HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 739 Rural Communities
SPONSOR(S): Workforce Development & Tourism Subcommittee, Hill
TIED BILLS: **IDEN./SIM. BILLS:** SB 298

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Workforce Development & Tourism Subcommittee	12 Y, 0 N, As CS	Willson	Cooper
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Florida imposes an annual tax on premiums collected by insurance companies doing business in the state. This tax applies to life, health, property and casualty, title insurance, and most other types of policies at a rate of 1.75%, with deductions allowed for reinsurance accepted, return premiums and assessments.

The bill creates s. 288.062, F.S., the “Florida Rural Jobs and Business Recovery Act.” The Program authorizes incentives in the form of tax credits against the state insurance premium tax for investors to invest funds with certified growth fund entities that, in turn, will make capital or equity investments, or loans with a maturity date of at least 1 year, in certain growth businesses located in non-urbanized areas of the state. The Program prohibits more than $5 million in tax credits to be taken in any one year, and no more than $25 million in credits may be taken over the lifetime of the Program.

The Program only applies to tax returns or reports originally due on or after January 1, 2020. The Program expires December 21, 2030. The bill authorizes the Department of Economic Opportunity to adopt rules to implement the Act.

The bill will have a negative recurring impact on state revenue of $5 million, and does not appear to have a fiscal impact on local governments.

The bill has an effective date of bill is July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The U.S. Census Bureau defines urban areas as urbanized areas of 50,000 or more population and urban clusters of at least 2,500 and less than 50,000 population.[1] The Census Bureau considers anything that is not an urban area to be rural.[2] Geographically, 86.2 percent of Florida's land lies in rural areas but only 8.8 percent of Florida's population lives in those rural areas.[3] Higher population density in Florida's urban areas drives a more robust jobs market and overall economic development.[4]

Economic Development Incentives and Rural Communities

Rural Economic Development Initiative

The Rural Economic Development Initiative (REDI) encourages and facilitates the location and expansion of economic development projects of significant scale in Florida's rural communities.[5] The REDI, which is administered by the Department of Economic Opportunity (DEO), coordinates the efforts and resources of state and regional agencies on the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities.[6] In particular, the REDI acts in rural areas of opportunity[7] (RAO) to promote the location or expansion of businesses to the RAO to serve as economic generators.[8]

Regional Rural Development Grant Program[9]

The Regional Rural Development Grant Program provides matching grants to build the professional capacity of Florida's regional economic development organizations (EDO). Additionally, an EDO may use the program's grants to provide technical assistance to businesses within the rural counties and communities that it serves. A grant to an EDO is capped at $50,000, or $150,000 in a RAO, per year; the EDO must match the state's grant with non-state resources. DEO administers the grant program through a contract with Enterprise Florida, Inc.[10] In fiscal year 2017-2018, DEO allocated $586,000 to EDOs.[11,12]

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[1] U.S. Census Bureau, *Defining Rural at the U.S. Census Bureau: American Community Survey and Geography Brief*, 3 (Dec. 2016), *available at* https://www2.census.gov/geo/pdfs/reference/ua/Defining_Rural.pdf (last visited Mar. 22, 2019). 75 FR 53029 (2011).
[2] U.S. Census Bureau, *supra* note 1, at 1.
[3] Florida Legislature Office of Economic and Demographic Research, *Florida: An Economic Overview Focusing on County Differences*, 10 (Jan. 8, 2019), *available at* http://edr.state.fl.us/Content/presentations/economic/EconomicOverviewFocusingonCounty%20Differences.pdf (last visited Mar. 22, 2019).
[4] *Id*. at 8-13.
[5] Ch. 97-278, Laws of Fla.
[6] S. 288.0656(3) & (6)(a), F.S.
[7] S. 288.0656(1)(d), F.S., defines a "rural area of opportunity" as a rural community, or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.
[8] S. 288.0656(7)(c), F.S.
[9] S. 288.018, F.S.
[10] DEO, *Regional Rural Development Grants*, http://www.floridajobs.org/community-planning-and-development/rural-community-programs/regional-rural-development-grants (last visited Mar. 22, 2019).
[11] DEO may allocate up to $750,000 from the Rural Community Development Revolving Loan Fund to the Regional Rural Development Grants Program. S. 288.018(4), F.S.
[12] DEO, *2018 Incentives Report*, at 19 (Dec. 28, 2018), http://www.floridajobs.org/docs/default-source/reports-and-legislation/2018-annual-incentives-report.pdf?sfvrsn=2 (last visited Mar. 22, 2019).

