

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 116

SPONSOR: Commerce Economic, Opportunities, and Consumer Services Committee
and Senator Wise

SUBJECT: Community Contribution Tax Credits

DATE: March 20, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	CM	Favorable/CS
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Under the community contribution tax credit program, corporations, insurance companies, and persons who collect sales or use taxes are authorized to receive community contribution tax credits for “community contributions” or donations to certain projects. Eligible projects must provide low-income housing; community development; broadband capability for rural enterprise zones; or educational programs and materials for the Florida Holocaust Museum in St. Petersburg. The amount of the tax credit is equal to 50 percent of the value of the contributor’s community contributions up to \$200,000 per year. These tax credits may be used against corporate income taxes, insurance premium taxes, and sales or use taxes. Currently, \$10 million in community contribution tax credits are available per year.

The committee substitute makes the following changes to the community contribution tax credit program:

- increases the amount of tax credits available under the program from \$10 million to \$20 million per year;
- reserves 10 percent of the available tax credits to partially offset community contributions to certain projects of the Florida Holocaust Museum; and
- provides that retaliatory taxes on non-domiciled insurance companies will not increase as the result of community contributions.

This committee substitute substantially amends the following sections of the Florida Statutes: 212.08, 220.03, 220.183, and 624.5105.

II. Present Situation:

Community Contribution Tax Credit Program

Credits Available

Under the community contribution tax credit program, corporations, insurance companies, and persons who collect sales or use taxes are authorized to receive community contribution tax credits against sales or use taxes, corporate income taxes, and insurance premium taxes.¹ Tax credits are limited to 50 percent of the amount of a community contribution or donation to a maximum of \$200,000 annually per applicant.² The total amount of community contribution tax credits available per year under the program \$10 million.³ Tax credits against sales or use taxes are granted as a refund against sales and use taxes reported on returns and remitted in the 12 months preceding the application to the Department of Revenue for a refund.⁴ Tax credits against corporate income taxes and insurance premium taxes are claimed against taxes due.⁵

Form of Contributions

Community contributions or donations must take the following forms: (1) cash or other liquid assets; (2) real property; (3) goods or inventory; or (4) other physical resources.⁶ For purposes of credits against insurance premium taxes and corporate income taxes, the Department of Revenue is authorized to identify “other physical resources” that qualify as a community contribution. For purposes of credits against sales or use taxes, the Office of Tourism, Trade, and Economic Development is authorized to identify “other physical resources.”

Use of Contributions

Community contributions must be used for projects to provide: low and very low-income housing; commercial, industrial, or public resources and facilities; entrepreneurial and job development opportunities for low-income persons; access to high speed broadband capability for rural enterprise zones; and educational programs and materials for the Florida Holocaust Museum in St. Petersburg.⁷ All projects must be located in an enterprise zone or a Front Porch Florida Community, unless the projects provide low-income housing or are designed to increase access to high speed broadband capability for a rural enterprise zone. For purposes of credits against corporate income taxes, projects increasing access to high speed broadband capabilities may be located in any area of a rural county.⁸ For purposes of credits against sales or use taxes, a project that is designed to increase high speed broadband access to rural enterprise zones may be located anywhere.⁹ For the purposes of credits against insurance premium taxes, however, a project that is designed to increase high speed broadband access to rural enterprise zones must be located in an enterprise zone or Front Porch Florida Community.¹⁰

¹ Sections 212.08(5)(q), 220.03(1)(d) and (t), 220.183, and 624.5105, F.S.

² Sections 212.08(5)(q)1.a. and c., 220.183(1)(a) and (b), and 624.5105(1)(a) and (b), F.S.

³ Sections 212.08(5)(q)1.e., 220.183(1)(c), and 624.5105(1)(c), F.S.

⁴ Section 212.08(5)(q)1.b., F.S.

⁵ Sections 220.183(1)(a) and 624.5105(1)(a), F.S.

⁶ Sections 212.08(5)(q)2.a., 220.03(1)(d), and 624.5105(5)(a), F.S.

⁷ Sections 212.08(5)(q)2.b., 220.03(1)(t), and 624.5105(2)(b) and (5)(e), F.S.

⁸ Section 220.183(2)(d), F.S.

⁹ Section 212.08(5)(q)2.d., F.S.

¹⁰ Section 624.5105(2)(d), F.S.

