otherwise have been imposed on a qualifying business."³⁵

Restrictions

In addition to limiting the designation of enterprise zones to areas truly in need of economic assistance, the Act specifically excludes local governments from including in their incentives, waivers from "any ordinance which is: (1) [e]xpressly required to implement or enforce any statutory provisions; or (2) [d]esigned to protect persons against discrimination on the basis of race, color, creed, national origin, sex, age, or handicap."³⁶

Conclusion

The Act is intended to spur economic development in depressed areas³⁷ by authorizing local governments to provide economic incentives to businesses. The Act does not require local governments to create enterprise zones, but provides them with additional tools to encourage business development in economically depressed areas.

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32. See O.C.G.A. § 36-88-7(c) (Supp. 1997); Jamieson Interview, *supra* note 8.

33. See Jamieson Interview, *supra* note 8.

34. O.C.G.A. § 36-88-8(a)(1) (Supp. 1997).

35. *Id.* § 36-88-9(a).

36. *Id.* § 36-88-7(b).

37. See Telephone Interview with Rep. Richard A. Royal, House District No. 164 (Apr. 16, 1997).