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 Budget Committee

BILL: CS/CS/SB 1150

INTRODUCER: Budget Subcommittee on Finance and Tax; Commerce and Tourism Committee; and Senator Richter

SUBJECT: New Markets Development Program

DATE: February 21, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	**Fav/CS**
2.	Babin	Diez-Arguelles	BFT	**Fav/CS**
3.	Babin	Rhodes	BC	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary

CS/CS/SB 1150 ("the bill") increases the total amount of tax credits available to be allocated for the New Markets Development Program from $97.5 million to $195 million, as well as increases the amount of permissible tax credits to be distributed in a single state fiscal year from $20 million to $40 million. According to the Revenue Estimating Conference, the bill will have an $18 million negative fiscal impact on General Revenue in FY 2014-15, and a recurring $20 million negative fiscal impact on General Revenue thereafter.

The bill also increases the number of years that a qualified community development entity is prohibited from making cash interest payments in excess of their operating income on long term debt securities issued as qualified investments from 6 years to 7 years. Lastly, the bill is amended to specify that a qualified community development entity's cumulative operating income should be calculated without giving effect to the interest expense on such long-term debt security.

This bill amends sections 288.9914 and 288.9915, F.S.

II. Present Situation:

Background

Florida's New Markets Tax Credits Program was enacted in 2009.[1] The program was "established to encourage capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that make qualified low-income community investments in qualified active low-income community businesses to create and retain jobs."[2]

Under this program, federally-certified Community Development Entities (CDE), which have entered into allocation agreements with the U.S. Treasury, have the ability to apply to the Department of Economic Opportunity (DEO) for a certification of Florida tax credits.[3] The CDE must show that it is prepared to invest capital into qualified businesses in Florida's low-income communities. The certification process includes 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, and a description of the CDE's efforts to partner with local community-based groups. DEO is also able to request additional information needed to verify continued certification. DEO certifies qualified applications on a first-come, first-served basis. Once DEO 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 invest a minimum of 85 percent of the purchase price in qualified low-income investments. Thereafter, the CDE must annually report to DEO information including:

- Audited financial statements;
- The industries for the investments;
- The counties investments were made in;
- The number of jobs created; and
- Verification that the average wages paid are at least equal to 115 percent of the federal poverty income guidelines for a family of four.[4]

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.[5]

Tax Credits

The New Markets Tax Credit Program allows a tax credit to be taken against the corporate income tax found in s. 220.11, F.S., or the insurance premium tax found in s. 624.509, F.S.[6] This credit may be claimed after the investment has been made and held for a minimum of 2 years. Therefore, no credit can be claimed in the first 2 years. In year 3, the annual credit is equal to 7 percent of the investment, and from the fourth year through the seventh year the annual credit is

[1] Florida's New Markets Development Program Act is codified at ch. 288, part XII, F.S.
[2] Section 288.9912, F.S.
[3] Section 288.9914, F.S.
[4] Section 288.9918, F.S.
[5] Section 288.9920, F.S.
[6] Section 288.9916, F.S.

equal to 8 percent. Over 7 years this credit totals 39 percent of the total 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.

Additionally, the program has a cap of $97.5 million on the total of tax credits allowed to be allocated to all investments with the caveat that no more than $20 million in tax credits may be claimed in a single state fiscal year. The program 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.

***Federal New Markets Tax Credit*[7]**

Florida's New Markets Tax Credit Program was mirrored after the federal program. The Federal 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).[8] 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 7-year period. In each of the first 3 years, the investor receives a credit equal to 5 percent of the total amount paid for the stock or capital interest at the time of purchase. For the final 4 years, the credit is equal to 6 percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the 7-year period. 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.

As stated above, the federal program and the state program each provide credits totaling 39 percent of the investment over a 7 year period. Therefore, a qualified taxpayer with a qualified investment approved for both the federal and state program could receive 78 percent of the purchase price of the investment in tax credits over 7 years. In addition to the tax credits that are received, the investor also has the potential to receive benefits from the results of the investment and eventual return of their principal.

[7] Information on the federal New Markets Tax Credit Program can be found at http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited February 6, 2012).
[8] 15 U.S.C. sec. 689, *et. seq*.

III. Effect of Proposed Changes:

Section 1 amends s. 288.9914, F.S., to increase the total amount of tax credits available to be allocated for the New Markets Development Program from $97.5 million to $195 million during the existence of the program, and it increases the amount of permissible tax credits to be distributed in a single state fiscal year from $20 million to $40 million.

Section 2 amends s. 288.9915, F.S., to increase the number of years that a qualified community development entity is prohibited from making cash interest payments in excess of their cumulative operating income on long term debt securities issued as qualified investments from 6 to 7 years. Moreover, the bill provides that a qualified community development entity's cumulative operating income should be calculated without giving effect to the interest expense on such long-term debt security.

Section 3 provides an effective date of July 1, 2012.

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:

On January 6, 2011, the Revenue Estimating Conference determined that the effects of this bill will result in an $18 million negative fiscal impact on General Revenue in the 2014-15 fiscal year, and a recurring $20 million negative fiscal impact on General Revenue thereafter. There is no impact to General Revenue in the 2012-13 or the 2013-14 fiscal years.

B. Private Sector Impact:

The New Markets Development program draws private sector investment into low-income rural and urban communities that may not otherwise have occurred.

C. Government Sector Impact:

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.)

CS/CS by Finance and Tax on February 9, 2012:
The amendment included in this Committee Substitute clarifies language that limits the amount of interest that a qualified community development entity can pay during the first 7 years of a long-term debt security that is a qualified investment.

CS by Commerce on January 19, 2012:
Increases the amount of permissible tax credits to be distributed in a single state fiscal year from $20 million to $40 million.

B. Amendments:

None.