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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS

BILL #: HB 577 (PCB TU 99-01)

RELATING TO: Corporate Tax Credits for Investments in Historic Preservation

SPONSOR(S): Committee on Tourism; Rep. Starks, and others

COMPANION BILL(S): SB 1388(s), HB 195(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) TOURISM YEAS 10 NAYS 0
(2) BUSINESS REGULATION & CONSUMER AFFAIRS YEAS 7 NAYS 0
(3) GOVERNMENT RULES & REGULATIONS
(4) FINANCE AND TAXATION
(5) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS

I. SUMMARY:

The bill establishes a corporate tax incentives program for the rehabilitation of qualified historic buildings. It allows a tax credit against the tax liability of a corporate taxpayer for up to 50 percent of the total dollars spent for the cost of rehabilitating a historic building that will be used for a commercial purpose.

The Department of State, Division of Historical Resources is charged with administering the program. The program is limited to $2 million annually for the total amount of tax credits granted for all projects approved, and to a minimum of $5,000 and a maximum of $200,000 for a single approved project. Any unused portion of a tax credit may be carried over for up to five years if a taxpayer has insufficient tax liability.

A historic building qualifies for the program if the property at the time the exemption is granted is listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended; or is a contributing property to a National Register Historic District; or is designated as a historic property, or as a contributing property to a historic district, under the terms of a local preservation ordinance. Also, any improvements to a historic property must meet certain state and federal criteria in order for a project to gain approval and subsequently qualify for a tax credit. The rehabilitation expenditures must be substantial and meet the definition of qualified expenditures in the bill. A project must be completed within 24 months of approval of the written architectural plans and specifications.

If the rehabilitated historic property is not used for a commercial purpose pursuant to a corporate tax return filed the year following project completion, the corporate taxpayer must repay the credit received in an amount prorated according to the time the property was not in commercial use.

The bill's fiscal impact is limited to $2 million annually from the General Revenue Fund for the total amount of tax credits available to corporate taxpayers participating in the program.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 220, F.S., implements Florida's Income Tax Code and provides for the taxation of corporations and other entities for the privilege of conducting business, deriving income, or existing within this state. Furthermore, it provides that the tax levied by this code be construed to be an excise or privilege tax measured by net income and that such tax not be deemed or construed to be a property tax, or a tax measured by the value of property for any purpose.

Programs establishing credits to the tax liability of corporations can also be found in Chapter 220, F.S. For example, the community contribution tax credit is authorized in s. 220.183, F.S., as an incentive for corporations to make donations to approved community development projects in enterprise zones. The community contribution tax credit allows up to 50 percent of the donation amount to be credited against the tax liability of a corporation.

Section 220.02, F.S., provides for the order tax credits must be applied to corporate taxes or franchise taxes.

Current Incentives for Preservation of Historic Properties in Florida

Currently, there are five available types of tax incentives for the preservation of historic properties in Florida. The tax exemptions discussed first are local option tax incentives. Local governments must adopt ordinances to enact them and they apply to privately owned historic properties, those properties used for nonprofit or governmental use only, and those properties used for certain commercial or nonprofit purposes. In the fifth incentive, a tax deferral program, the property owner is restricted in the use of the property or must convey development rights to the county. This particular incentive has never been used.

Tax Exemptions

Article VII, Section 3 of the state constitution permits municipalities and counties to authorize historic preservation ad valorem tax exemptions to owners of historic properties. Implementation of these exemptions is found in ss. 196.1997, 196.1998, and 196.1961, F.S., including the requirement of the enacting local government to pass an ordinance.

The following two types of tax exemptions are provided in ss. 196.1997 and 196.1998, F.S. :

1. Up to 100 percent of the assessed value of all improvements for private property owners.
2. Up to 100 percent of the assessed value of historic property used for nonprofit or governmental purposes that: (1) is regularly and frequently open for the public's use and (2) has undergone rehabilitation or renovation equal to at least 50 percent of the total assessed value of the property.

Both types of ad valorem tax exemptions are subject to additional requirements as follows:

- Exemptions apply only to taxes levied by the unit of government granting the exemption and do not apply to taxes pledged to the repayment of debt.
- Property owners must enter into a covenant requiring maintenance.
- Improvements must be in keeping with the character of the property for the exemption period.
- Historic properties must be listed on the National Register of Historic Places or designated as landmarks under a local historic preservation ordinance, or must contribute to the significance of a National Register historic district or a historic district designated by local ordinance (eligible historic properties may be owner-occupied residences or income-producing properties).
- The period of exemption may be for up to 10 years, which must be determined by the required local ordinance.
- Property must be undergoing renovations or have undergone renovations since the ordinance was adopted.