Florida Holocaust Museum

Tax credits are available for community contributions to certain projects of the Florida Holocaust Museum, located in St. Petersburg. According to the Office of Tourism, Trade, and Economic Development, the Florida Holocaust Museum is specifically included as an authorized recipient of community contributions by the following sentence: “A project may include the provision of museum educational programs and materials that are directly related to any project approved between January 1, 1996, and December 31, 1999, and located in an enterprise zone as referenced in s. 290.00675.”¹¹ Tax credits have been approved in the following amounts for community contributions to the Florida Holocaust Museum: FY 2000-2001, \$500; FY 2001-2002, \$214,350; and FY 2002-2003, \$182,900.¹²

Contribution Recipients

Eligible project sponsors under the program are the wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards who are authorized to accept community contributions.¹³ The Office of Tourism, Trade, and Economic Development maintains a list of approved sponsors.

Tax Credit Application Process

Applications to receive community contribution tax credits must be submitted to the Office of Tourism, Trade, and Economic Development. The application must set forth the terms of the application, such as the name of the sponsor, a description of the project, and the type, value, and purpose of the contribution. For the purposes of credits against corporate income taxes and sales or use taxes, the sponsor must verify in the application for tax credits that the community contribution has been received.¹⁴ For the purposes of credits against insurance premium taxes, the sponsor must state its willingness to receive the contribution in the application for tax credits.¹⁵ After approval for community contribution tax credits is received by an applicant, the applicant must also claim the credit from the Department of Revenue.¹⁶ Unused credits against corporate income taxes and insurance premium taxes may be carried forward for 5 years.¹⁷ Unused credits against sales taxes may be carried forward for 3 years.¹⁸

Retaliatory Taxes

Under the McCarran-Ferguson Act, Congress expressly authorized states to tax the business of insurance as they deem fit.¹⁹ This authorization permits a state to impose greater taxes on insurers domiciled in other states than on the state’s domestic insurers.²⁰ Under s. 624.5091, F.S., a retaliatory tax is imposed on insurers doing business in Florida but domiciled in states that impose greater taxes on insurers domiciled in Florida than the taxes imposed on their domestic insurers. By making a community contribution, a foreign insurer may reduce its tax liability under the provisions of law that apply to Florida insurers. An insurer from a state that

¹¹ Sections 220.03(1)(t) and 212.08(5)(q)2.b., F.S.

¹² Information provided by Office of Tourism, Trade, and Economic Development.

¹³ Sections 212.08(5)(q)2.c. and 220.183(2)(c), F.S.

¹⁴ Sections 212.08(5)(q)3.b. and 220.183(3)(b), F.S.

¹⁵ Section 624.5105(3)(b), F.S.

¹⁶ Section 212.08(5)(q)3.c., F.S., and Rules 12A-1.107(4) and 12B-8.001, F.A.C.

¹⁷ Sections 220.183(1)(e) and 624.5105(1)(e), F.S.

¹⁸ Section 212.08(5)(q)1.b. and 5., F.S.

¹⁹ 15 U.S.C. ss. 1011-1015.

