HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 485 Fast Track Economic Stimulus for Small Businesses
SPONSOR(S): Economic Development Policy Committee/Weatherford and others
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	21 Y, 0 N, As CS	West	Kruse
2)	Economic Development & Community Affairs Policy Council	15 Y, 0 N	West	Tinker
3)	Finance & Tax Council		Diez-Arguelles	Langston
4)				
5)				

SUMMARY ANALYSIS

The bill creates the Florida New Markets Development Program (NMDP) to provide state tax credits for investments in low-income communities. Tax credits allocated may be used to offset corporate income or insurance premium tax liabilities. The program is designed to make the state more attractive to national investors who are deciding where to invest funds raised under the federal New Markets Tax Credits program by creating a state NMDP similar to the federal program.

There is no credit provided for the first two years after the original date of investment. The credit provided in the third year after investment is seven percent of the investment amount. The credit provided between the fourth and seven year after the investment is equal to eight percent of the investment amount. Over seven years this credit totals 39 percent of the original investment amount.

The federal program provides credits totaling 39 percent of the investment over a seven year period. A company with a qualified investment for both the federal and state program would receive 78 percent of the purchase price of the investment in tax credits. An entity could qualify for the state program and not qualify for the federal program. If a taxpayer's state tax liability exceeds their tax credit, then the tax credit may be carried forward for future taxable years, however all tax credits expire December 31, 2022. The tax credits are allocated on a first-come, first-serve basis.

The Revenue Estimating Conference has determined that the provisions of this bill will not affect tax collections in FY 2008-09 and FY 2010-11 and will reduce tax receipts by $17.5 million in FY 2011-2012 and by $20 million in each of the following 4 years.

The bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal New Markets Tax Credit
The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). The CDE must in turn invest the qualified equity investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.[1]

An organization wishing to receive allocations under the federal NMTC Program must be certified as a CDE by the US Department of Treasury.

To qualify as a CDE, an organization must:

- Be a domestic corporation or partnership at the time of the certification application;
- Demonstrate a primary mission of serving, or providing investment capital for low-income communities or low-income persons; and
- Maintain accountability to residents of low-income communities through representation on a governing board of or advisory board to the entity.[2]

Community Development Entities in Florida, Investment by State
There are 99 CDEs in Florida.[3] Florida trails New York (377), California (306), Missouri (201), Louisiana (197), Maryland (145), Indiana (143), Wisconsin (135), Pennsylvania (130), Virginia (130), Illinois (129), Ohio (122), Washington D.C. (121), and Massachusetts (117) in total number of CDEs.[4] The federal

[1] Community Development Financial Institutes Fund; the Department of Treasury; information contained in this paragraph is available online at http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5.
[2] Id.
[3] Community Development Financial Institutes Fund; the Department of Treasury; available online at http://www.cdfifund.gov/docs/certification/cde/CDEsbyState.pdf.
[4] Id.

program has allocated New Markets Tax Credits to at least 364 CDEs nationwide; these CDEs would be eligible to utilize the state program created by this bill.[5]

Under the federal program, loans have been used to finance a range of activities, such as the rehabilitation of historic buildings and the operation of mixed-use real estate development. Other uses include the construction or operation of cultural arts centers, religious institutions, business incubators, supermarkets, health care facilities, pharmacies, manufacturers, distributors, and the construction of daycare centers and charter schools.[6]

Florida ranked 25th in total NMTC investment dollars during fiscal years 2003-2005. The state received 1.23 percent of total loans and investments and eight total projects.[7]

State	Total dollar amount of loans and investment	Percentage of all loans and investment	Number of NMTC projects	Percentage of NMTC projects
1.California	$303,081,270	9.74	58	9.95
2. New York	239,178,566	7.68	25	4.29
3. Ohio	201,857,969	6.49	69	11.84
4. Maine	153,527,250	4.93	13	2.23
5. Wisconsin	149,131,108	4.79	26	4.46
6. Missouri	146,165,868	4.70	22	3.77
7. Massachusetts	145,059,237	4.66	34	5.83
8. Kentucky	135,117,406	4.34	44	7.55
9. North Carolina	126,420,590	4.06	14	2.40
10. Washington	125,703,680	4.04	19	3.26
11. Minnesota	122,587,357	3.94	13	2.23
12. Oklahoma	112,092,186	3.60	24	4.12
13. Oregon	111,464,317	3.58	14	2.40
14. Maryland	106,171,382	3.41	14	2.40
15. New Jersey	83,439,000	2.68	7	1.20
16. Pennsylvania	77,111,177	2.48	21	3.60
17. Arizona	68,476,055	2.20	8	1.37
18. Washington D.C.	67,715,807	2.18	10	1.72
19. Texas	65,644,265	2.11	11	1.89
20. Michigan	57,541,869	1.85	10	1.72
21. Virginia	55,898,873	1.80	8	1.37
22. Rhode Island	55,235,675	1.77	3	0.51
23. Utah	53,884,716	1.73	14	2.40
24. Georgia	38,516,906	1.24	4	0.69
25. Florida	***38,261,093***	***1.23***	***8***	***1.37***