Rural Infrastructure Fund[13]

The Florida Rural Infrastructure Fund (Fund) facilitates the planning, preparation, and financing of traditional economic development or nature-based tourism infrastructure projects that encourage job creation and capital investment in rural communities. DEO administers the Fund and may award grants or loans to local governments or businesses in its role as administrator. The amount awarded and required local government match requirements vary based on whether the project is located in a RAO, a catalyst site, or rural community.[14]

Federal Rural Business Investment Company and Small Business Investment Programs[15,16]

Rural Business Investment Companies (RBIC) and Small Business Investment Companies (SBIC) are privately owned and managed investment funds that are licensed and regulated by the U.S. Department of Agriculture and Rural Development[17] and Small Business Administration (SBA)[18] respectively, that make capital investments in small businesses located in rural communities or other qualifying businesses.

An RBIC or SBIC program offers incentives for private capital to invest in small businesses, startups, low-income areas, or regions otherwise under economic distress. These programs often include special criteria for a certain quantity of the credit to focus on rural or underdeveloped areas.

Economic Development Incentives that Utilize Tax Credits

Rural Job Tax Credit Program[19]

The Florida Rural Job Tax Credit Program offers a tax credit incentive to eligible businesses that are located within a designated qualified rural area to create new jobs. The tax credit ranges from $1,000 to $1,500 per qualified employee and can be taken against either the businesses' corporate income tax or sales and use tax liabilities. A business is limited to no more than $500,000 of tax credits per year. DEO administers this program, and may approve up to $5 million in tax credits per year; in 2018, DEO approved $229,000 in rural job tax credits.[20]

Florida New Markets Development Program[21]

The Florida New Markets Development Program (NMDP), similarly to the Program created in this bill, uses tax credits to spur economic development. The NMDP allows Florida taxpayers to earn tax credits against corporate income tax and insurance premium tax by investing in qualified community development entities (CDEs) that make investments in qualified low-income community businesses. CDEs are domestic corporations or partnerships that have a primary role in administering the tax credit program and act as intermediaries between the investors, financiers, and low-income community

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[13] S. 288.0655, F.S.

[14] DEO, *Rural Infrastructure Fund*, http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-infrastructure-fund (last visited Mar. 22, 2019).

[15] 7 C.F.R. § 4290 et seq. (2009).

[16] 15 U.S.C. §§ 681-688.

[17] United Stated Department of Agriculture and Rural Development, *Rural Business Investment Program*, https://www.rd.usda.gov/programs-services/rural-business-investment-program (last visited Mar. 22, 2019).

[18] U.S. Small Business Administration, *Become an SBIC*, https://www.sba.gov/partners/sbics/apply-be-sbic (last visited Mar. 22, 2019).

[19] S. 212.098, F.S.

[20] DEO, *2018 Incentives Report*, 20 (Dec. 28, 2018), http://www.floridajobs.org/docs/default-source/reports-and-legislation/2018-annual-incentives-report.pdf?sfvrsn=2 (last visited Mar. 22, 2019).

[21] S. 288.991-.9922, F.S.

businesses. The NMDP is modeled after the Federal New Markets Tax Credit program.[22] The NMDP is capped at a cumulative investment that would result in no more than $216.34 million in tax credits, and an annual investment that would result in no more than $36.6 million in a single fiscal year.[23]

Examples of Similar Rural Jobs Acts in Other States

Utah passed a substantially similar bill, the Utah Rural Jobs Act, which authorizes up to $42 million in tax credits, and caps the total contributions one entity may make under the program at $24.36 million. Additionally, Utah assesses a $50,000 annual fee that is split between all the certified growth fund entities.[24]

In 2017, Georgia created the Georgia Agribusiness and Rural Jobs Act, which is designed to spur $100 million in capital investments in rural businesses in the state. Investors may redeem up to $15 million in tax credits annually for four years (for a total of $60 million tax credits) against their corporate income tax and premium tax liabilities.[25]

Similar legislation has been proposed in several other states, including Washington. Additionally, New Markets Tax Credit Programs, which are structurally similar to the Act, are active in several other states, including Florida.[26]