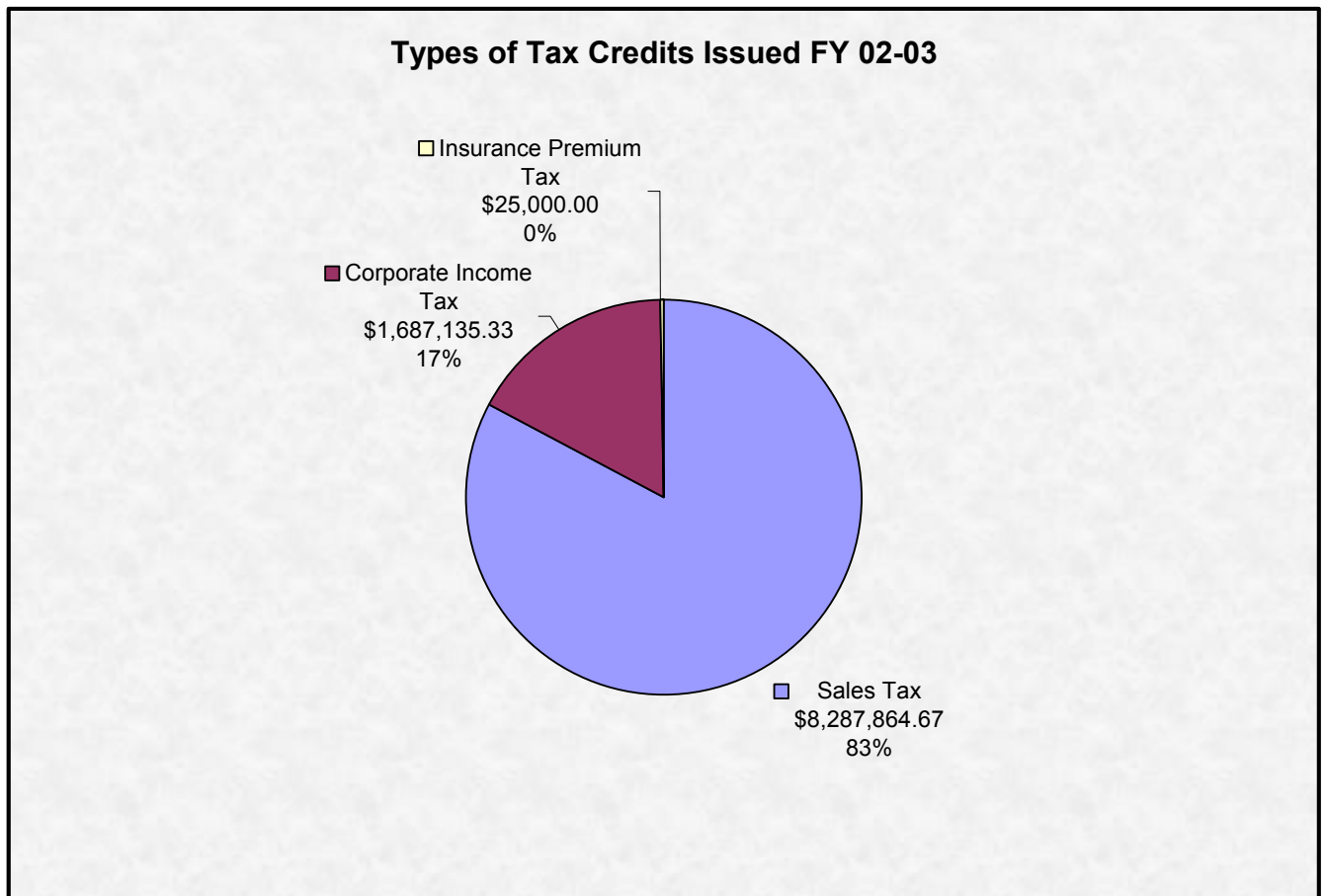
²⁰ See, e.g., *Gallagher v. Motors Insurance Corporation*, 605 So. 2d 62 (Fla. 1992).

discriminates against Florida insurers, however, is subject to increased retaliatory tax by making a community contribution.

Program Statistics

According to the Office of Tourism, Trade, and Economic Development, the \$10 million allocation of community contribution tax credits was exhausted in 80 days for fiscal year 2002-2003. Currently, most of the community contribution tax credits are used against sales taxes, as shown in Chart 1 below.