The following tax exemption, which was contingent upon passage of Amendment 1 to the state constitution in November 1998, became effective January 1, 1999, and is implemented in s. 196.1961, F.S.

- Up to 50 percent of the assessed value of certain historic property used for commercial purposes or used by a not-for-profit organization under s. 501(c)(3) or s. 501(c)(6) of the Internal Revenue Code of 1986. Only those portions of the property used predominantly for the purposes specified shall be exempt.

The property must meet the following additional criteria:

- Be listed in the National Register of Historic Places, as defined in s. 267.021, F.S.; or must be a contributing property to a National Register Historic District; or must be designated as a historic property or as a contributing property to a historic district, under the terms of a local preservation ordinance.

- Be regularly open to the public (a minimum of 40 hours per week, for 45 weeks per year, or an equivalent of 1,800 hours per year).

- To retain the exemption, the historic character of the property must be maintained in good repair and condition to the extent necessary to preserve the historic value and significance of the property.

Classification and Assessment

Section 4(d), Art. VII of the state constitution was amended in November 1998 to permit the Legislature, by general law, to authorize counties and municipalities to assess historic properties solely on the basis of character or use rather than just valuation. The requirements for implementation, including the eligibility for properties, are provided in s. 193.503, F.S., which will became effective on January 1, 1999. The eligible properties are only those that are used for commercial purposes or by certain not-for-profit organizations. Other criteria for the eligible properties mirror that contained in s. 196.1961, F.S.

Any reduction in property taxes as a result of a use assessment ordinance may be recaptured for up to 10 years if there is a change in the status, use, or qualifying criteria of the property.

Deferral of Tax Liability for Historic Properties

In addition to the local option program specified in the Florida Constitution, s. 193.505, F.S., provides a mechanism for owners of improved, historically significant real property to defer tax liability. The owner either conveys all development rights to the county or enters into a covenant with the local governing body to not use the property for any purpose inconsistent with historic preservation. Upon expiration of this agreement, the deferred tax liability, that is, the difference between the taxes due on the property assessed at its use value rather than its fair market value, becomes due within 90 days. Although this tax deferment program has been in existence since 1984, it has never been used. The following are possible reasons why the tax deferral provision is not used:

- A property owner has no way of knowing in advance how much the deferral amount will be.
- A sizeable tax bill can be due at the end of the deferral period.
- The property owner loses unrestricted rights to develop the property to its fullest economic advantage.

Incentives Used for Historic Preservation in Other States

Several states have instituted some type of tax relief for the rehabilitation and preservation of historic properties. Corporate tax incentive programs are currently being used in several states as a tool to leverage private investment in historic preservation. These incentives are viewed as inducements to invest in rehabilitating older buildings, reviving decaying neighborhoods, preserving historic housing stock and rebuilding the fiscal base of older towns and cities. The eligibility requirements, qualifying criteria, and specific provisions of the tax credits vary; however, all are designed to encourage private investment in historic preservation. A January 1997 interim

study by the House Committee on Tourism entitled “Funding and Promoting Florida’s Cultural and Historical Resources,” examined programs in six states: Colorado, Maryland, New Mexico, North Carolina, West Virginia, and Wisconsin.

Benefits of Historic Preservation

According to the Advisory Council on Historic Preservation, some of the economic and revenue implications of historic preservation land uses are: tourism, private investment, new businesses and jobs; increased property values; enhanced quality of life; sense of neighborhood and community pride; compatible land use patterns; increased property and sales taxes; and pockets of deterioration and poverty diluted.

Because of the labor intensive nature of historic preservation, dollar for dollar, it is one of the highest job-generating economic development options available. Donovan Rypkema, a well-known nationally recognized historic preservation consultant with Real Estate Services Group, states that as a rough rule of thumb, half of new construction expenditure goes for labor and half for materials. He further states that in a typical historic rehabilitation project between 60 and 70 percent of the total cost goes toward labor that is nearly always hired locally and who spend their wages locally. Direct local purchases from both retailers and wholesalers is greater, dollar for dollar, for a rehabilitation project than for a new construction project. According to Rypkema, the local direct purchases, combined with the locally recirculated wages of construction workers, have a surprisingly large economic impact.