In 2008, eight Florida-based CDE's received federal NMTC allocations totaling $468.25 million:

- Advantage Capital Community Development Fund, LLC ($60 million)
- Banc of America CDE, LLC ($85 million)
- Citibank NMTC Corporation ($31.25 million)
- Local Initiatives Support Corporation ($80 million)
- Self-Help Ventures Fund ($50 million)
- Stonehenge Community Development, LLC ($85 million)
- Sun Trust Community Development Enterprises, LLC ($50 million)
- UA LLC ($27 million)[8]

[5] Community Development Financial Institutes Fund; the Department of Treasury: http://www.cdfifund.gov/awardees/db/basicSearchResults.asp. (database was sorted by program and year)
[6] United States Government Accounting Office (GAO) *Report to Congressional Committees, Tax Policy, January, 2007,* page 30.
[7] United States Government Accounting Office (GAO) *Report to Congressional Committees, Tax Policy, January, 2007.*
[8]Community Development Financial Institutes Fund; the Department of Treasury: http://www.cdfifund.gov/docs/2008/nmtc/2008NMTCStatesServed.pdf.

Effects of Proposed Changes

The bill creates the Florida New Markets Development Program (NMDP) in s. 288.991, F.S. The program will provide state tax credits for corporate income tax under s. 220.11, F.S., and insurance premium tax under s. 624.509, F.S., for qualified investments in Florida low-income communities.

<u>How the Program Works</u>
Under this program, federally-certified CDEs, which have entered into allocation agreements with the U.S. Treasury, have the ability to apply to the Office of Tourism, Trade, and Economic Development (OTTED) for a certification of Florida tax credits. The CDE must show that it is prepared to invest capital into qualified businesses in Florida's low-income communities. The certification process would include proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding how the investments will be used i, and a description of the CDE's efforts to partner with local community-based groups. OTTED will also be able to request additional information needed to verify continued certification. OTTED will certify qualified applications on a first-come, first-serve basis. For applications received on the same day and deemed complete, the office shall certify, consistent with remaining tax credit authority, qualified equity investments in proportionate percentages based on the amount of qualified equity investment requested to be certified in each application.

Once OTTED certifies a CDE's qualified equity investment, the CDE has 30 days to raise its investment capital (the qualified equity investment) and then 12 months to make the investments in a low-income community. Thereafter, the CDE must annually report to OTTED information, including a list of low-income community investments and the amount of the investments with third-party proof that the investment was made. Any CDE that is allocated more than $500,000 in tax credits in any state fiscal year will also be required to participate in Florida's Single Audit program. Any failure by a CDE to follow either Florida or federal law may result in the state recapturing tax credits claimed, together with interest and penalties.

OTTED is required to develop a list of designated industries specifically for NMDP investments. OTTED may grant a waiver of some criteria if a project will provide an economic stimulus to a community. In addition, jobs created as a result of NMDP investments must pay an average wage of 115 percent of the federal poverty guidelines for a family of four.

<u>Qualified Investments</u>
A "qualified investment" means any equity investment or long-term debt security by a qualified CDE that:

- Is issued solely in exchange for cash; and
- Is designated by the CDE and approved by OTTED as a qualified equity investment.

The definition for a "qualified investment" in this bill expands the federal definition allowed under Sec. 45D of the Internal Revenue Code, by specifically allowing for a long-term debt security to be a qualified investment.

"Long-term debt security" means any debt instrument issued by a CDE, "at par value or a premium, having an original maturity date of at least seven years following the date of its issuance, with no acceleration of repayment, amortization, or prepayment features before its original maturity date."

<u>Qualified Active Low-Income Community Business</u>
A "qualified active low-income community business" has nearly the same meaning as what is provided in federal law. However, it also includes language different from federal law that states the business must not derive 15 percent or more of its annual revenue from the rental or sale of real estate. Also, businesses such as golf courses, country clubs, massage parlors, tanning salons, liquor stores, and establishments that permit gambling are not eligible for this program.