Tax on Insurance Premiums

Florida imposes an annual tax on premiums collected by insurance companies doing business in the state.[27] This tax applies to life, health, property and casualty, title insurance, and most other types of policies at a rate of 1.75%, with deductions allowed for reinsurance accepted, return premiums and assessments.[28] It applies to self-insurance funds at a rate of 1.6%.[29] It applies to annuities at a rate of 1%.[30] It applies to wet marine and transportation insurance at a rate of 0.75% of gross underwriting profit, defined as net premiums minus net losses paid.[31]

There are a number of credits allowed against insurance premiums tax liability. These include:

- 100% of corporate income tax paid pursuant to chapter 220, F.S.[32]
- 15% of salaries paid by the company to its Florida-based employees.[33]
- 50% of a community contribution made pursuant to the Community Contribution Tax Credit Program.[34]
- 100% of donations made to eligible scholarship funding organizations pursuant to s. 1002.395.[35]

The sum of the credits granted for corporate income tax and employee salaries may not exceed 65% of the insurer's premium tax liability.[36]

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[22] Florida Legislature Office of Economic and Demographic Research, *Economic Evaluation for Select State Economic Development Incentive Programs*, 32-36 (Mar. 2017), *available at* http://edr.state.fl.us/content/returnoninvestment/ROISELECTPROGRAMS2017final.pdf (last visited Mar. 22, 2019).
[23] S. 288.9914(3)(c), F.S.
[24] Utah Code Annotated s. 63N-4-301, et seq. (2017).
[25] Ga. Code Annotated s. 33-1-25, et seq. (2017).
[26] Doug Farquhar, *Jump-Starting Rural Economies* (Apr. 2018), http://www.ncsl.org/research/environment-and-natural-resources/jump-starting-rural-economies.aspx (last visited Mar. 22, 2019).
[27] S. 624.509, F.S.
[28] S. 624.509(1)(a), F.S.
[29] S. 624.4625(4), F.S.
[30] S. 624.509(1)(b), F.S.
[31] S. 624.510, F.S.
[32] S. 624.509(4), F.S.
[33] S. 624.509(5), F.S.
[34] S. 624.5105, F.S.
[35] S. 624.51055, F.S.

Retaliatory Tax

When another state or foreign country levies certain taxes or fees, including insurance premiums tax, on Florida insurers in excess of the taxes and fees levied by Florida on insurers from such other state or foreign country, a retaliatory tax is charged.[37] Companies from the other state or foreign country are taxed using the same tax and fee structure that a similar Florida insurer operating in such state or foreign country would be charged.

<u>Effect of the Bill</u>

Florida Rural Jobs and Business Recovery Act (Program)

The bill creates s. 288.062, F.S., the "Florida Rural Jobs and Business Recovery Act." The Program authorizes incentives in the form of tax credits against the state insurance premium tax for investors to give funds to certified growth fund entities that, in turn, will make capital or equity investments, or loans with a maturity date of at least 1 year, in growth businesses located in non-urbanized areas of the state. The Program caps investment at a level that will result in no more than $5 million in tax credits claimed under the program each year and no more than $25 million in credits over the lifetime of the Program.

Growth fund applicants are required to give "first priority" to investments located in one of the counties affected by Hurricane Michael and designated by Federal Emergency Management Agency declaration FEMA-4399-DR.[38] The Program only applies to tax returns or reports originally due on or after January 1, 2020. The Program expires December 21, 2030. The bill authorizes DEO to adopt rules to implement the Act.

A growth business is one that:

- Has fewer than 200 employees
- Has its principal business operations in a growth zone; and
- Participates in approved agribusiness; mining, oil, and gas extraction; utilities and construction; manufacturing; transportation and warehousing; professional scientific or technical services; healthcare and social assistance; or DEO determines that the investment will create new jobs or result in retained jobs.

Tax Credit Application, Approval, and Allocation

DEO is required to adopt an application form and begin accepting applications for approval as a growth fund on September 1, 2019. The application must include the following:

- Total investment authority sought by the applicant;
- A copy of the applicant's or an affiliate of the applicant's license as a rural business investment company or small business investment company, as defined in federal law;[39]
- Evidence that the applicant or its affiliates have invested at least $100 million in private companies that are located in nonmetropolitan counties;
- An estimate of the total number of new annual jobs that will be created and retained over the life of the program in the state as a result of the applicant's growth investments;
- A business plan that includes a 10-year revenue impact estimate of the proposed growth investments, including the investment's effect on state and local tax revenues, and state

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[36] S. 624.509(6)(a), F.S.

[37] S. 524.5091, F.S.