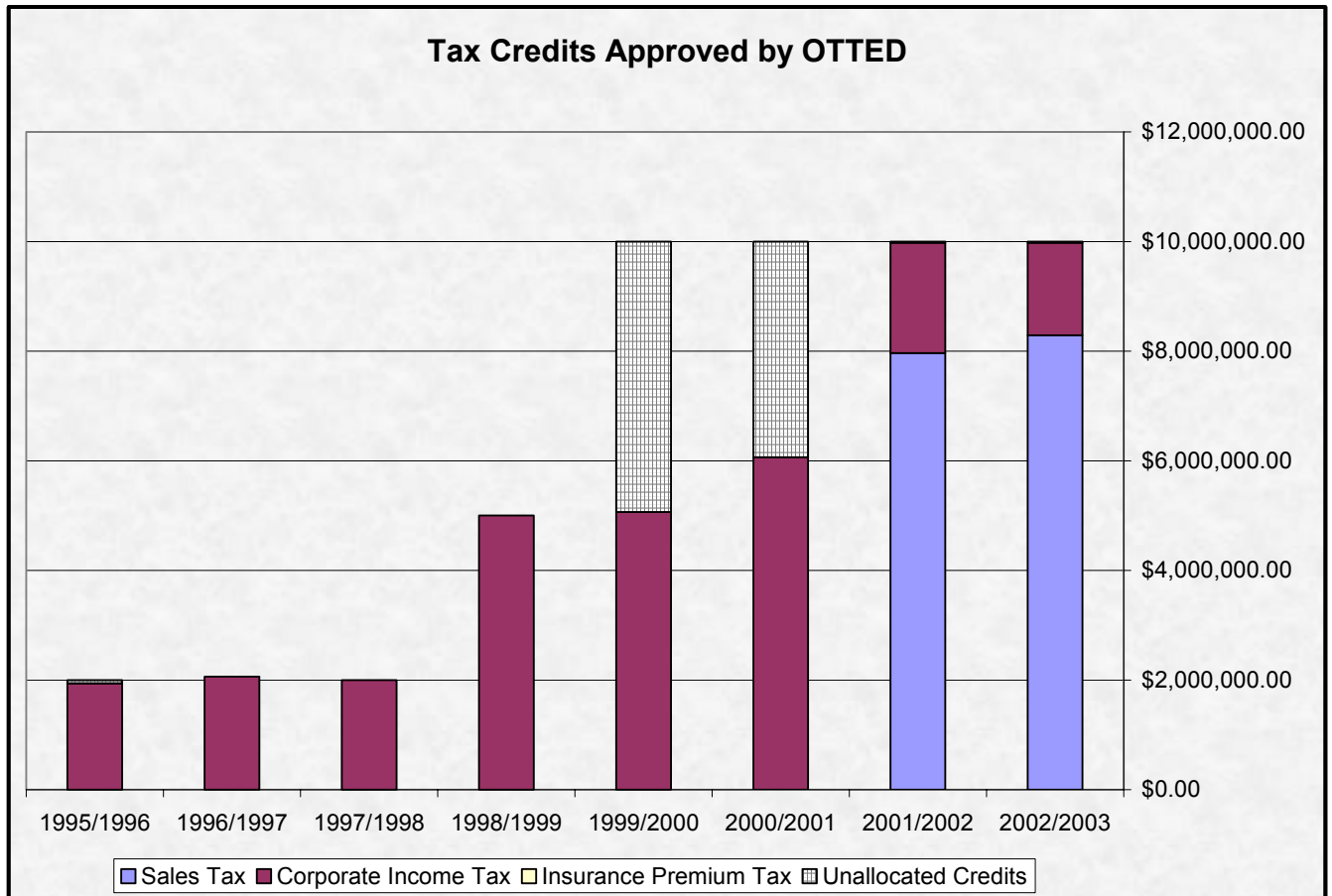
Chart 1



Source: Created from data provided by the Office of Tourism, Trade, and Economic Development

The amount of tax credits available under the community contribution tax credit program has increased since 1995. From FY 1995-1996 through FY 1997-1998, \$2 million in annual tax credits were available. For FY 1998-1999, \$5 million in annual tax credits were available. From FY 1999-2000 to the present, \$10 million in annual tax credits are available. Since the community contribution tax credit program was expanded to authorize tax credits against sales or use taxes in FY 2001-2002, the majority of the \$10 million in credits allocated have been used to offset those taxes. See Chart 2.