B. EFFECT OF PROPOSED CHANGES:

Section 220.185, F.S., is created to allow for a corporate tax credit of up to 50 percent of the total dollars spent for the cost of rehabilitation of a historic building that is to be used for commercial purposes against the tax liability of a corporate taxpayer. The Division of Historical Resources of the Department of State is charged with administering the program.

The program is limited to $2 million annually for the total amount of tax credits granted for all projects approved, and to a minimum of $5,000 and a maximum of $200,000 for a single approved project. Any unused portion of a tax credit may be carried over for up to five years if a taxpayer has insufficient tax liability. In order to qualify, the rehabilitation must be substantial (as determined by the Department of State), expenditures must be qualified expenditures as defined in the section, and the project must be completed within 24 months of approval of the written architectural plans and specifications. No expenditure prior to the effective date of the bill can count as a qualified rehabilitation expenditure.

A historic building qualifies for the program if at the time the exemption is granted the property:

- is listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended;
- is a contributing property to a National Register Historic District; or
- is designated as a historic property, or as a contributing property to a historic district, under the terms of a local preservation ordinance.

Additionally, in order for an improvement to a historic property to qualify the property for exemption, the improvement must: (a) be consistent with the Secretary of the Interior’s Standards for Rehabilitation, and (b) be determined by the Division of Historical Resources to meet criteria established in rules adopted by the Department of State.

The bill also states that it shall be the responsibility of the taxpayer to affirmatively demonstrate to the satisfaction of the Department of Revenue that it meets the requirements of this act.

The bill provides that a corporate taxpayer that received a credit under this act must certify to the Department of Revenue in its corporate tax return filed the year following completion that the rehabilitated building was used for a commercial purpose. If not, the corporate taxpayer is to repay the credit received in an amount prorated according to the time the property was not in commercial use.

Finally, the bill also has a provision that protects against "double dipping" into funds by corporate taxpayers participating in this program.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill provides the Departments of Revenue and State with the authority to make necessary rules to implement the corporate tax incentives program.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The Department of State will have the responsibility of administering the program, including approving projects and certifying their compliance with program specifications.

The Department of Revenue will be responsible for administering tax credits when they become applicable. Staff from the department did not project a fiscal impact for implementation because the department currently administers various tax credits.

Corporate taxpayers electing to participate will incur work through preparing the required proposal to participate in the corporate tax incentive program.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 220.185, F.S.

Amends ss. 220.02 and 220.13, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 - Creates s. 220.185, F.S., establishing a program to allow for a corporate tax credit of up to 50 percent of the total dollars spent for the cost of rehabilitation of a historic building that is to be used for commercial purposes to be applied against the tax liability of a corporate taxpayer. The Division of Historical Resources (Division) of the Department of State is charged with administering the program.

The program is limited to $2 million annually for the total amount of tax credits granted for all projects approved, and to a minimum of $5,000 and a maximum of $200,000 for a single approved project. Any unused portion of a tax credit may be carried over for up to five years if a taxpayer has insufficient tax liability. Additionally, in order to qualify, the rehabilitation must be substantial (as determined by the Department of State), expenditures must be qualified expenditures as defined in this section, and the project must be completed within 24 months of approval of the written architectural plans and specifications. No expenditure prior to January 1, 2000, can count as a qualified rehabilitation expenditure. A “qualified rehabilitation expenditure” is defined as any amount properly chargeable to capital accounts in connection with the rehabilitation of a qualified historic building.

A historic building qualifies for the program if at the time the exemption is granted the property:

- is listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended;
- is a contributing property to a National Register Historic District; or
- is designated as a historic property, or as a contributing property to a historic district, under the terms of a local preservation ordinance.

In order for an improvement to a historic property to qualify the property for exemption, the improvement must be consistent with the Secretary of the Interior’s Standards for Rehabilitation and be determined by the Division to meet criteria in departmental rules.

The section provides that it shall be the responsibility of the taxpayer to affirmatively demonstrate to the satisfaction of the Department of Revenue that it meets the requirements of this act.