A low-income community is defined as any population census tract within the state for which the federal individual poverty rate of such tract is at least 20 percent. For census tracts not located within a metropolitan area to qualify as a low-income community, the median family income must not exceed 80 percent of the statewide median income. For census tracts located within a metropolitan area, the median family income must not exceed 80 percent of the greater of statewide median family income or the metropolitan area median income.

Tax Credits

The bill allows a tax credit to be taken annually only after the investment has been made and held for two years. There is no credit provided for the first two years but in year three the credit provided is worth 7 percent of the investment. The credit is worth 8 percent of the investment for the fourth through the seventh year. Over seven years this credit totals 39 percent of the investment. Any unused portion of the tax credit may be carried forward for future tax years; however, all tax credits expire on December 31, 2022. No more than $17.5 million in tax credits may be claimed in the third fiscal year and no more than $20 million in tax credits may be claimed in any of the subsequent four fiscal years. The amount of investments that may be used to calculate a CDE's total tax credit allocation is capped at $97.5 million for the life of the program.

The federal program provides credits totaling 39 percent of the investment over a seven year period. A qualified taxpayer with a qualified investment for both the federal and state program could receive 78 percent of the purchase price of the investment in tax credits over seven years if a CDE were to combine state and federal credits.

A taxpayer with qualified investments would receive credit allocations as follows:

Year	State Program	Federal Program
1	0%	5%
2	0%	5%
3	7%	5%
4	8%	6%
5	8%	6%
6	8%	6%
7	8%	6%
Total	**39%**	**39%**

The bill does not allow the transfer or sale of tax credits, but does allow a tax credit to travel with the purchase of an investment to a new owner.

Any CDE that receives an annual allocation of tax credits that exceeds $500,000 is treated as a recipient pursuant to s. 215.97(2), F.S., and is required to participate in a state single audit pursuant to the provisions of s. 215.97, F.S.

The department must recapture tax credits available to an investor if:

- For any reason the federal government recaptures a related tax credit;
- The CDE redeems any principal repayment related to the investment prior to its seventh anniversary;
- The requirement to maintain at least 85 percent of the investment in low-income community investments in Florida is not met;
- The CDE fails to make qualified low-income community investments in qualified active low-income communities;
- The CDE fails to provide to OTTED and DOR any of the information or reports required by this bill; or
- A taxpayer received credits to which it was not entitled.

The bill gives DOR and OTTED the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of this bill.

B. SECTION DIRECTORY:

Section 1: Adds subsection (19) to s. 213.053, F.S.**Section 2:** Amends subsection (8) of s. 220.02, F.S.
Section 3: Amends paragraph (a) of subsection (1) of s. 220.13, F.S.

Section 4: Creates s. 288.991, F.S.

Section 5: Creates s.288.9912, F.S.

Section 6: Creates s. 288.9913, F.S.

Section 7: Creates s. 288.9914, F.S.

Section 8: Creates s. 288.9915, F.S.

Section 9: Creates s. 288.9916, F.S.

Section 10: Creates s. 288.9917, F.S.

Section 11: Creates s. 288.9918, F.S.

Section 12: Creates s. 288.9919, F.S.

Section 13: Creates s. 288.9920, F.S.

Section 14: Creates s. 288.9921, F.S.

Section 15: Creates s. 288.9922, F.S.

Section 16: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has determined that the provisions of this bill will not affect tax collections in FY 2008-09 and FY 2010-11and will reduce tax receipts by $17.5 million in FY 2011-2012 and by $20 million in each of the following 4 years.

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

New Market Development Program investments may assist existing and new businesses in Florida's low-income communities.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The 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:

None.

B. RULE-MAKING AUTHORITY:

The bill grants separate rule-making authority to DOR and OTTED for the purpose of administering the provisions set out by this bill including the recapture provision and the allocation of tax credits issued for qualified equity investments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 11, 2009, the Economic Development Policy Committee reported the bill favorably with a strike-all amendment. The amendment:

- Added wage requirements to jobs created or retained by the program;
- Replaced "Internal Revenue Service" with "United States Department of Treasury," where appropriate;
- Clarified tax credit limits in a single state fiscal year;
- Added a five year carry forward provision to the program;
- Added wage requirements to CDE annual reports;
- Provided clarification on the recapture of tax credits;
- Corrected an erroneous statutory reference; and
- Replaced some technical language with more accurate terms.