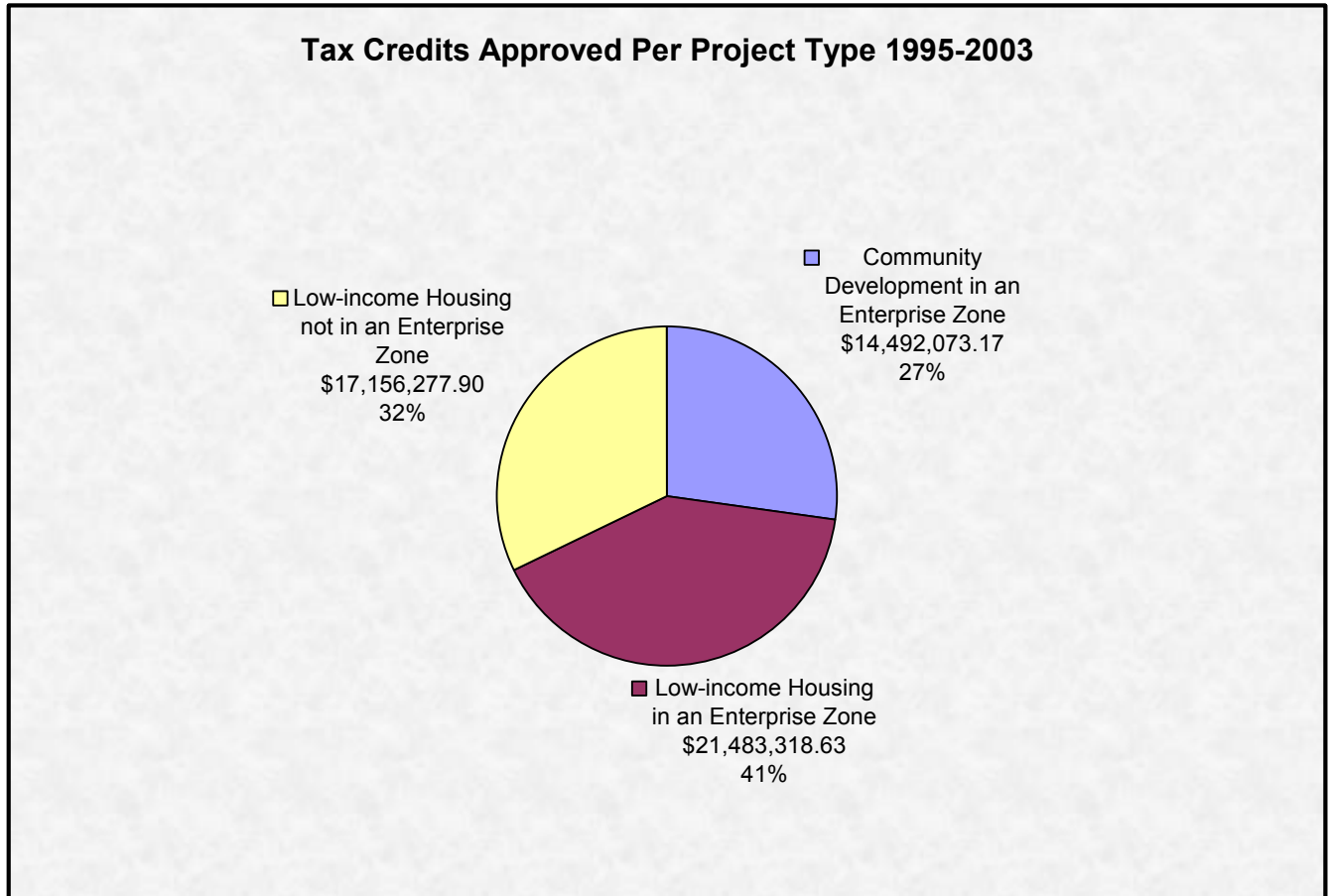
Chart 2



Source: Created from data provided by the Office of Tourism, Trade, and Economic Development

Since 1995, most community contribution tax credits have been made to low-income housing projects. See Chart 3. In Chart 3, the category “community development in an enterprise zone” includes projects that construct or rehabilitate commercial, industrial, or public facilities. Examples of community development include: community centers, museums, parks, day care centers, and the PACE Center for Girls.

Chart 3



Source: Created from data provided by the Office of Tourism, Trade, and Economic Development

III. Effect of Proposed Changes:

The committee substitute makes the following changes to the community contribution tax credit program:

- increases the amount of tax credits available under the program from \$10 million to \$20 million per year;
- reserves 10 percent of the available tax credits to partially offset community contributions to certain projects of the Florida Holocaust Museum;
- provides that retaliatory taxes on non-domiciled insurance companies will not increase as the result of community contributions; and
- expands a cross-reference in existing law, to clarify that the annual cap on the total amount of tax credits applies to all three tax sources under the program.

The committee substitute takes effect July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The committee substitute will increase the amount of community contribution tax credits available from \$10 million to \$20 million per year.

B. Private Sector Impact:

There will be more tax credits available to individuals and businesses who pay or remit sales or use taxes, corporate income taxes, and insurance premium taxes and choose to engage in charitable giving. More funding may be available to organizations who provide low-income housing and engage in community development activities.

C. Government Sector Impact:

Government agencies that sponsor low-income housing projects and community development activities may receive additional funding in support of such projects and activities by increasing the cap on the community contribution tax credit program.

The Office of Tourism, Trade, and Economic Development and the Department of Revenue may have to process additional applications for community contribution tax credits and claims for tax credits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

For ease of administration of the community contribution tax credit program, the Legislature may wish to eliminate inconsistent provisions in the three different chapters of the statutes governing the program.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