The section also provides that a corporate taxpayer that received a credit under this act must certify to the Department of Revenue in its corporate tax return filed the year following completion that the rehabilitated building was used for a commercial purpose. If the building was not used for a commercial purpose, the corporate taxpayer must repay the credit received in an amount prorated according to the time the property was not in commercial use.

Section 2 - Amends s. 220.02, F.S., 1998 Supplement, to include corporate income tax credits for rehabilitating historic buildings pursuant to s. 220.185, F.S., to the prescribed order of applying corporate tax credits.

Section 3 - Amends s. 220.02, F.S., 1998 Supplement, as amended by chapter 98-132, F.S., 1998 Supplement, to include corporate income tax credits for rehabilitating historic buildings pursuant to s. 220.185, F.S., to the prescribed order of applying corporate tax credits that becomes effective on July 1, 2000.

Section 4 - Amends s. 220.13(1)(a), F.S., by adding subparagraph 10. which adds that portion of the substantial rehabilitation and preservation costs which is paid for the taxable year which is equal to the credit allowable for the taxable year under s. 220.185, F.S., to be considered taxable income, thereby protecting against "double dipping" into funds.

Section 5 - Provides an effective date of January 1, 2000, except for section 3 which takes effect on July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   The Department of Revenue may experience minimal cost for designing a form to use when notifying corporate taxpayers of tax credits applied to their tax liability. However, the Department of Revenue currently has similar responsibilities for implementing tax credits pursuant to other programs. The Department of State may experience minimal start-up expense for items such as designing forms to be used by corporate taxpayers when making a proposal to participate in the program.

2. Recurring Effects:

   The Division of Historical Resources is required to monitor all projects in a manner consistent with available resources and to review each project upon completion. Staff from the Division indicated that to the extent possible, travel expenses would be held to a minimum by performing site inspections when travel in the area is already planned.

   There could be a reduction in corporate tax revenues to the General Revenue Fund of up to $2 million annually if participation in the corporate tax incentives program reaches its potential.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   Minimal to the Departments of State and Revenue; however, there is a potential loss of corporate tax revenues to the General Revenue Fund of up to $2 million annually if the corporate tax incentives program reaches its full potential.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Because a proposal to participate in the program must contain a resolution from the local governmental unit in which the property is located certifying that the proposal is consistent with local plans and regulations, some local governmental units may experience the cost of a resolution.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

To the extent that corporate taxpayers choose to participate in the program, cost in time and money preparing the proposal will be incurred.

2. Direct Private Sector Benefits:

Tax credits may be applied to the tax liability of a participating corporate taxpayer of up to 50 percent of the cost of rehabilitation for a historic building, not to exceed a maximum of $200,000.

There would be increased expenditures for local labor and direct local purchases from both retailers and wholesalers for the rehabilitation of historic properties. According to Donovan Rypkema, a nationally recognized historic preservation consultant, expenditures for rehabilitation projects are greater, dollar for dollar, than for new construction projects. Rypkema also reports that local direct purchases combined with the locally recirculated wages of construction workers have a surprisingly large economic impact.

3. Effects on Competition, Private Enterprise and Employment Markets:

One potential benefit would be on local employment markets through the increased use of local construction workers. Another is the potential for increased employment through the corporations coming to an area.

D. FISCAL COMMENTS:

The proposed corporate tax incentives program has an annual limitation of $2 million. Information provided by the Department of Revenue states that the total amount of corporate tax revenue collected in FY 1996-97 was $1.362 billion ($130 million was refunded) and the total amount collected in FY 1994-95 was $1.396 billion ($124.4 million was refunded). There were approximately 360,000 active accounts in both fiscal years.

The positive amount of revenue realized because of increased sales tax, property tax, and any economic development effects that might be afforded the economies of state and local governments by the rehabilitation of historic properties through the corporate tax incentives program is difficult to quantify.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Committee on Business Regulation and Consumer Affairs: The rulemaking authority provided in the bill (p. 6, lines 9-11) appears to be broad and inconsistent with the House's guidelines for such authority. The bill is referred next to the Committee on Governmental Rules and Regulations. Based on conversations with that committee staff, it is recommended that the Committee on Business Regulation and Consumer Affairs defer the issue to the Committee on Governmental Rules and Regulation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON TOURISM:

Prepared by:	Staff Director:
Judy C. McDonald	Judy C. McDonald

AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:	Staff Director:
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