[38] FEMA, *Florida Hurricane Michael (DR-4399)*, https://www.fema.gov/disaster/4399 (last visited Mar. 22, 2019). Designated counties include Bay, Calhoun, Franklin, Gadsden, Gulf, Hamilton, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Suwannee, Taylor, Wakulla, Walton and Washington Counties.

[39] *See* notes 15-18, *supra*.

expenditures. This business plan must be prepared by an independent third-party economic forecasting firm that uses a dynamic economic forecasting model; and
- A signed affidavit from the applicant's investors stating the contribution each commits to make.

DEO must grant or deny an application within 45 days of its receipt. DEO must deny an application if:
- The application is incomplete;
- The revenue impact assessment does not demonstrate that the applicants business plan will result in a positive revenue impact on the state over a 10-year period;
- The growth fund has failed to commit investor contributions equal to at least 75 percent of the investment authority it seeks; or
- DEO has already approved the maximum amount of investment authority authorized.

If DEO denies an application on certain grounds, the applicant has 15 days to cure any defects.

Once DEO approves an application, it is required to certify:
- The applicant as a growth fund,
- The amount of the applicant's investment authority;
- The investor contributions required from each investor that submitted an affidavit with the growth fund application; and
- the number of new annual jobs and jobs retained that will be required of the growth fund, as prorated, based on the investment authority awarded to the growth fund.

At least 10% of the fund's investment authority must consist of equity investments contributed by the fund's affiliates.

Within 60 days of its certification, a growth fund must collect all of its committed investor contributions and any additional cash investments. The fund must provide proof to DEO that it collected all required contributions and investments within 65 days of certification. A fund's certification will lapse if it fails to perform these duties.

Tax Credit

An investor in a fund is vested with an earned credit against its state premium tax liability equal to the value of its contribution to the fund. The investor may not sell, transfer, or allocate the credit to any entity other than an affiliate of the fund. DEO is required to provide the name of any insurance company and the amount of any tax credits allocated under the Program to the Department of Revenue.

An investor may claim 20 percent of its credit each taxable year from the year of the closing date through fourth year after its investment. The amount of the credit may not exceed the amount of the taxpayer's premium tax liability.

Revocation of Tax Credit Certificates and Exit from the Program

DEO must revoke a tax credit certificate if:
- The fund does not invest 100 percent of its investment authority in state growth investments within 2 years after the closing date;
- The fund fails to maintain investments equal to 100 percent of its investment authority until the sixth anniversary of its closing date (with a permitted 12 months between receipt of capital and reinvestment of that capital);
- The fund makes a distribution or payment that results in the fund having less than 100 percent of its investment authority invested in growth investments in Florida or available for state growth investments and held in cash or other securities; or

- The fund invests in a growth business that directly, or indirectly through an affiliate, owns, has the right to acquire an ownership interest in, makes a loan to, or makes an investment in the fund, an affiliate of the fund, or an investor of the fund.

DEO must give a growth fund notice of a pending revocation and an opportunity to cure. If tax credits are revoked, DEO must re-allocate the investment authority and investor contributions on a pro rata basis to each fund that was awarded less than its requested investment authority, and any balance to new applicants.

On or after the seventh anniversary of the closing date, a growth fund may apply to DEO to exit the program. DEO must approve the request within 30 days if no tax credit certificates issued to the fund's investors have been revoked, and the fund's certification has not been revoked or is not currently subject to revocation. DEO may not revoke a tax credit certificate after a fund exits the program.

Reporting Obligations

Each fund must submit an annual report to DEO, which includes:

- A bank statement evidencing each of the fund's investments;
- The name, location, and industry of each growth business that receives a growth investment;
- Evidence that a growth business qualified as such at the time the fund made the investment;
- The number of employment positions at the growth business on the date of the fund's initial investment;
- The number of new and retained annual jobs and their average salary at each growth business;
- The cumulative amount of growth investments made in the growth business; and
- Any other information required by DEO.

B. SECTION DIRECTORY:

Section 1 Creates s. 288.062, F.S.; establishing the "Florida Rural Jobs and Business Recovery Act."

Section 2 Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will have a negative $5 million impact on general revenue.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have a positive fiscal impact on some rural local governments as a result of increased investment in businesses in their communities.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in a positive direct economic impact for businesses that are located in an eligible area and receive an investment because of the program.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DEO to adopt rules to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Workforce Development & Tourism Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute removed a reference to the "Department of Insurance" and replaced it with the "Department of Revenue."